

Marc Azdaridis

*Chief Specialist of the Department for the Protection of the Interests of the Republic of Armenia in International Arbitration and Foreign Courts,
Office of the Representative of the Republic of Armenia on International Legal Matters, Office of the Prime Minister of the Republic of Armenia*

THE LEGAL NATURE OF ADMINISTRATIVE OFFENSES¹

Abstract

The Code on Administrative Offenses of the Republic of Armenia was adopted back in 1985 and it can be argued that it is rather outdated in the current legal system of the RA considering that it was passed during the USSR, which was fundamentally different from a democratic state governed by the rule of law because of which several provisions of the Code are incompatible with the current realities of the RA. This demonstrates the need for urgent reform. Moreover, the Constitutional Court of the Republic of Armenia has repeatedly referred to the non-modernity of the Code on Administrative Offenses of the Republic of Armenia and the need for changes, stating that part of the legal regulations provided for by the Code pose a legal threat inappropriate for a state governed by the rule of law. In turn, in 2022, the new Criminal Code of the Republic of Armenia entered into force, introducing several reforms. Research on the Criminal Code and the Code on Administrative Offenses shows that in many cases the actions (infractions) defined by the two legal acts are quite difficult to distinguish, which raises the question of the grounds for differentiating the latter and whether there are such grounds or not. Besides that, it is essential to find out the true legal nature of an “administrative offense”: whether it belongs to administrative or criminal law? In other words, the keystone of this paper is the following question: Should administrative offenses be a part of administrative law, or do they belong in essence to criminal law and just have a confusing name? The article will mainly focus on the normative side of the issue, without neglecting the practice.

Keywords: criminal law; crimes; administrative law; administrative offenses; misdemeanor; penalty.

Introduction

The Code on Administrative Offenses of the Republic of Armenia (hereinafter: CAO) was adopted back in 1985 and it can be argued that it is rather outdated in the current legal system of the RA considering that it was passed during the USSR, which

¹ The article was presented on 10.07.2025 and was reviewed on 06.10.2025.

was fundamentally different from a democratic state governed by the rule of law because of which several provisions of the Code are incompatible with the current realities of the RA. The above implies the need for urgent changes. Moreover, the Constitutional Court of the Republic of Armenia (hereinafter: CCT) has repeatedly referred to the non-modernity of CAO and the need for changes, stating that part of the legal regulations provided for by CAO pose a legal threat inappropriate for a state governed by the rule of law². In turn, in 2022, the new Criminal Code of the Republic of Armenia (hereinafter: CC) entered into force, introducing several reforms. Research on CC and CAO shows that in many cases the actions (infractions) defined by the two legal acts are quite difficult to distinguish, which creates the need to find out what the grounds are for differentiating the latter and whether there are such grounds or not. Besides that, it is essential to find out the true legal nature of an “administrative offense”: whether it belongs to administrative or criminal law? In other words, the keystone of this paper is the following question: Should administrative offenses be a part of administrative law, or do they belong in essence to criminal law and just have a confusing name? The article will mainly focus on the normative side of the issue, without neglecting the practice.

In the light of the above, in this paper I will discuss the legal nature of administrative offenses and the issue of the existence of the “Soviet” legacy concept of “administrative offenses” in the current RA and European law, particularly by comparing offenses under the CC and CAO, emphasizing the essence and the scope of the administrative and criminal law, considering also the approaches of Germany, France and Russia.

Additionally, the need for practical changes stemming from theoretical conclusions will also be discussed, as well as their feasibility.

The research will also discuss the issue in the scope of European human rights standards, particularly Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR), revealing the autonomous concept of criminal prosecution through the case law of the European Court.

This paper is organized in the following way. Chapter 1 will elaborate on key aspects of criminal law, while Chapter 2 will reveal the essence of administrative law. Chapter 3 is dedicated to administrative offenses *per se* and in Chapter 4 administrative offenses will be considered in comparison with criminal and administrative laws. In Chapter 5 the experience of foreign countries on the issue in question is discussed. Chapter 6 will examine administrative offenses in the light of the ECHR. Lastly, Chapter 7 will address the practical side of the issue under discussion.

The relevance of the topic is evidenced by the planned and implemented reforms of the legislation on criminal, as well as administrative offenses, in light of which it is important to exclude in new legal acts the fundamental theoretical inconsistencies existing in previous substantive laws on public infractions.

² Inter alia decision No 1339 of 24 January 2017.

CHAPTER 1. Criminal Law

To clarify the normative nature of administrative offenses and their affiliation to a particular branch of law, it is first necessary to identify the principal elements of the relevant branch of law, because they predetermine the essence of the latter and make it possible to distinguish one branch of law from another. Thus, before analyzing administrative offenses, it is essential to outline the fundamental nature and evolution of criminal law. Only by understanding the conceptual and historical foundations of criminal liability can we later determine whether administrative offenses belong to this category or form an independent legal institution. For this reason, the key ideas of criminal law will be discussed in this section.

Ancient societies began defining certain actions as unacceptable and imposing punishments for them thousands of years before our era. The Code of Hammurabi, a Babylonian legal text composed during 1755–1750 BC is one of the most famous early sets of laws, which were written in clay tablets and included punishments for crimes such as murder, theft, and adultery³. The greatest representative of Armenian legal and political thought, Mkhitar Gosh, in his 12th-century work *“Girq Datastani”* (Book of Judgment) also addresses several issues of criminal law. Hence, Mkhitar Gosh believes that punishment should have the goal of admonishing, correcting, and educating, rather than inflicting suffering and revenge⁴.

Criminal law is one of the oldest branches of law, which regulates social relations arising from the protection of individual rights and freedoms, the interests of society and the state from certain unlawful behavior. In a narrow sense, criminal law is a set of legal norms adopted in a prescribed manner by the highest legislative body of the state, which determine what a crime is, define criminal liability, the types and amount of punishment, etc. The main idea and essence of criminal law boils down to establishing a ban on certain behaviors in order to protect the individual, society and the state imposing negative consequences on those who violate the ban in order to maintain it. Prohibited behavior has different names in different legal systems, but is mainly defined as “crime” and the main tool of intervention is “punishment”, the application of which belongs to the state, and, as a rule, the right to punish is reserved for the courts.

Thus, criminal law consists of two fundamental concepts: “crime” and “punishment”. Due to the above, in different countries, criminal law is called using those words, for example, in France it is *“droit criminel”* or *“droit pénal”*, in Germany it is *“criminalrecht”* or *“strafrecht”* in Bulgaria it is *“наказателно право”*.

³ Harper, Robert F., The Code of Hammurabi, King of Babylon: About 2250 B.C., CreateSpace Independent Publishing Platform, 2013, ISBN: 978-1482670028, 316 pages

⁴ Ալեքսեյ Սուքիասյան, «Մխիթար Գոշը և Հայոց դատաստանագիրքը», Երևան, ԵՊՀ հրատ, 1965, 255 էջ:

Alexey Sukiasyan, "Mkhitar Gosh and the Armenian Code of Laws", Yerevan, YSU Press, 1965, 255 pages

Criminal law is primarily “punitive” in nature and achieves its goals with the use of a prohibitive method, which is why it is also called the law of punishment.

Professor Perkins argues⁵ that while crimes are typically broken into degrees or classes to punish appropriately, all offenses can be divided into *mala in se* and *mala prohibita* laws. Both are Latin legal terms, *mala in se* means crimes that are thought to be inherently evil or morally wrong and thus will be widely regarded as crimes regardless of jurisdiction. *Mala in se* offenses are felonies, property crimes, immoral acts and corrupt acts by public officials. *Mala prohibita*, on the other hand, refers to offenses that do not have wrongfulness associated with them. Parking in a restricted area, driving the wrong way down a one-way street, jaywalking or unlicensed fishing are examples of acts that are prohibited by statute, but without which are not considered wrong. *Mala prohibita* statutes are usually imposed strictly, as there does not need to be a *mens rea* component for punishment under those offenses, just the act itself. For this reason, it can be argued that offenses that are *mala prohibita* are not really crimes at all.

The main source of criminal law of the RA is the CC⁶. It consists of two main parts: general and special. The general part defines the principles of criminal law and other general provisions of criminal law: crime, types of punishment, subject of crime. The special part defines specific criminal acts and the punishments provided for them.

One of the characteristic features of the CC is its strict codification. According to Article 1 of the CC norms providing for a crime or punishment or a measure of criminal legal influence may be applied only after being included in the Code. In other words, if any act is not provided for in a special part of the CC, it cannot be considered a crime.

The special part of the CC provides for 420 types of crimes, which are divided into 4 groups according to the degree of severity: minor gravity, medium gravity, grave and particularly grave. The basis for determining the severity of a crime is the maximum penalty for the commission of the relevant criminal act. Crimes are also classified into chapters and sections depending on the type of social relationship at risk (object of the crime), e.g., crimes against a person, crimes against property, thefts, etc.

The main principles of criminal law are the principle of **legality**, which is the enshrining of the well-known *nullum crimen sine lege* principle, the principle of **personal responsibility**, according to which each individual is subject to criminal liability only for the crime he or she has committed and which prohibits the criminal liability of another person for the collective or individual act committed by one person, the principle of **liability according to guilt**, which excludes criminal liability without the presence of guilt, as well as the principle of **justice and individualization of responsibility**.

⁵ Perkins, Rollin M., Criminal Law, 3rd ed. The Foundation Press, Inc., 1982, ISBN: 9780882770673, 1312 Pages

⁶ Criminal Code of the Republic of Armenia of 05 May 2021.

The Code establishes 4 main objectives of the criminal legislation of the RA. They are:

1. *protection of interests stipulated by law from criminal encroachments,*
2. *prevention of crimes,*
3. *fairness of the liability of a legal entity subject to criminal liability and a person who has committed a crime,*
4. *ensuring the reintegration and resocialization in society of a person who has committed a crime.*

One of the main concepts of criminal law, **crime**, is defined in the Code as an act provided for by the Criminal Code, prohibited by the threat of punishment, committed by the subject of the crime with guilt, while an act is not considered a crime if, although it formally contains the features provided for by the Special Part of the Criminal Code, due to its low danger, it did not cause and could not cause significant harm to a natural or legal person, society or the state.

