
RESOLUTION TO IMPOSE AN ADMINISTRATIVE FINE AS EXECUTIVE DOCUMENT

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Summary. Administrative responsibility is characterized by the fact that it is a very important legal instrument to fight not only administrative, but also for other offenses. Especially important preventive role of administrative responsibility. It is important that the application of administrative responsibility is not to punish only the guilty person, and any other discipline, to say that it is necessary to comply with the law, to ensure that the requirements would be enforced. One of the most widely applicable to administrative penalties is administrative fine. Therefore, the implementation of sanctions is very important to the whole administrative justice to function effectively. An administrative penalty, as one of the administrative penalties, enforcement is a feature that forced her recovery goes beyond the boundaries of administrative justice and civil proceedings are in scope. Therefore, the recovery of administrative penalties is governed by several branches of law, and because there are some theoretical and practical problems. This article explores the forced recovery of administrative fines in the problem. Administrative penalties forced the recovery process begins with the decision of an administrative penalty of recovery transferred to the bailiff. A requirement for the resolution of administrative penalty as an enforceable title, and the transfer of decision comes into forced recovery procedure the Administrative Violations Code. However, enforcement document, making the conditions for recovery and a forced regime regulated by the Civil Procedure Code (hereafter - CCP). Therefore, more attention is paid to the regulation of CAO set the resolution to impose an administrative fine, as the executive regulation of this document and the relationship with the CCP provisions posed by non-judicial documents issued by the executive, as well as the Code of Civil Procedure Execution rules whose application is causing problems forced the recovery of administrative penalties.

Keywords: administrative procedure, civil procedure, administrative responsibility, administrative sanction.

PREFACE

One of mostly imposed administrative penalties is administrative fine. For this reason the execution of administrative penalty is very important for the whole administrative justice effective working. Administrative fine's, as one of administrative penalties, execution peculiarity is its forced recovery which goes over limits of administrative justice and becomes the range of civil procedure regulation. The administrative fines recovery is regulated by some law branches and for this reason arise some theoretical and practical problems.

Still, main part of fines recovery process proceeds in Civil Procedure Code (further in text – CPC) regulated Executive procedure frames. Executive process is important link in human rights

protection system. By the European Court's of Human Rights decisions¹ executive process is appreciable as integral part of right to fair trial. Material values are not created in executive process. However, during this process is implemented court's or other competitive subject's decision.

Researches related to administrative fines forced recovery in-between Lithuanian scholars are few. Must be mentioned D. Raižys and V. Višinskis article „Some of the administrative penalties enforcement problems”². Some of other mentioned authors and also of other scholars – S. Vėlyvis, E. Stauskienė, I. Žalėnienė, V. Nekrošius, D. Ambrasienė researches³ are related to administrative fines forced recovery executive process peculiarities.

The object of the research – the Administrative Law Violations Code of the Republic of Lithuania (further in text - ALVC) norms regulating resolution's to impose administrative fine execution and its application. Also in this article are analyzed problems of resolutions to impose a fine execution according to Civil Procedure Code regulated Executive process.

The practical relevance of article can be disclosed according to statistical data of administrative fines imposed for the breaches of Roads rules (further – RR). Last year in Lithuania were officially fixed half of million – 448990 RR violations. For these violations were imposed 42.7 millions of litas fines for transgressors. Incomes to national budget for collected RR violations were 25.1 millions of litas or a bit more then 58 percents of whole imposed fine's sum.

By the data of Chamber of bailiffs, last year from undisciplined drivers was trying to recover more than 35 millions of litas, even two of three violators escaped responsibility, so high administrative fines for most dangerous RR violations mostly stayed as paper sanctions.

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

² D. Raižys, V. Višinskis. Kai kurios administracinių nuobaudų vykdymo problemos // *Jurisprudencija : mokslo darbai*. T. 53(45). ISSN 1392-6195. Vilnius : LTU Leidybos centras. 2004, T. 53(45).