Referring to the scope of persons subject to criminal liability, it is necessary to emphasize that the CC establishes that a sane individual who was 16 years old at the time of committing the crime, as well as a legal entity, is subject to criminal liability, except crimes explicitly listed exhaustively by the Code, for which the minimum age of criminal liability is set at 14 years.

Another important institution of criminal law is **punishment**, which is defined by the CC as a measure of state coercion, which is imposed on behalf of the state by a court verdict against a person found guilty of a crime and is expressed in the deprivation or restriction of that person of the rights or freedoms provided for by the Criminal Code. The goals of punishment are to restore social justice, resocialize the person subjected to punishment and prevent crimes. The legislation provides for 2 main groups of punishments - main and additional, as well as 11 types of punishment, among which are: fine, deprivation of the right to hold certain positions or engage in certain activities.

The above overview demonstrates that criminal law, by its very nature, regulates socially dangerous conduct through punitive sanctions. This characteristic will later serve as a key comparative benchmark for evaluating whether administrative offenses share the same punitive essence or differ in substance.

CHAPTER 2. Administrative Law

As a logical continuation of the previous section and a prerequisite for revealing the legal nature of administrative offenses, this section will discuss the main characteristics of administrative law.

The etymology of the name “administrative law” takes us to Ancient Rome, in particular, it comes from the Latin word “Administratio”, meaning administration, which also characterizes the essence of administrative law - to regulate managerial social relations.

Trying to formulate the concept of administrative law, Wade and Forsyth say “A first approximation to a definition of administrative law is to say that it is the law relating to the control of governmental power”⁷ developing the previous idea, the latter argue that “As a second approximation to definition, administrative law may be said to be the body of general principles which govern the exercise of powers and duties by public authorities”⁸.

In his work on administrative law, Maurer says that administrative law is the epitome of written and unwritten legal norms that especially apply to the administration – the administrative functions, administrative procedure, and the administrative organization. It is the law of administration⁹. Nevertheless, Maurer explains that administrative law is not only decisive for the administrative organs and their activities. It also regulates the relationship between the administration and the citizen and accordingly establishes rights and duties for the citizen, but always in relation to the administration¹⁰.

The origins of administrative law are constitutional foundations. Judge Fritz Werner of the Federal Administrative Court of Germany defined administrative law as concretized constitutional law¹¹.

First and foremost, it is about the rule of law, which requires that all state activities are based on laws justified under the constitution and that, in case of unlawful exercises of power by the state, the individual is entitled to a legal remedy in an independent court. One of the main principles of administrative law, the principle of proportionality, which serves as a tool for verifying the validity of administrative acts and laws, also stems from the rule of law.

The essence of administrative law is also directly related to the idea of democracy, as it limits the discretion of administrative bodies, reaffirms and serves the idea that power originally belongs to the people and is only delegated to public authorities to a specific extent, in order to use it to achieve specific goals. In turn, the primary bearer of power is entitled to guarantees that the transferred power will be used correctly. It follows from the above that not only is control over management important, but also its effectiveness and efficiency.

Therefore, we can state that the primary goal of administrative law is to bring the administration within the regime of law. Administrative law is fundamentally the right to protect the citizen from the arbitrariness of the administration, and not the right of the administration.

⁷ Wade, H.W.R., Forsyth, C.F., *Administrative Law*, 4 (7th ed., 1994), Oxford Univ Pr, 1994, ISBN: 9780198763109, 1120 pages.

⁸ Ibid.

⁹ Maurer, H., *Allgemeines Verwaltungsrecht* (12 auflage., 1999), C. H. Beck.

Maurer, H., *General Administrative Law* (12" ed., 1999), C. H. Beck.

¹⁰ Ibid.

¹¹ Werner, F., *Verwaltungsrecht als konkretisiertes Verfassungsrecht*, *Deutsches Verwaltungsblatt (DVBl.)*, 1959, seiten 527-533. Werner, F., *Administrative Law as Concretized Constitutional Law*, *German Administrative Gazette (DVBl.)*, 1959, pages 527-533.

CHAPTER 3. Administrative Offenses

The natural consequence of revealing the essence of criminal and administrative law in the previous sections should be to refer to the phenomenon of *administrative offense*, since, after all, the cornerstone of the work is exactly the concept of administrative offense, and revealing the essence of criminal and administrative law is of an auxiliary nature in finding the answer to the main question. Thereby, in this section, I will first discuss the phenomenon of “administrative offense” *per se*, its origin, after which administrative offenses will be examined through the prism of RA law.

Origin

Among the features common to the administrative-delictual legislation of all states, it is possible to determine the historical origin of administrative violations from criminal law, recognition of the subjects of liability of individuals and legal entities, establishment of a fine as the main penalty, existence of additional measures for committing a violation in addition to administrative penalties, lack of complete systematization of the composition of violations within one normative act, etc. The historical origin of administrative violations from criminal law lies in the fact that all types of violations in the twentieth century in European states were considered exclusively within the framework of criminal legislation. But the development of the economy and spheres of human activity confirmed the impossibility of regulating liability for all types of violations by the mechanisms of criminal law with the obligatory involvement of the court, observance of the principle of adversarial proceedings, and equality of the parties, etc. Therefore, one of the steps towards increasing the effectiveness of criminal law, proper maintenance of law and order, and criminal procedural economy was the allocation of certain acts (misdemeanors, police misdemeanors, violations) that were punished not by representatives of the judiciary, but by the police, i.e., by administrative authorities¹².

From a comparative legal point of view, two options for solving the problem of a sharp increase in the number of minor criminal prohibitions punishable by a fine were discovered:

1) Some countries (France, Belgium, etc.) retained the three-part classification of criminal offenses, leaving “criminal offenses” within the formal boundaries of their Criminal Codes. But as a counterweight, they simplified the proceedings for several

¹² БАНЧУК О. А., «Право об административных правонарушениях: опыт стран Западной и Восточной Европы, требования Европейского Суда по Правам Человека и стандарты Совета Европы», Аналитический доклад

BANCHUK O. A., “The Law on Administrative Offences: the Experience of Western and Eastern European Countries, the Requirements of the European Court of Human Rights and the Standards of the Council of Europe”, Analytical Report

<https://lprc.kz/wp-content/uploads/2020/05/Analiticheskij-doklad-%C2%ABPravo-ob-administrativnyh-pravonarusheniyah-opyt-stran-Zapadnoj-i-Vostochnoj-Evropy%C2%BB.pdf> (access 07/07/2025)

“criminal offenses” as much as possible, transferring them from judicial competence to the competence of administrative bodies (primarily the police). This is, for example, how the modern French procedure of *amende forfaitaire* looks like, when a police officer offers a traffic violator to pay a fixed fine, but in case of refusal, the case will be heard by the court according to completely traditional rules with all the procedural guarantees. By offering to pay the fine, the police officer acts based on the Criminal Procedure Code (the norm on simplified procedures), since there is no Code of Administrative Offenses in France. In such a situation, we are not talking about a substantive-legal technique, but about a purely procedural one for overcoming the problem of the growing number of criminal offenses and the overload of the courts.

2) Other countries (Germany, Italy, etc.) acted differently. They removed minor “criminal offenses” from their Criminal Codes, retaining not a three-member, but a two-member classification of criminal acts (crime and criminal misdemeanor). At the same time, the former “criminal offenses” turned into simply “minor offenses”, which sometimes began to be designated as “administrative” to the extent that sanctions for their commission began to be imposed not by the courts, but by purely administrative bodies. Thus, in Germany, the idea of an autonomous “criminal-administrative legislation” was discussed even during the preparation of the draft Criminal Code of 1911, which was never put into effect. Later, it was nevertheless reflected in the Laws of 1952, 1962, 1968, in order to be finally consolidated in the famous Law of January 2, 1975, which created an institution of minor offenses – *Ordnungswidrigkeiten*, separate from formal criminal law¹³.

Administrative Offenses in RA

In the legal system of the RA, administrative offenses are consolidated in one legal act: the RA Code on Administrative Offenses¹⁴. CAO was adopted in 1985, back during the USSR. It consists of general and special parts. The special part defines more than half a thousand administrative offenses and classifies them into different chapters according to the objects violated. The general part regulates issues of a general nature, for example, defining an administrative offense, defining the types and purposes of administrative penalties, the basis for administrative liability, the subject, the grounds for exemption from liability, etc.

The currently invalid first article of the Code stipulated that the goal of the legis-

¹³ Леонид Головкин, Соотношение уголовных преступлений и административных правонарушений: необходимость преодоления советских деформаций в контексте реализации задач по кодификации законодательства. Leonid Golovko, The Correlation of Criminal Offenses and Administrative Offenses: The Need to Overcome Soviet Deformations in the Context of the Implementation of Legislation Codification Tasks https://comitasgentium.com/ru/doctrina/chastnoe_i_ugolovnoe/sootnoshenie-ugolovnyh-prestuplenij/#_ftn2/ (access 07/07/2025)

¹⁴ Code of the Republic of Armenia on Administrative Offenses of December 6, 1985.

lation of the RA on Administrative Offenses is to **preserve the social order** of the USSR, socialist property, the socio-economic, political and personal rights and freedoms of citizens, as well as the rights and legitimate interests of enterprises, institutions and organizations, the established order of governance, state and public order, strengthen socialist legality, **prevent offenses**, educate citizens to accurately and steadfastly observe the Constitution of the USSR, the Constitution of the RA and Soviet laws, to respect the rights, honor and dignity of other citizens, the rules of socialist co-existence, to conscientiously fulfill their duties, in the spirit of responsibility towards society. To implement this task, the CAO determines which action or inaction is an administrative offense, what administrative penalty, by which body (official) and in what manner may be imposed on a person who has committed an administrative offense.

The CCT, in its decision SDO-864, stated that: “(...) administrative liability in general, and administrative penalty as a means of administrative liability in particular, pursue a goal other than the judicial restoration of a person's violated right. Administrative liability primarily serves a public goal, the offender is responsible to society, not to a private person, administrative liability is related not so much to private, but to public interests”¹⁵.

An administrative offense or misdemeanor is defined by the Code as an unlawful, culpable (intentional or negligent) action or inaction that violates state or public order, ensuring state security, socialist property, citizens' rights and freedoms, and the established order of governance, for which administrative liability is provided for by legislation.

The legislator provides for two forms of guilt: intent and negligence. An administrative offense is considered committed intentionally if the person committing it was aware of the illegal nature of his action or inaction, foresaw its harmful consequences and desired them, or knowingly allowed the occurrence of these consequences. An administrative offense is considered committed by negligence if the person committing it foresaw the possibility of the occurrence of harmful consequences of his action or inaction, but frivolously hoped to prevent them or did not foresee the possibility of such consequences, although he was obliged and could foresee them.

As for the subject of an administrative offense, those who have reached the age of sixteen before the moment of committing the administrative offense are subject to administrative liability.

The measure of responsibility for an administrative offense is an administrative penalty, which is legislatively divided into two groups: main and additional. The following types of administrative penalties are established: 1) warning, 2) penalty unit, 3) fine, 4) taking with compensation an instrument or an object that is the direct object of committing an administrative offense, 5) confiscation of an instrument or an object

¹⁵ https://www.concourt.am/decision/decisions/633eb364cf9cf_sdv-864.pdf (access 07/07/2025)

that is the direct object of committing an administrative offense, 6) suspension of the right to drive vehicles, 7) deprivation of a special right, 8) suspension of economic activity.

The purposes of applying administrative penalties are to **educate the person** who committed the administrative offense in the spirit of observing Soviet laws and respecting the rules of socialist coexistence, as well as to **prevent** the commission of new offenses by him or other persons.

The Code also has parts entitled “Part 3”, “Part 4”, “Part 5”, which in their essence provide procedural regulations in the substantive law: e.g., the scope of bodies authorized to examine cases on administrative offenses, the subordination of cases on administrative offenses, the issues and procedure for the proceedings on administrative offenses, administrative arrest, examination of things, seizure of things and documents, persons participating in the proceedings on an administrative offense, and other issues. In my opinion, referring to this part of the Code within the framework of the issue of clarifying the essence of administrative offenses is pointless, since it is not possible to assess the nature of substantive law by procedural regulations, also taking into account the fact that procedural norms are aimed at defining the “form” and do not relate to the “content”. Moreover, the inclusion of procedural norms in a legal act containing strictly substantive law norms is perhaps difficult to assess as the best legislative solution, and their clear separation seems more appropriate.

Although, as already noted, it is not possible to assess the legal nature of substantive law norms through procedural regulations, I nevertheless believe that a comparative analysis of procedural regulations of the CAO and of the Criminal Procedure Code of the Republic of Armenia (hereinafter: CPC) may be useful in the framework of the issue of the affiliation of administrative offenses to criminal law, taking into account that similar matter also requires similar procedures. In this context, it is necessary to emphasize that the regulations starting from Part 3 of the CAO, in their essence and content, have significant similarities, if not identical, with criminal procedural legislation. Hereby, according to the CAO, the circumstances excluding the proceedings on administrative offenses are: 1) absence of a case or the composition of an administrative offense, 2) not having reached the age of sixteen at the time of committing an administrative offense, 3) insanity of the person who committed an unlawful act or omission, 4) the person's action in a state of extreme necessity or necessary defense, 5) adoption of a law on amnesty, if it abolishes the application of an administrative penalty, 6) abolition of an act establishing administrative liability. Substantive analogues of all the aforementioned grounds are also present in Article 12 of the CPC and Article 35 of the former CPC. Another example is the case of Articles 263 and 264 of the CAO, which establish the procedure for personal inspection and inspection of things, seizure of things and documents, which corresponds to the regulations on inspection, examination,

seizure investigative actions established by the CPC. In addition to the above, there are numerous other similarities (rules of subordination, issues of proceedings, scope of participating persons, rights, obligations, scope of authorized officials, execution of decisions, etc.), which indicate the similar nature of the legislative acts.

New Code

On September 20, 2023, a draft of the new CAO¹⁶ was put up for discussion, which at first glance seems identical to the new CC.

The draft law envisages strictly codifying administrative offenses (as it is in CC), stipulating that administrative offenses and liability for them will be defined only by the aforementioned Code.

According to the draft, the Code will maintain the division into two main sections - a general and a special part, which are ideologically identical to both the CC and the current CAO.

The draft provides for the following principles of administrative offenses:

1. *Legality*
2. *Prohibition of discrimination*
3. *Prohibition of arbitrariness and proportionality*
4. *Presumption of innocence*
5. *Personal responsibility and fault-based responsibility*
6. *Inadmissibility of bringing to administrative liability again for the same act*

The draft rewrote the concept of an administrative offense, defining it as an unlawful act committed by a person with guilt or an unlawful act committed by a legal entity for which administrative liability is established by a special part of the Code.

The draft maintains the requirements for the subject of an offense: a sane person who has reached the age of 16 at the time of committing the administrative offense defined by the Code is subject to administrative liability. Moreover, the concept of sanity has been brought into line with the definition in the CC, defining that sanity is the ability of a person to realize the illegality of their act at the time of committing the administrative offense and to control it.

The draft defines an administrative penalty as a measure of administrative responsibility imposed in accordance with the procedure established by the Code against a person who has committed an administrative offense, and the goals of applying an administrative penalty are to **form a person's law-abiding behavior** and **prevent** the commission of new administrative offenses. It is also necessary to record that although the draft eliminated sections 3, 4, and 5, the procedural regulations were preserved (rights and obligations of persons participating in the proceedings, challenge, arrest, etc.) and included in the general part.

¹⁶ <https://www.e-draft.am/projects/6259> (access 07/07/2025)

CHAPTER 4. Comparative Analysis

Although I am sure that the reader has already formed the impression before reaching this section that the CAO and the CC are essentially identical with minor differences, I would like to highlight the most significant commonalities. Moreover, a partial comparative study and analysis will be conducted not because the regulations that have not been discussed speak of the differences between the aforementioned legal acts, but because the commonalities are so numerous that referring to each one would burden the work significantly beyond the reasonable limit.

Substantive Similarities between the CAO and CC

First of all, before making comparisons between specific legal regulations, I consider it necessary to refer to the subjects of regulation of the mentioned legal acts, as a cornerstone characteristic feature. Accordingly, both the CAO and the CC are aimed at prohibiting the manifestation of certain behavior and limiting or depriving a person of certain rights or freedoms or establishing a certain obligation for violating the prohibition.

As a result of a more individual observation, it becomes obvious that the similarities are not limited only to features of a general nature.

The structure of the mentioned acts is characteristic, with a clear separation of general and specific parts, which is not distinctive of any other legal act. The regulations of the codes in time and space, as well as in terms of the scope of their action by the circle of persons, are also identical in content.

One of the main identifying features of a branch of law are its principles, which is the foundation from which its essence stems and all other regulations are derived. In this context, an essential circumstance indicating the similar type of the legal acts under discussion is that all the principles of the CC are included in the draft of CAO, including classical criminal principles such as the presumption of innocence, the principle of legality with its elements like the prohibition of analogy of the norms defining offense and etc., responsibility according to guilt and personal responsibility. In this regard, the decision No. 832 of the CCt is noteworthy, in which the latter emphasized that a person begins to benefit from the protection of the principle of the presumption of innocence when he is informed that the competent authorities have reason to believe that he has committed a reprehensible act, moreover, the reprehensible act does not necessarily have to be considered a criminal offense in accordance with domestic law, it may have another, for example, administrative nature¹⁷. On this point, the content of the concepts of “charge” and “accused” are of significant importance, which, according to the case-law of the European Court, can be defined as “the official notification given to an individual by the competent authority of an allegation that he has committed a given offense”¹⁸.

¹⁷ Decision of the Constitutional Court of the Republic of Armenia No 832.

¹⁸ Öztürk v. Germany, 1984

Among other things, the mentioned acts have defined identical problems, in particular, the prevention of offenses and the protection of the rights, freedoms of individuals, the interests of the state and society. Moreover, the means intended for combating both types of offenses, punishment and administrative penalty, pursue the same goals, namely, to prevent new offenses and correct the offender (although the codes use different terms on this issue, namely, to re-socialize, to re-educate, we are talking about the same phenomenon in content).

In addition, the model structures of the administrative offense and the crime are also indistinguishable, which are divided into the same 4 elements: object, objective side, subject, subjective side. The similarity by the objects is evident from the legislative classification of offenses in the chapters of the same name. In both cases, the general minimum age threshold necessary to hold a person liable for the corresponding offense is also equivalent.

In addition to the above, the CAO defines as circumstances excluding administrative liability the following circumstances excluding criminal liability: extreme necessity, necessary defense and, most importantly, insanity, which is a classic criminal law institution, and all circumstances excluding administrative liability provided for by the draft are analogous to the circumstances excluding liability defined in the CC.

Illustrative Examples of Overlap

The lack of differentiation becomes most evident when comparing the special parts of the Codes.

The Article 396 of the CC provides for criminal liability for the illegal production, preparation, processing, acquisition, storage, transportation, or delivery of a **significant amount** of drugs, psychotropic substances, their preparations or equivalent substances (analogues) or their derivatives or precursors without the intention of sale.

At the same time, Article 44.1 of the CAO provides for administrative liability for the illegal production, preparation, processing, acquisition, storage, transportation or delivery of **small quantities** of drugs, psychotropic substances, their preparations or their equivalent substances (analogues) without the intention of selling.

From the comparison of the mentioned offenses, it becomes clear that the act turns from an administrative offense into a crime only as a result of changing the quantitative standard of a drug or other similar substance, while both the objective, subjective aspects and the object of the offense are identical. It is noteworthy that in the same way, in the case of a large amount of a drug or other substance defined by the article, the degree of gravity of the crime changes and it is already subject to qualification under Part 2 of the mentioned article of the CC.

Another illustrative example of the above is the draft law being circulated by the Ministry of Internal Affairs of the Republic of Armenia, according to which driving a

vehicle by a person without a driver's license will be criminalized. If a person does not have a driver's license, but drives a vehicle, they will first be subject to administrative and then criminal liability. In this case, the transition from an administrative offense to a crime for a completely identical act is conditioned exclusively by the repetition of the act within a certain period¹⁹.

CHAPTER 5. Foreign Practice

RUSSIA

Taking into account the common post-Soviet legal heritage of the RA and the Russian Federation, as well as the fact that Armenian law has “transplanted” Russian law for decades, I believe that a discussion of relevant Russian regulations within the framework of the issues raised in this thesis would be useful.