³ Некрошюс В. Гражданско - процессуальная реформа в Литве. Российский ежегодник гражданского и арбитражного процесса. № 2, 2002-2003, под редакцией В.В.Яркова - СПб: Издательский дом Санкт-Петербургского государственного института, 2004; E. Stauskienė. Skubiai vykdytinų teismo sprendimų instituto taikymo problemos. *Jurisprudencija* 69(61) 2005; Stauskienė, E. Teismas – teisinių santykių vykdymo procese subjektas. Mokslinės praktinės konferencijos „Teisė į teisminę gynybą bei jos realizavimo praktiniai aspektai“ mokslinių pranešimų rinkinys. Vilnius: Mykolas Romeris universitetas, 2006; Stauskienė, E. Teismo sprendimų įvykdymo atgręžimas. *Jurisprudencija*, 2006, t. 4 (82); S.Vėlyvis, V.Višinskis, I.Žalėnienė. Antstolio veiksmų apskundimas// *Jurisprudencija*, 1 2007 (91); S.Vėlyvis, E.Stauskienė, V.Višinskis. Pagrindinės teismo sprendimų vykdymo taisyklės romėnų teisėje // *Jurisprudencija*, 2 2007 (92); В. Вишинский, С. Веливис. Реформа исполнительного процесса в Литве// Теоретические и практические проблемы гражданского, арбитражного процесса и исполнительного производства. Сборник научных статей. Краснодар-Санкт-Петербург, изд. Юридический центр Пресс, 2005, с.444-453, ISBN 5-94201-454-X; V. Višinskis. Turto pardavimo iš varžytynių problemos // *Jurisprudencija*, 1999, t. 13(5); V. Višinskis. Išieškojimo iš fizinių asmenų problemos // *Jurisprudencija*, 1999, t. 14(6); V. Višinskis. Vykdyto proceso Lietuvoje: esama padėtis ir reformavimo kryptys // *Jurisprudencija*, 2002, t. 28(20); V. Višinskis. Teismo sprendimo vykdymo vieta// *Jurisprudencija*, 1 2006, (79); V.Višinskis, D.Ambrasienė. Teismo vykdomųjų dokumentų išdavimo tvarka// *Jurisprudencija: mokslo darbai*. ISSN 1392-6195. Mykolas Romeris universiteto Leidybos centras. 2008, Nr. 2(104).

From 1500 till 5 thousands of litas seeking fines for intoxicated driving, escape from traffic accident place and for other harsh violations by forced way pays only one-third of all drivers. Other two-thirds of violators' escapes responsibility, because they have no work, have no property or are able to use gaps of the implementation of administrative sanctions.

Each year police institutions gives 10-12.5 thousands executive documents to bailiffs for 1500-5 thousands of litas fines recovery, but only 32-36 percents of during a year imposed fines are successfully recovered. By the Chamber of bailiff representatives' assertion, there are some persons who have more then 10 administrative fines for harsh RR violations. The average recovery fine's sum reaches over 40 thousands of litas and fines imposed for "record-holders" reaches about 60 thousands of litas.

Such RR violators – „record-holders“ eventually feel unpunishable and lately completely ignore any rules and repeat dangerous violations. When fine's amount reaches several ten thousands of litas then others lose hope to pay it. Then new fines don't scare them, because it becomes just unimportant and new fine in an "account".

In accordance to bailiff's practice, administrative fines recovery perspective is conversely proportional to the quantity of a fine – growing quantity and rising number of a fine leads to slim chance that violator will be able to pay it⁴.

Relatively low level of administrative fine's recovery shows that when fine is recovered by bailiffs the forced fine's recovery mechanism is ineffective. Often the recovery of fine is unsuccessful because of some objective reasons – the debtor has no property, he left territory of the Republic of Lithuania. But sometimes occur cases when imposed fine recovery fails because of legal regulation gaps. The peculiarity of forced fines recovery legal regulation is that process begins under application of ALVC norms and ends under CPC norms. The purpose of this article is to analyze the order of resolution to impose administrative fine in administrative procedure and what its importance in civil procedure when it becomes an executive document.

LEGAL IMPORTANCE OF A RESOLUTION TO IMPOSE AN ADMINISTRATIVE FINE AS EXECUTIVE DOCUMENT

ALVC 313 article sets administrative fine's payment order by good will. Person, who is subjected to administrative responsibility, must pay fine not later than in forty days from the day of a resolution to impose a fine delivery to him, and in appealing such resolutions case – not later than in forty days from a report about appeal dissatisfy day. Imposed fine for administrative law

⁴ „Baudos gali būti surenkamos efektyviau“. <http://az.atn.lt/articles/view/54603/?print=true>; 2010 06 20.

breach, the violator must pay in savings-bank or in other bank, except fine, which is taken in a violation's commitment place, if the laws of the Republic of Lithuania determines otherwise. Considering to person's who is subjected to administrative responsibility financial situation and other important circumstances, according to written persons application body (official) taking a resolution in administrative law violation case but not later than in forty days from resolution establishment day can locate imposed fines payment till two years period according to imposed fines amount.