The problem of human behavior, its socially disapproved behavior, has caused and continues to cause interest among scientists in various areas. In the system of our legal consciousness, we identify such behavior with the concept of an offense in a broad sense, without going into legislative and doctrinal definitions.

Old Russian law did not provide for a clear classification of branches of law, nor did it provide for a gradation of unlawful behavior into types.

The document containing the most important legal norms of Kievan Rus of the 11th-12th centuries, “*Russkaya Pravda*”²⁰ mainly provided for acts of a criminal-legal nature (murder, murder during robbery, theft, encroachment on someone else's property, etc.).

In turn, the legal document “*Sudebnik Casimir*”, compiled in 1468 by Casimir the Fourth, also regulated mainly criminal and legal relations (16 articles out of 25 were devoted to theft)²¹.

The next stage relates to the “Code of Criminal and Correctional Punishments”²², the first Criminal Code of Russia. An important feature of this document is the division of illegal acts into crimes and misdemeanors.

¹⁹ <https://armenpress.am/hy/article/1207777> (access 07/07/2025)

²⁰ Ланге, Н.И. Исследование об уголовном праве Русской Правды/ соч. Н. Ланге .- С.-Петербург: тип. II Отд. С. Е. И. В. Канцелярии, ценз.1860.- 290 с. Lange, N. I. Research on the criminal law of the Russian Truth / works by N. Lange. - St. Petersburg: type. II Department of the S. E. I. V. Chancellery, censored. 1860. - 290 p. <https://www.prlib.ru/item/416374> (access 07/07/2025).

²¹ Судебник Казимира (1468) = Kaazimiero teisynas (1468 г.) /под ред. А. Тила; подготовка к печати, введ. и пояснение д-ра ист. наук Ю. Юрчиниса. - Вильнюс: Минтис, 1967. -С 26-32. Casimir's Code (1468) = Kaazimiero teisynas (1468) / edited by A. Til; preparation for publication, introduction and explanation by Doctor of Historical Sciences J. Jurcinis. - Vilnius: Mintis, 1967. - P. 26-32. https://pravo.by/upload/pdf/krim-pravo/sudebnik_kazimira_1468_god.pdf (access 07/07/2025)

Уложение о наказаниях уголовных и исправительных 1845 г.

²² Уложение о наказаниях уголовных и исправительных 1845 г. Code of Criminal and Correctional Punishments, 1845 <https://nnov.hse.ru/ba/law/igpr/ulonakaz1845> (access 07/07/2025)

Therefore, the analysis of legal documents from different historical periods shows that the division of offenses into felonies and misdemeanors began only in the 19th century, and before that, an offense was understood only as a criminal act.

The formal legal regulation of administrative liability and administrative offenses dates back to the USSR. The main act that formed the basis for the development of administrative-delictual legislation is the Decree of the Presidium of the Supreme Soviet of the USSR of June 21, 1961 “On further limiting the application of fines imposed administratively”²³.

The first codified regulatory act was the “Fundamentals of the Legislation of the USSR and the Union Republics on Administrative Offenses”²⁴, adopted by the Supreme Soviet of the USSR on October 23, 1980, where an administrative offense (misdemeanor) was recognized as “an unlawful, culpable (intentional or careless) action or inaction that encroaches on state or public order, socialist property, the rights and freedoms of citizens, or the established order of management, for which administrative liability is provided by law”.

In the RF, issues of administrative offenses are currently regulated by the Code on Administrative Offenses²⁵ adopted in 2001, which stipulates that: An administrative offense is recognized as an unlawful, culpable action (inaction) of an individual or legal entity for which this Code or the laws of the constituent entities of the Russian Federation on administrative offenses establish administrative liability.

The Code consists of 5 sections. Section I defines the general principles and provisions of administrative offenses, the scope of the Code in time and space, persons subject to administrative liability, forms of guilt, administrative punishment, its types, purposes and procedure for appointment, cases when a person can be released from administrative liability, establishes the age of administrative liability, and the specifics of administrative liability of minors. Section II describes the composition of specific administrative offenses and lists the sanctions (types and amounts of punishment) for committing them. Section III defines the courts, bodies and officials authorized to consider cases of administrative offenses. Section IV is procedural in nature. It defines the

²³ Указ Президиума Верховного Совета СССР от 21 июня 1961 г. № 154/3 “О дальнейшем ограничении применения штрафов, налагаемых в административном порядке”. Decree of the Presidium of the Supreme Soviet of the USSR of June 21, 1961 “On further limiting the application of fines imposed administratively”. <https://docs.cntd.ru/document/9007314> (access 07/07/2025)

²⁴ “Основы законодательства Союза ССР и союзных республик об административных правонарушениях” (приняты ВС СССР 23.10.1980 N 3145-X). “Fundamentals of the Legislation of the USSR and the Union Republics on Administrative Offenses (adopted by the Supreme Council of the USSR on 23.10.1980 N 3145-X).

<https://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=ESU&n=44928#bfOfweUgAeOkB1Y9> (access 07/07/2025)

²⁵ Кодекс Российской Федерации об Административных Правонарушениях Code of the Russian Federation on Administrative Offenses https://www.consultant.ru/document/cons_doc_LAW_34661/ (access 07/07/2025)

procedure from the stage of initiating a case on an administrative offense to deciding on cases of administrative offenses. Section V is of an executive nature. It determines the procedure for executing decisions on administrative offenses.

The RA and RF examples, as expected, are identical in terms of both form and content, providing for similar legislative regulations with homogeneous concepts.

GERMANY

This section will discuss the example of Germany, which is valuable not only because both German administrative and criminal law are leading among continental law countries and are a source of inspiration for other countries, but also because the new CC and the CAO were drafted based on the German example.

In **Germany**, the legal system categorizes offenses into three main types: regulatory offenses (*Ordnungswidrigkeiten*), misdemeanors (*Vergehen*) and crimes (*Verbrechen*).

Ordnungswidrigkeiten are less serious and handled outside of criminal courts, typically resulting in fines or other administrative penalties (speeding, parking violations, public disorder, environmental violations). These infractions are typically handled by administrative bodies such as the police, local authorities, or regulatory agencies.

Vergehen are more serious but less severe than major crimes, typically punishable by fines or imprisonment for up to five years (theft, minor assault, fraud, DUI).

Verbrechen are the gravest offenses, which can result in severe criminal penalties, including long prison sentences or life imprisonment (murder, rape, robbery, terrorism, drug trafficking). Crime cases are generally handled in the **regional courts** (*Landgerichte*), while misdemeanors are handled in **district courts** (*Amtsgerichte*).

Crimes and misdemeanors are generally regulated by the Criminal Code (*Strafgesetzbuch*²⁶), while the main legal document for regulatory offenses is the Regulatory Offense Act (*Ordnungswidrigkeitengesetz*²⁷). Although, it must be noted that in Germany, **not all regulatory offenses** are covered by a single act, nor all the crimes and misdemeanors included in the criminal code. Instead, **administrative offenses as well as crimes and misdemeanors** are regulated by multiple laws, depending on the type of offense and the specific area of law; the latter are also called Secondary Criminal Law (*Nebenstrafrecht*²⁸).

In Germany, the legislation on administrative offenses is considered criminal law in the broad sense. The doctrinal interpretation of the administrative-delictual legislation of the Federal Republic of Germany as criminal law in the broad sense predetermines the subsidiary application of the rules of criminal procedure law in proceedings on ad-

²⁶ German Criminal Code https://www.gesetze-im-internet.de/englisch_stgb/ (access 07/07/2025)

²⁷ Act on Regulatory Offences https://www.gesetze-im-internet.de/englisch_owig/ (access 07/07/2025)

²⁸ <https://de.wikipedia.org/wiki/Nebenstrafrecht#:~:text=Zum%20Nebenstrafrecht%20werden%20alle%20Strafnormen,eine%20eher%20ungew%C3%B6hnliche%20Terminologie%20ist.> (access 07/07/2025)

ministrative offenses, if the necessary administrative-procedural rules are not contained in the law or there is a direct indication of the need to apply their provisions. This is most clearly illustrated by the example of Article 53, “Tasks of the Police” of the Federal Law on Regulatory Offenses. Per this article, the police are obliged, based on the principles of official discretion, to investigate all circumstances of the administrative offense and take all urgent measures to establish the truth. When investigating the circumstances of the commission of an administrative offense, unless the law provides otherwise, the police have the same rights and obligations as when prosecuting crimes²⁹.

The above idea seems natural considering that the legislation on administrative violations prohibits actions or omissions that the law defines as unlawful just like the criminal law.

Unlike the RF, the regulations on administrative offenses in Germany, although at first glance also identical to the RA example (separated from criminal law, non-judicial prosecution), are significantly different at the theoretical level. Thus, the German example is a vivid indicator of the original separation of administrative offenses from criminal law and clearly expresses the approach that administrative offenses are a component of criminal law at the theoretical-normative level, and their separation solves practical problems.

FRANCE

The contribution of France to the development of both modern administrative law and modern criminal law is difficult to overestimate, therefore, the discussion of the latter example is extremely useful and necessary within the framework of the issue at hand.

The French Criminal Code of 1810³⁰, which laid the foundations of modern European criminal law, contained a three-part classification of criminal acts (violations of the criminal law), distinguishing, along with crimes, also criminal misdemeanors (*délits*) and criminal offenses (*contraventions*). The criterion for distinguishing them for the legislator was the punishability of the act, which depended, of course, on the social danger of the latter (the criterion of penalization and criminalization), but for the law enforcement officer - only the nature and type of punishment that he could apply in a specific case (the substantive aspect), as well as the link in the judicial system competent to consider the relevant cases (the procedural aspect). In such a situation, criminal offenses were minor violations of the criminal law, punishable exclusively by “police

²⁹ Университета имени О.Е. Кутафина (МГЮА). A. D. Maile, S. A. Starostin, Features of German Administrative-Torrent Law, 2018, Bulletin of the O. E. Kutafin Moscow State Law University (MSAL) <https://vestnik.msal.ru/jour/article/download/380/380> (access 07/07/2025)

³⁰ Penal Code of France of 1810

https://www.napoleon-series.org/research/government/france/penalcode/c_penalcode3b.html (access 07/07/2025)

punishments”, primarily a fine, cases of which were considered by the so-called “police courts”, criminal misdemeanors were more serious violations of the criminal law, punishable by the so-called “correctional punishments”, which included stricter sanctions up to imprisonment for several years, cases of which were considered by the so-called “correctional courts”, consisting of several professional judges, and crimes were the most dangerous violations of the criminal law, punishable by the so-called “criminal punishments” (death penalty, hard labor, long-term imprisonment), cases of which were considered by jury courts. At the same time, the concept embedded in the French Criminal Code proceeded from the fact that any violation of the law punishable by the state is part of the criminal law, regardless of the severity of the punishment (from a fine to the death penalty). Their distinction was already an intra-branch criminal law problem, and criminal law itself was not only and not so much the law on crimes, but the law on punishments (public-law sanctions imposed on an individual), which was reflected in most languages (French: *droit pénal*; Italian: *diritto penale*; German: *Strafrecht*). The French concept very quickly became dominant in Europe.

The current regulations do not differ significantly. In France, there is no term for administrative offense; offenses are divided into 3 main types, each of which is part of criminal law³¹.

Petty offenses (*Contraventions*) are the less serious offenses, which are more of a violation of the rules of community life rather than a violation of fundamental norms of social order. They are punishable by fines, and are divided into five classes that determine the amount of the fine: from €38 for first-class violations (such as failure to carry a hunting license), to €1,500 for fifth-class violations (such as willful violence with incapacity for work of less than or equal to eight days). This amount can be increased to €3,000 in the event of a repeat offense (a new offense committed after a first conviction). The police court (*tribunal de police*) has jurisdiction over contraventions.

Misdemeanors (*délits*) are offenses characterized by an intention to transgress an important social norm. They are punishable by fines of €3,750 or more and imprisonment of up to 10 years (20 years for repeat offenses) for the most serious offenses. Among the most frequently reported offenses are theft, aggravated assault, carrying a weapon, sexual assault, etc. The correctional court (*tribunal correctionnel*) has jurisdiction over the prosecution of offenses.

Felonies (*crime*) constitute the most serious category of offenses, which manifest an extreme violation of fundamental societal prohibitions. They are punishable, depending on their severity, by imprisonment of between 15 years and life. Homicide, rape, and the issuance of counterfeit currency are felonies. Felonies are tried by the de-

³¹ Penal Code of France

https://sherloc.unodc.org/cld/uploads/res/document/french_penal_code_html/french_penal_code.pdf (access 07/07/2025)

partmental criminal court when they are punishable by 15 to 20 years' imprisonment; by the jury court when they are punishable by more than 20 years' imprisonment.

One of the characteristic features of French criminal law is its multi-element codification, i.e. all offenses that constitute criminal law are not included in a single code, but rather there are numerous legal acts that define offenses and one main legal act, the Criminal Code. Another peculiarity is that regardless of the seriousness of the offense, the case is carried out and the punishment is determined by an independent tribunal (except *amende forfaitaire*).

It is obvious that French law differs significantly from Armenian law on this issue both at the practical and theoretical level.

COMPARISON

Comparing the regulations of the above-mentioned states, we can conclude that in the case of all states, administrative offenses were still an integral part of criminal law in the recent past, and only in the last century did the “migration” begin. The current regulations of RF and RA are almost identical both in form and in essence and do not differ significantly in content from the regulations of the German Federation, although at a theoretical level, there is a noticeable disruption. In the case of all three states, the problem of the exponential growth of less dangerous criminal offenses has been solved by separating the relevant offenses from criminal law in both substantive and procedural terms, with the difference that in the case of Germany, separate legal acts on administrative offenses are nevertheless considered additional “criminal” law. At the same time, in the case of France, regulations have been selected that are more correct at the conceptual-theoretical level in terms of the substantive classification of offenses. Thus, although France has provided for less dangerous offenses with significantly different and highly simplified procedures than other criminal offenses, it has preserved the organic integrity of criminal law, not singling out any type of criminal offense. The French example is also distinctive and noteworthy because the jurisdiction to determine liability for “administrative” offenses that are essentially criminal is reserved to the courts.

CHAPTER 6. Administrative Offenses in the light of the ECHR

The ECHR as well as the case-law of the European Court established on its basis, as a phenomenon that develops and interprets the Convention and constitutes its integral part, are essential actors in the development of not only the domestic law of the RA, but also the law of all the member states of the Council of Europe. It is indeed difficult to overestimate the influence of the Convention and the case-law of the European Court in the continuous development of Armenian law.

In light of the above, I believe it is important to address the main ideological ques-

tion raised in this paper, namely, “what is the legal essence/nature of administrative offenses”, in the light of the ECHR.

Article 6 of the Convention enshrines the right to a fair trial. It has the following appearance: In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

From the content of the regulation of Article 6 of the Convention, it becomes clear that it is divided into two main parts - civil and criminal wings. In such a case, with a positivist interpretation of the text of the Convention, it can be concluded that in public relations regulated by administrative law, individuals are not protected by the guarantees of a fair trial. Naturally, this is not the case. Making a brief remark on the absence of a mention of administrative law in Article 6 of the Convention, it is worth emphasizing that the Convention was written after the Second World War and the main author of the drafting of the text was one of the victorious states - the United Kingdom, which at that time was “skeptically” approaching the French-inspired concept of the separation of “administrative law”, therefore it was not included in the text of the Convention signed in 1950.

British Constitutional lawyer Albert Venn Dicey even wrote in 1885 that administrative law was a peculiar feature of the continental countries, particularly of France and also of Germany, which was unknown to the common law of England³².

The above-mentioned gap was resolved by the European Court (hereinafter also referred to as The Court and ECtHR) through the “autonomous concepts” of the Convention.

ECtHR has stated that the concept of a “criminal charge” has an autonomous meaning, independent of the categorisations employed by the national legal systems of the member States³³. This is true both for the determination of the “criminal” nature of the charge and for the moment from which such a “charge” exists.

The Court’s established case-law sets out three criteria, commonly known as the *Engel criteria*, to be considered in determining whether there was a criminal charge. The first is the legal classification of the offense under national law, the second is the very nature of the offense, and the third is the degree of severity of the penalty that the person concerned risks incurring³⁴.

The Court takes a substantive, rather than a formal, conception of the charge contemplated by Article 6³⁵. Charge may thus be defined as “the official notification given to an individual by the competent authority of an allegation that he has committed a

³² Albert Venn Dicey, Lectures Introductory to the Study of the Law of the Constitution (1885). http://files.libertyfund.org/files/1714/0125_Bk.pdf (access 07/07/2025)

³³ Blokhin v. Russia [GC], 2016, § 179; Adolf v. Austria, 1982, § 30.

³⁴ Grosam v. the Czech Republic [GC], 2023, § 113.

³⁵ Deweer v. Belgium, 1980, § 44.

criminal offense”, a definition that also corresponds to the test whether “the situation of the [suspect] has been substantially affected”³⁶.

As regards the autonomous notion of “criminal”, the Court stated that the Convention is not opposed to the moves towards “decriminalisation” among the Contracting States. However, offenses classified as “regulatory” following decriminalisation may come under the autonomous notion of a “criminal” offense. Leaving States the discretion to exclude these offenses might lead to results incompatible with the object and purpose of the Convention³⁷.

The starting point for the assessment of the applicability of the criminal aspect of Article 6 of the Convention is based on the criteria outlined in *Engel and Others v. the Netherlands*, 1976 (§§ 82-83):

1. *classification in domestic law*;
2. *nature of the offense*;
3. *severity of the penalty that the person concerned risks incurring*.

The first criterion is of relative weight and serves only as a starting point. If domestic law classifies an offense as criminal, then this will be decisive. Otherwise the Court will look behind the national classification and examine the substantive reality of the procedure in question³⁸.

In evaluating the second criterion, which is considered more important³⁹, the following factors can be taken into consideration:

- **whether the legal rule in question is directed solely at a specific group or is generally binding**⁴⁰;
- **whether the proceedings are instituted by a public body with statutory powers of enforcement**⁴¹;
- whether the legal rule has a **punitive** or deterrent **purpose**⁴²;
- **whether the legal rule seeks to protect the general interests of society usually protected by criminal law**⁴³;
- **whether the imposition of any penalty is dependent upon a finding of guilt**⁴⁴;
- how comparable procedures are classified in other Council of Europe member States.

³⁶ *Eckle v. Germany*, 1982, § 73, and also *Ibrahim and Others v. the United Kingdom* [GC], 2016, § 249; *Simeonovi v. Bulgaria* [GC], 2017, § 110.

³⁷ *Öztürk v. Germany*, 1984, § 49.

³⁸ *Gestur Jónsson and Ragnar Halldór Hall v. Iceland* [GC], 2020, §§ 85 and 77-78.

³⁹ *Jussila v. Finland* [GC], 2006, § 38.

⁴⁰ *Bendenoun v. France*, 1994, § 47.

⁴¹ *Benham v. the United Kingdom*, 1996, § 56.

⁴² *Öztürk v. Germany*, 1984, § 53; *Bendenoun v. France*, 1994, § 47.

⁴³ *Produkcija Plus Storitveno podjetje d.o.o. v. Slovenia*, 2018, § 42.

⁴⁴ *Benham v. the United Kingdom*, 1996, § 56.

The third criterion is determined by reference to the maximum potential penalty for which the relevant law provides⁴⁵.

The second and third criteria laid down in Engel case are alternative and not necessarily cumulative for Article 6 to be held to be applicable, it suffices that **the offense in question should by its nature be regarded as "criminal" from the point of view of the Convention**, or that the offense rendered the person liable to a sanction which, by its nature and degree of severity, belongs in general to the “criminal” sphere⁴⁶. **The fact that an offense is not punishable by imprisonment is not in itself decisive, since the relative lack of seriousness of the penalty at stake cannot divest an offense of its inherently criminal character**⁴⁷.

Applying the above test, the European Court has found that the following acts qualified as “administrative offenses” under domestic law are criminal in nature:

1. *Road-traffic offenses punishable by fines or driving restrictions, such as penalty points or disqualifications*⁴⁸;
2. *Minor offenses of causing a nuisance or a breach of the peace*⁴⁹.
3. *Offenses against social-security legislation*⁵⁰;
4. *Administrative offense of promoting and distributing material promoting ethnic hatred, punishable by an administrative warning and the confiscation of the publication in question*⁵¹;
5. *Administrative offense related to the holding of a public assembly*⁵².