If the convicted person fails to pay the fine in accordance with set order, it must be recovered by force, according to ALVC 314 article set procedures. If the violator fails to pay the fine during the period set in 313 article of the Code, the resolution to impose a fine established body (official) sends this resolution to bailiff for execution. Fines recovery cannot be directed to the property, to which in accordance with the Civil Procedure Code of the Republic of Lithuania recovery cannot be pointed by the executive documents.

State gives the opportunity for recoverer to access the means of enforcement only under specified conditions in the implementation process.

Under CPC 586 article the basis of executive actions is in accordance with CPC VI chapter order presented executive document. Without executive document to perform executions actions is forbidden. This is imperative law's norm and that is why it is impossible to perform any actions without executive document. This is directly related not only with forced execution but and with others executions actions: debtor's property and incomes search, exhortation mailing and other. Executions activities performance without executive document makes all bailiffs actions illegal.

Law separates enforceable documents and executive documents. Enforceable documents list, set in CPC 584 article, defines subjects, whose decisions can be executed by force and the form of these subject's decisions. This is courts and arbitrage decisions, judgments, resolutions and orders in civil cases also in cases for administrative legal relations, courts judgments, resolutions and decisions in criminal cases as much as they are related to property nature recovery, institutions and officials resolutions in administrative law violations cases as far as they are related to property nature recovery and other enforceable documents.

Executive documents are classified according to different criterions. The classification of executive documents is important not only theoretically but also practically, because on this depends their execution order, legal defense measures and other. According to their content executive documents can be divided into two groups:

1. documents, that at the same time are law application acts and executive documents;

2. the executive documents issued on the basis of other legal acts.

First executive documents group involve courts orders, officials and bodies resolutions for administrative sanctions imposition. Courts order, police officers resolution for administrative penalty imposition at the same time is laws application act in which is fixed adjudgement debt or committed administrative law violation, and executive document on which basis are implemented forced executions actions (recovery of a debt or fine). From the content of executive documents we can see why court gave order to recover the debt or what actions committed violator, convicted by administrative order.

Main distinction between court's and non court's established documents is that the legitimacy of courts decisions, judgments, resolutions can be examined by CPC set appealing or cassation order. So, executive papers cannot be disputed in court. But if executive document is issued not by a court, in some cases the object of the dispute may be the executive document itself.

ALVC AND CPC REQUIREMENTS FOR CONTENT OF RESOLUTION TO IMPOSE AN ADMINISTRATIVE FINE AS EXECUTIVE DOCUMENTS CONTENT

As mentioned, CPC is not regulating executive order of executive documents issued not by court. But in 648 article's 5 part are set general requirements for other institutions issued executive documents content. Others (not courts issued) executive documents content is set by other laws, but in all cases in these documents must be pointed props set in CPC 648 article's 1 part's 7 subsection and on which law basis document must be executed according to CPC set order. In executive document must be pointed place for bailiff's tag about implemented executions actions.

The content of resolution in administrative law violation case is regulated by ALCV 286 article: in resolution must be: resolution accepting body (official) name, case hearing date, information about person, which case is heard; information about other persons involved in the proceedings; circumstances stated during case hearing and their motivated estimation; this Code's article, article's part or other legal acts, providing responsibility for this violation, which person violated; the decision adopted in case.

If solving the question of sanction imposition for an administrative violation in ALVC 216 article's 1-4 subsections listed bodies (officials) together decide the question for violator's committed property damages compensation, in case resolution must be set the amount of recovered damage, recovery period and procedure. In case resolution must be solved question about taken items and documents; as well must be indicated the decision appealing procedure and period. Resolution is issued by collegial body by simple collegial body members, who participated in the

meeting, majority votes. Resolution in administrative law violation case is signed by the officer hearing the case, and a collegial body issued resolution - the session chairperson and secretary. In some cases set by laws of the Republic of Lithuania information about penalty must be recorded in administrative law violation protocol or resolution is formalized other established way.