Referring also to bodies that have the authority to prosecute for criminal offenses within the meaning of the Convention, which constitute other types of offenses under domestic law, the European Court has stated that conferring the prosecution and punishment of minor “criminal” offenses on administrative authorities is not inconsistent with the Convention provided that the person concerned is enabled to take any decision thus made against him before a tribunal that does offer the guarantees of Article 6⁵³. Therefore, decisions taken by administrative authorities which do not themselves satisfy the requirements of Article 6 « 1 of the Convention must be subject to subsequent review by a “judicial body that has full jurisdiction”. The defining characteristics of such

⁴⁵ Campbell and Fell v. the United Kingdom, 1984, § 72; Demicoli v. Malta, 1991, § 34.

⁴⁶ Lutz v. Germany, 1987, § 55; Öztürk v. Germany, 1984, § 54.

⁴⁷ Ibid, § 53; Nicoleta Gheorghe v. Romania, 2012, § 26.

⁴⁸ Lutz v. Germany, 1987, § 182; Schmautzer v. Austria, 1995; Malige v. France, 1998; Marčan v. Croatia, 2014, § 33; Igor Pascari v. the Republic of Moldova, 2016, §§ 20-23; by contrast, Matijašić v. Croatia (dec.), 2021.

⁴⁹ Lauko v. Slovakia, 1998.

⁵⁰ Hüseyin Turan v. Turkey, 2008, §§ 18-21, for a failure to declare employment, despite the modest nature of the fine imposed.

⁵¹ Balsytė-Lideikienė v. Lithuania, 2008, § 61.

⁵² Kasparov and Others v. Russia, 2013, § 39-45; Mikhaylova v. Russia, 2015, §§ 50-75.

⁵³ Öztürk v. Germany, 1984, § 56; A. Menarini Diagnostics S.R.L. v. Italy, 2011; Flisar v. Slovenia, 2018, § 33.

a body include the power to quash in all respects, on questions of fact and law, the decision of the body below⁵⁴: for instance, administrative courts carrying out a judicial review that went beyond a “formal” review of legality and included a detailed analysis of the appropriateness and proportionality of the penalty imposed by the administrative authority⁵⁵.

Similarly, a judicial review may satisfy Article 6 requirements even if it is the law itself which determines the sanction in accordance with the seriousness of the offense⁵⁶.

It is noteworthy that the European Court does not view all cases of “criminal prosecution” within the meaning of the Convention on the same level and provides for certain distinctions in terms of ensuring the minimum necessary guarantees depending on the nature of the offense for which the prosecution is being carried out. Thus, the European Court has emphasized that requirements of a fair hearing are stricter in the sphere of criminal law than under the civil limb of Article 6⁵⁷. However, the criminal-head guarantees will not necessarily apply with their full stringency in all cases, particularly those that do not belong to the **traditional categories of criminal law**, such as tax surcharges proceedings⁵⁸, **minor road traffic offenses proceedings**⁵⁹, or proceedings concerning an **administrative fine for having provided premises for prostitution**⁶⁰. Having regard to the large number of minor offenses - notably in relation to road traffic - which are not so discreditable that the offenders deserve the stigma of a criminal penalty, a Contracting State may have good reasons for introducing a system which relieves its courts of the task of dealing with the great majority of them. Conferring the prosecution and punishment of minor offenses on administrative authorities is not inconsistent with the Convention, provided that the person concerned is able to bring any decision thus made against him before a tribunal that does afford the safeguards of Article 6⁶¹.

Having examined the offenses provided for in the CAO using the test developed by the EctHR in the *Engel* case, I find that the offenses considered administrative under the domestic legislation of the RA have a criminal nature within the meaning of the Convention. The basis for the aforementioned conclusion is the second component of the aforementioned test, namely the nature of the offense. Thereby, the CAO **is of a generally binding character and is not directed solely at a specific group, that is, it**

⁵⁴ Schmutz v. Austria, 1995, § 36; Grading v. Austria, 1995, § 44; Grande Stevens and Others v. Italy, 2014, § 139.

⁵⁵ A. Menarini Diagnostics S.R.L. v. Italy, 2011, §§ 63-67, in respect of a fine imposed by an independent regulatory authority in charge of competition.

⁵⁶ Malige v. France, 1998, §§ 46-51, in respect of the deduction of points from a driving licence.

⁵⁷ Moreira Ferreira v. Portugal (no. 2) [GC], 2017, § 67; Carmel Saliba v. Malta, 2016, § 67.

⁵⁸ Jussila v. Finland [GC], 2006, § 43; Vegotex International S.A. v. Belgium [GC], 2022, § 76.

⁵⁹ Marčan v. Croatia, 2014, § 37.

⁶⁰ Sancaklı v. Turkey, 2018, §§ 43-52.

⁶¹ Lutz v. Germany, 1987.

does not have a “disciplinary” nature, the proceedings are instituted by a public body with statutory powers of enforcement, the liability provided for administrative offenses is primarily punitive in nature, as it is aimed at achieving negative consequences for a person who has demonstrated such unacceptable behavior, and the secondary goals of prevention and education are derived from the main one. Moreover, **the same social relations that are protected by the Criminal Code are protected through administrative offenses**, as evidenced by the provision of similar chapters in both legislative acts (administrative offenses encroaching on public order, administrative offenses encroaching on the established procedure for management, administrative offenses encroaching on the health of the population, administrative offenses encroaching on property, administrative offenses in the field of transport, road economy and communications and, respectively, crimes against property (...), crimes against public order (...), crimes against the health of the population, crimes against the order of management, crimes against the established procedure for traffic safety and transport operation), which are an indicator of what social relations are encroached on by the offense included in the corresponding chapter. **The offense and ultimately the liability for administrative offenses depends on the person's guilt**, intent or negligence, and in its absence, there can be no question of an administrative offense, therefore, liability for an administrative offense is also excluded.

Summarizing the above, we can conclude that although administrative offenses are outside the "criminal" field under the domestic legislation of the RA, taking into account their legal nature, they are "criminal" offenses from the perspective of the ECHR.

Referring to the regulations on non-judicial bodies with the authority to examine cases of administrative offenses, it is necessary to note that such a regulation in itself is not problematic from the point of view of the Convention, and although a situation arises when the issue of the existence of a “criminal” offense in its nature is discussed and liability is determined not by the court, but, for example, by the police, inspection bodies, etc., the fact that the acts adopted by the aforementioned bodies are subject to judicial review in the Administrative Court is of primary importance.

CHAPTER 7. Adaptation, Pros and Cons of the proposed changes

Taking into account the preliminary conclusions already made regarding the “criminal” nature of “administrative” offenses, the logical question arises as to whether such a legal-theoretical inconsistency/inaccuracy also necessitates practical changes. In other words, should the statement that administrative offenses are part of the organic whole of criminal law imply legislative changes or not, and if so, what kind of changes, and what are the positive and negative consequences of such changes?

Procedural Burdens

At first glance, the best solution seems to be the simple inclusion of administrative offenses in the CC with a special classification as less dangerous acts (misdemeanors) than minor gravity crimes, but such a change can become extremely dangerous, taking into account the consequences that inevitably arise from it. First of all, it is necessary to emphasize that, unlike administrative offenses, even the most minor crimes provided for by the CC require a complex procedure, which includes mandatory preliminary investigation and prosecutorial supervision. In other words, the inclusion of administrative offenses in the CC without procedural changes can cause a collapse for the simple reason that both in terms of staffing and financial aspects, the criminal justice bodies are not able to conduct an investigation of such a huge number of offenses, and the reservation of additional powers and the responsibilities arising from it will have undesirable consequences in terms of the efficiency of the investigation of classic crimes and, consequently, in terms of the effective protection of the rights of private participants (accused, victim) involved in the criminal proceedings.

Considering the fact that over time, the decriminalisation of certain acts and their classification as other type of offense has not been an end in itself process, it is necessary to also discuss the question of whether the reasons for the initial changes have been preserved. This is, first of all, about the unburdening of courts and criminal prosecution bodies. Thus, although in a world of limitless possibilities it is difficult to imagine a better solution than a thorough, competitive classical criminal proceeding, it is necessary to admit that such an idea is utopian and has no relation to our reality, while legislative regulations should not be illusory, but should regulate social relations in practice. Therefore, the option that seems to be the best solution at first glance is unrealistic in the current conditions, and the reasons why some offenses previously migrated from criminal law and were called “administrative” remain extremely relevant.

Public Perception

Another issue is the problem of social perception. So, under the current regulations, there is a clear distinction between crimes and administrative offenses, while assimilation can lead to labeling a person who has committed a minor act as a “criminal”, since in Armenian society “penal” law is necessarily associated with “crime”, therefore, a person who has committed an act provided for by the Penal Code, regardless of the type or severity of that act, will be perceived as a criminal, which, in my opinion, is not justified and can have an adverse impact on people who will be viewed in the eyes of society on the same level as people who have committed thefts or violent acts, despite the fact that they simply, for example, parked their vehicle in the wrong place.

Defense Rights

Among the positive changes, one can highlight the more effective protection of the rights of persons who have allegedly committed an offense and especially the presumption of innocence. Thus, under the current regulations, persons who have allegedly committed any act provided for by the CC are innocent until the guilty verdict of the competent court enters into legal force, while in the case of the majority of administrative offenses, the proceedings on the administrative offense are carried out by the administrative body (for example, a patrol officer). As a result, in the case of an administrative offense, the person is forced to resort to “active” defense and request a judicial review himself, having previously overcome the appeal in the administrative superior order, while in the case of criminal proceedings, the person who has allegedly committed a crime can demonstrate absolute passivity until the end, which cannot cause harmful consequences for him. Moreover, if a person can be punished for allegedly committing an act provided for by the CC in the presence of a judgment that has entered into absolute legal force, in the case of an administrative offense, the person may suffer the penalty imposed by the administrative body for committing an alleged administrative offense that has not yet been confirmed by judicial review. A vivid example of the above is the administrative penalty of suspension of the right to drive vehicles, in which case the challenge of the act establishing administrative liability in the administrative court does not automatically suspend the execution of the penalty and, according to Article 83 of the Administrative Procedure Code of the Republic of Armenia, a person may only benefit from the presumption of innocence in its entirety if he submits an additional petition to the court and it is satisfied. Meanwhile, under the current regulation, a person who has committed a “criminal” offense begins to serve his sentence in the event that the legality and justification of the administrative body’s conclusions regarding him are still being discussed in court, and situations are possible when the person initially suffers the deprivation of his rights by the penalty, and only after its term expires, the court makes a decision that proves the unlawfulness of the administrative body’s decision that served as the basis for the deprivation, i.e. there is a risk of delayed justice.

Another issue is the availability of defense guarantees. Thus, in the event of being accused of committing any act provided for by the CC, a person has the right to request the state to provide him with a defense attorney if he is unable to afford an attorney with his own funds. In such a case, although the criminalisation of administrative offenses may theoretically have a very positive effect from the point of view of protecting people, in my opinion, in practice it will cause an insurmountable burden on the Public Defender's Office of the RA Chamber of Advocates, which is natural considering the fact that even under the current workload and by providing defense only in proceedings on classical crimes, the Office operates at the maximum of its capabilities, and the additional burden will either lead to a significant decline in quality, if the number of em-

ployees is not significantly increased, or to a significant additional financial burden for the state in order to provide the Office with the necessary lawyers.

Another negative aspect of the current regulation is the merging of the functions of “prosecutor” and “judge” in the case of administrative bodies investigating an administrative offense. The person who actually carries out the prosecution for an essentially “criminal” offense ultimately also makes a decision on it, which entails risks of impartiality and objectivity, especially in cases where the facts of the alleged offense are perceived by the body conducting the further investigation into it personally. Although the raised issue is resolved within the framework of a subsequent judicial appeal, when the final decision will be made by an independent tribunal, it should be noted again that judicial protection in the majority of cases of administrative offenses implies “active” actions by the person who committed the alleged offense, while the right to consider the “accusation” brought against him by an impartial body, in my opinion, should not depend on the person, but should be a mechanism existing by the force of law. In the above-mentioned context, it is also important to emphasize the self-serving and ineffective institution of appeal through administrative superiors in practice, which additionally burdens the person in the process of submitting the accusation brought against him to an impartial body for examination and serves exclusively to relieve the court of its burden because citizens in many cases put up with decisions that they initially assess as unlawful in order not to waste time and resources, while administrative superior bodies, ignoring established judicial practice on many issues, continue to assess as lawful the obviously unlawful decisions of their subordinate bodies.

It follows from the above that although in terms of substantive law there is a need for a conceptual change regarding administrative offenses, which will emphasize the criminal nature of the latter and will not allow for a strict departure from criminal law guarantees, nevertheless, classic criminal procedural mechanisms (mandatory preliminary investigation, competitive trial, etc.) cannot be considered effective in the case of administrative offenses, and simplified, including existing, means are more effective, sound and lawful, therefore a “symbiotic” solution is needed, the essence of which boils down to the transfer of administrative offenses to the field of criminal law, but providing for more simplified procedural mechanisms that are significantly different from the existing criminal procedural regulations. An option for solving the formal side of the problem is to rename “administrative” offenses in a way that reflects their essence, while a more substantive solution could be to create special courts, following the example of France, whose function would be to examine proceedings regarding less dangerous offenses in a simplified manner. Such a solution will also have a positive impact on relieving the burden on administrative courts, which is a grave problem and has already led to the transfer of administrative disputes related to the entry, implementation, and dismissal from public or alternative service to civil courts⁶².

⁶² RA law No. HO-222-N of May 02, 2024 on amendments and supplementations to the RA Civil Procedure Code.

Conclusion

Summarizing all of the above and answering the legal question raised, I believe that the results of this study indicate that administrative offenses are not related to administrative law, since they are not aimed at solving the problems of administrative law, namely, protecting citizens from public authorities by regulating and limiting their activities. On the contrary, administrative offenses, similar to criminal law, pursue the goal of protecting certain public relations from prohibited behavior and preventing unlawful behavior and are aimed at an indefinite circle of persons, that is, the addressee is not public authorities, but citizens, and it is not the activities of the administration that are regulated, but the citizenry. Moreover, in the case of administrative offenses and criminal offenses, both the legislative regulations, the basis of liability, and the main defining elements of the offense are almost identical. Special attention is need to be paid to the direct dependence of liability for administrative and criminal offenses on the presence of the alleged offender's guilt, the punitive nature of the latter, as well as the fact that administrative offenses and criminal offenses protect almost the same social relations, and the difference between the latter comes down to the public danger of the corresponding offense and the intensity of state intervention for its commission, which, in essence, cannot be characteristic from the point of view of legal nature. Such conclusions not only stem from a theoretical comparative analysis of the essence of criminal and administrative laws, but also correspond to the ECHR and the case law of the European Court, as well as the best practice of European states with progressive legal systems. Hence, we can state that administrative offenses are less dangerous criminal offenses.

Referring to the need for possible legislative amendments in the event of the above conclusion, it should be noted that the very grounds, as a result of which administrative offenses were decriminalised over time, remain relevant. In particular, we are talking about the complexity and cost-effectiveness of criminal procedural mechanisms. Therefore, it is necessary to emphasize that the direct transfer of administrative offenses to the criminal field would be unrealistic and ineffective, while the consequences of such a change, in my opinion, would significantly negatively affect both the resolution of criminal law (including administrative offenses) issues and the effective protection of individual rights. Therefore, although administrative offenses have a “criminal” nature, the provision of differentiated, simplified regulations for the latter is justified and necessary. For the reasons mentioned, although the existing regulations at the conceptual-theoretical level are misleading and do not correctly characterize the legal essence of administrative offenses, nevertheless, the existing mechanisms can be assessed as effective from a practical point of view, the importance of which prevails. As a result of the above, I find that the best solution is to provide dissimilar procedural regulations under the conditions of unified substantive law. In

other words, while maintaining simplified investigation mechanisms, it is necessary to clearly define that in the case of an administrative offense, we are always dealing with criminal law, not with administrative law and administration, a good example of which is the French regulations.

Reference list (գրականության ցանկ, список литературы)

1. German Criminal Code https://www.gesetze-im-internet.de/englisch_stgb/ (access 07/07/2025)
2. Act on Regulatory Offences [https://www.gesetze-im-internet.de/englisch_owig/per cent per cent](https://www.gesetze-im-internet.de/englisch_owig/per_cent_per_cent) (access 07/07/2025)
3. Penal Code of France of 1810
https://www.napoleon-series.org/research/government/france/penalcode/c_penalcode3b.html (access 07/07/2025)
4. Penal Code of France.
https://sherloc.unodc.org/cld/uploads/res/document/french_penal_code_html/french_penal_code.pdf (access 07/07/2025)
5. Criminal Code of the Republic of Armenia of 05 May 2021.
6. Code of the Republic of Armenia on Administrative Offenses of December 6, 1985.
7. RA law No. HO-222-N of May 02, 2024 on amendments and supplementations to the RA Civil Procedure Code.
8. Кодекс Российской Федерации об Административных Правонарушениях
Code of the Russian Federation on Administrative Offenses
https://www.consultant.ru/document/cons_doc_LAW_34661/ (access 07/07/2025)
9. "Основы законодательства Союза ССР и союзных республик об административных правонарушениях" (приняты ВС СССР 23.10.1980 N 3145-X)
“Fundamentals of the Legislation of the USSR and the Union Republics on Administrative Offenses (adopted by the Supreme Council of the USSR on 23.10.1980 N 3145-X)
<https://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=ESU&n=44928#bfOfweU-gAeOkB1Y9> (access 07/07/2025)
10. Указ Президиума Верховного Совета СССР от 21 июня 1961 г. № 154/3 “О дальнейшем ограничении применения штрафов, налагаемых в административном порядке”.
Decree of the Presidium of the Supreme Soviet of the USSR of June 21, 1961 “On further limiting the application of fines imposed administratively”
<https://docs.cntd.ru/document/9007314> (access 07/07/2025)
11. Уложение о наказаниях уголовных и исправительных 1845 г.
Code of Criminal and Correctional Punishments, 1845
<https://nnov.hse.ru/ba/law/igpr/ulonakaz1845> (access 07/07/2025)
12. Blokhin v. Russia [GC], 2016, « 179;
13. Adolf v. Austria, 1982.
14. Grosam v. the Czech Republic [GC], 2023.
15. Deweer v. Belgium, 1980.
16. Eckle v. Germany, 1982.
17. Ibrahim and Others v. the United Kingdom [GC], 2016.
18. Simeonovi v. Bulgaria [GC], 2017.
19. Öztürk v. Germany, 1984.
20. Gestur Jgnsson and Ragnar Halldgr Hall v. Iceland [GC], 2020.
21. Jussila v. Finland [GC], 2006.
22. Bendenoun v. France, 1994.
23. Benham v. the United Kingdom, 1996.
24. Produkcija Plus Storitveno podjetje d.o.o. v. Slovenia, 2018.
25. Campbell and Fell v. the United Kingdom, 1984.
26. Demicoli v. Malta, 1991.

27. Lutz v. Germany, 1987.
28. Nicoleta Gheorghe v. Romania, 2012.
29. Schmautzer v. Austria, 1995.
30. Malige v. France, 1998.
31. Marčan v. Croatia, 2014.
32. Igor Pascari v. the Republic of Moldova, 2016.
33. Matijašić v. Croatia (dec.), 2021.
34. Lauko v. Slovakia, 1998.
35. Hüseyin Turan v. Turkey, 2008.
36. Balsytė-Lideikienė v. Lithuania.
37. Kasparov and Others v. Russia, 2013.
38. Mikhaylova v. Russia, 2015.
39. A. Menarini Diagnostics S.R.L. v. Italy, 2011.
40. Flisar v. Slovenia, 2018.
41. Gradinger v. Austria, 1995.
42. Grande Stevens and Others v. Italy, 2014.
43. Moreira Ferreira v. Portugal (no. 2) [GC], 2017.
44. Carmel Saliba v. Malta, 2016.
45. Vegotex International S.A. v. Belgium [GC], 2022.
46. Sancaklı v. Turkey, 2018.
47. Decision of the Constitutional Court of the Republic of Armenia No 1339.
48. Decision of the Constitutional Court of the Republic of Armenia No 864.
49. Decision of the Constitutional Court of the Republic of Armenia No 832.
50. Albert Venn Dicey, Lectures Introductory to the Study of the Law of the Constitution (1885). http://files.libertyfund.org/files/1714/0125_Bk.pdf (access 07/07/2025)
51. Harper, Robert F., The Code of Hammurabi, King of Babylon: About 2250 B.C., Create-Space Independent Publishing Platform, 2013, ISBN: 978-1482670028, 316 pages
52. Perkins, Rollin M., Criminal Law, 3rd ed. The Foundation Press, Inc., 1982, ISBN: 9780882770673, 1312 Pages
53. Ալեքսեյ Սուքիասյան, «Մխիթար Գոշը և Հայոց դատաստանագիրքը», Երևան, Ե-ՊՆ հրատ, 1965, 255 էջ
Alexey Sukiasyan, "Mkhitar Gosh and the Armenian Code of Laws", Yerevan, YSU Press, 1965, 255 pages
54. Wade, H.W.R., Forsyth, C.F., Administrative Law, 4 (7th ed., 1994), Oxford Univ Pr, 1994, ISBN: 9780198763109, 1120 pages.
55. Maurer, H., Allgemeines Verwaltungsrecht (12 auflage., 1999), C. H. Beck.
Maurer, H., General Administrative Law (12" ed., 1999), C. H. Beck.
56. Werner, F., Verwaltungsrecht als konkretisiertes Verfassungsrecht, Deutsches Verwaltungsblatt (DVBl.), 1959, seiten 527-533.
Werner, F., Administrative Law as Concretized Constitutional Law, German Administrative Gazette (DVBl.), 1959, pages 527-533.
57. Ланге, Н.И. Исследование об уголовном праве Русской Правды/ соч. Н. Ланге .- С.-Петербург: тип. II Отд. С. Е. И. В. Канцелярии, ценз. 1860.- 290 с.
Lange, N. I. Research on the criminal law of the Russian Truth / works by N. Lange. - St. Petersburg: type. II Department of the S. E. I. V. Chancellery, censored. 1860. - 290 p. <https://www.prlib.ru/item/416374> (access 07/07/2025)
58. Судебник Казимира (1468) = Kaazimiero teisynas (1468 г.) /под ред. А. Тила; подго-

товка к печати, введ. и пояснение д-ра ист. наук Ю. Юрчиниса. - Вильнюс: Минтис, 1967. - С 26-32.

Casimir's Code (1468) = Kaazimiero teisynas (1468) / edited by A. Til; preparation for publication, introduction and explanation by Doctor of Historical Sciences J. Jurcinis. - Vilnius: Mintis, 1967. - P. 26-32.

- https://pravo.by/upload/pdf/krim-pravo/sudebnik_kazimira_1468_god.pdf (access 07/07/2025)
59. БАНЧУК О.А., «Право об административных правонарушениях: опыт стран Западной и Восточной Европы, требования Европейского Суда по Правам Человека и стандарты Совета Европы», Аналитический доклад
 BANCHUK O.A., “The Law on Administrative Offences: the Experience of Western and Eastern European Countries, the Requirements of the European Court of Human Rights and the Standards of the Council of Europe”, Analytical Report
<https://lprc.kz/wp-content/uploads/2020/05/Analiticheskij-doklad-%C2%ABPravo-ob-administrativnyh-pravonarusheniyah-opyt-stran-Zapadnoj-i-Vostochnoj-Evropy%C2%BB.pdf> (access 07/07/2025)
 60. А. Д. Майле, С. А. Старостин, Особенности Германского Административно-Деликтного Законодательства, 2018, Вестник Университета имени О.Е. Кутафина (МГЮА)
 A. D. Maile, S. A. Starostin, Features of German Administrative-Torment Law, 2018, Bulletin of the O. E. Kutafin Moscow State Law University (MSLU)
<https://vestnik.msal.ru/jour/article/download/380/380> (access 07/07/2025)
 61. Леонид Головкин, Соотношение уголовных преступлений и административных правонарушений: необходимость преодоления советских деформаций в контексте реализации задач по кодификации законодательства
 Leonid Golovko, The Correlation of Criminal Offenses and Administrative Offenses: The Need to Overcome Soviet Deformations in the Context of the Implementation of Legislation Codification Tasks
https://comitasgentium.com/ru/doctrina/chastnoe_i_ugolovnoe/sootnoshenie-ugolovnyh-prestuplenij/#_ftn2/ (access 07/07/2025)
 62. <https://www.e-draft.am/projects/6259> (access 07/07/2025)
 63. <https://armenpress.am/hy/article/1207777> (access 07/07/2025)
 64. <https://de.wikipedia.org/wiki/Nebenstrafrecht#:~:text=Zum%20Nebenstrafrecht%20werden%20alle%20Strafnormen,eine%20eher%20ungew%C3%B6hnliche%20Terminologie%20ist.> (access 07/07/2025)

Մարկ Ազդարիդիս

ՀՀ վարչապետի աշխատակազմի Միջազգային իրավական հարցերով ներկայացուցչի գրասենյակի Միջազգային արբիտրաժներում և օտարերկրյա դատարաններում ՀՀ շահերի պաշտպանության վարչության գլխավոր մասնագետ

ՎԱՐՉԱԿԱՆ ԻՐԱՎԱԽԱՍՏՈՒՄՆԵՐԻ ԻՐԱՎԱԿԱՆ ԲՆՈՒՅԹԸ¹

Համառոտագիր

Վարչական իրավախախտումների վերաբերյալ ՀՀ օրենսգիրքն ընդունվել է դեռևս 1985 թվականին, և կարելի է պնդել, որ այն բավականին հնացած է ՀՀ ներկայիս իրավական համակարգում՝ հաշվի առնելով, որ այն ընդունվել է ԽՍՀՄ օրոք, որը էականորեն տարբերվում էր ժողովրդավարական իրավական պետությունից, ինչի պատճառով օրենսգրքի մի շարք դրույթներ անհամատեղելի են ՀՀ ներկայիս իրողությունների հետ: Վերոնշյալը ենթադրում է անհապաղ փոփոխությունների անհրաժեշտություն: Ավելին, ՀՀ Սահմանադրական դատարանը բազմիցս անդրադարձել է Վարչական իրավախախտումների վերաբերյալ ՀՀ օրենսգրքի ոչ արդիականությանը և փոփոխությունների անհրաժեշտությանը՝ նշելով, որ օրենսգրքով նախատեսված իրավական կարգավորումների մի մասը ներկայացնում է իրավական սպառնալիք, որը անհամատեղելի է իրավական պետության հետ: Իր հերթին, 2022 թ. ուժի մեջ է մտել ՀՀ նոր քրեական օրենսգիրքը, որը նախատեսել է մի շարք բարեփոխումներ: Քրեական և Վարչական իրավախախտումների վերաբերյալ օրենսգրքերի ուսումնասիրությունը ցույց է տալիս, որ բազմաթիվ դեպքերում երկու իրավական ակտերով սահմանված արարքները (իրավախախտումները) բավականին դժվար է տարբերակել, ինչը ստեղծում է անհրաժեշտություն՝ պարզելու, թե որոնք են վերջիններիս տարբերակման հիմքերը, և արդյո՞ք կան նման հիմքեր, թե ոչ: Բացի այդ, կարևոր է պարզել «վարչական իրավախախտման» իրական իրավական բնույթը. այն պատկանում է վարչակա՞ն, թե՞ քրեական իրավունքին: Այլ կերպ ասած, այս հոդվածի հիմնաքարը հետևյալ հարցն է. վարչական իրավախախտումները պե՞տք է լինեն վարչական իրավունքի մաս, թե՞ դրանք, ըստ էության, պատկանում են քրեական իրավունքին և պարզապես ունեն շփոթեցնող անվանում: Հոդվածը հիմնականում կկենտրոնանա հարցի նորմատիվ կողմի վրա՝ առանց անտեսելու պրակտիկան:

Հիմնաբառեր – հանցանք, քրեական իրավունք, վարչական իրավունք, վարչական իրավախախտում, զանցանք, պատիժ:

¹ Հոդվածը ներկայացվել է 10.07.2025 թ., գրախոսվել է 06.10.2025 թ.:

Марк Аздаридис

*Главный специалист Департамента по защите интересов
Республики Армения в международных арбитражах и иностранных судах
Офиса представителя Республики Армения по международно-правовым
вопросам Аппарата Премьер-министра Республики Армения*

ПРАВОВАЯ ПРИРОДА АДМИНИСТРАТИВНЫХ ПРАВОНАРУШЕНИЙ¹

Абстракт

Кодекс об административных правонарушениях Республики Армения был принят в 1985 году. Можно утверждать, что он значительно устарел для нынешней правовой системы РА, так как был принят во времена СССР, который в корне отличался от демократического правового государства, из-за чего ряд положений Кодекса несовместим с современными реалиями РА. Из вышеизложенного следует необходимость срочных изменений. Более того, Конституционный Суд Республики Армения неоднократно указывал на неактуальность Кодекса об административных правонарушениях и необходимость внесения поправок, отмечая, что часть предусмотренных им норм представляет собой угрозу, не соответствующую принципам правового государства. В 2022 году вступил в силу новый Уголовный кодекс Республики Армения, предусматривающий ряд реформ. Исследование Уголовного кодекса и Кодекса об административных правонарушениях показывает, что во многих случаях действия (правонарушения), определяемые этими двумя актами, достаточно сложно разграничить. Это создает необходимость выяснить, каковы основания для такого разграничения и существуют ли они вообще. Кроме того, необходимо определить истинную правовую природу «административного правонарушения»: относится ли оно к административному или уголовному праву? Иными словами, краеугольным камнем данной статьи является вопрос: должны ли административные правонарушения быть частью административного права или они по своей сути относятся к уголовному праву и лишь имеют иное наименование? В статье основное внимание уделено нормативной стороне вопроса, при этом не оставлена без внимания и правоприменительная практика.

Ключевые слова: преступление; уголовное право; административное право; административное правонарушение; проступок; наказание.

¹ Статья была представлена 10.07.2025 и прошла рецензирование 06.10.2025.