Thus, CPC 648 article's 1 part's 7 subsection requirements for non courts issued executive documents contents and ALVC 286 article's set requirements for administrative law violation case resolution content are incompatible. As mentioned, according to CPC 648 article's 5 part, in these documents must be indicated props set in CPC 648 article's 1 part's 7 subsection and legal act on which basis the document must have to be carried out in accordance with the Code of Civil Procedure. In the executive document must be showed place for bailiff's tag about implemented execution's actions. For this reason, in the resolution to impose administrative fine must be determined whole recoverer's and debtor's name and addresses, personal code, legal person's registration number, bank details. Talking about violators details, in ALVC 286 article only determine "information about person, whose case is on trial". That is why in resolution to impose a fine there is no obligation to point out violator's name, personal code, recoverer's name and account to which must be transferred recovered fine.

According to CPC 651 article, the bailiff received executive documents examines if there are any obvious obstacles for acceptance of executive documents and start of executive actions. If there are any obstacles to accept executive document for execution, bailiff with his direction refuses to accept it and returns it to the submitted person, stating returning reasons.

Requirement, that place for bailiff's tag about implemented execution's actions must be showed in Executive document, is not ending in itself. So, executive document must have a tag with implemented executive actions. Executive document can be partly executed and after that send to other bailiff for execution, returned to recoverer and so on. Therefore executive document must have a tag with implemented executive actions. If there is no such tag so actions can be repeatedly performed and in this way would be volated persons rights. Practice shows, that there is no such speaicl place for bailiff's tag about implemented actions in resolution, so such tag usually is not done; an indication of the executed actions are carried out in cover letter.

During forced execution against debtor state uses compulsion. That is why during this process is important to secure debtor's rights. There is no list of executive documents implemented by force in CPC. So CPC 648 article's 1 part's 5 subsection sets demand that all institutions, except court, have to determine legal act on which basis the document must be executed under CPC set order. Such link would let debtor easily check is there legal basis to apply for forced execution beginning.

ALVC set provisions for the content of Resolution to impose administrative fine don't create an obligation for official or institution which impose a fine to point out legal act on which basis the document has to be executed under CPC set order. So, legislative will to create conditions for debtor about easy checking of legal acts on which basis forced execution process could be started against him, stays outstanding.

In determining whether there are obvious obstacles to accept executive document and to start the execution's implementation actions, checks is executive documents content accordant with the requirements of CPC 648 article.

According to CPC 1 article's 2 part if there are any coalisions between CPC and other laws of the Republic of Lithuania court follow CPC norms, except cases, when CPC gives preference to toher law's norms. That is why resolution of administrative law violation content inadequacy with CPC 648 article's 1 part's 7 subsection requirements can be obstacle for bailiff to enact this resolution for execution. This problem can become even bigger considering that according to ALVC 308 article resolution to impose administrative penalty cannot be executed is the resolution wasn't presented to execute in three month from enactment day. Therefore bailiffs, for executive documents content defects rejecting to take this document to execute, can overdue the three month limitation period of administrative penalty execution.

According to ALVC 313 article's 4 part, Considering to person's who is subjected to administrative responsibility financial situation and other important circumstances, according to written persons application, body (official) taking a resolution in administrative law violation case but not later then in forty days from resolution establishment day can locate imposed fines payment till two years period according to imposed fines amount. In such cases, when body (official) decided to locate imposed fine's payment, the resolution for recovery of a fine as executive document can be issued and given for execution only in cases when competitive official canceled resolution for fines recovery location or when location term ended and fine has not been recovered.

CONCLUSION AND RECOMMENDATIONS

Administrative fines forced recovery is important administrative justice part, showing whole legal regulation mechanism effectiveness and opportunity to influence on human behavior. Now valid administrative fines forced recovery legal regulation has collisions and gaps which must be eliminated.

The resolution for administrative penalty imposition at the same time is law application act in which is fixed adjudged debt and committed administrative law violation, and executive document, according to which are performed forced execution actions (recovered debt or fine).

Thus, CPC 648 article's 1 part's 7 subsection's requirements for non courts issued executive documents contents and ALVC 286 article's set requirements for administrative law violation case resolution content are incompatible. This creates obstacles for forced administrative fines recovery.

ALVC 286 article has to be filled with add that in the Resolution to impose administrative fine must be determined whole recoverer's and debtor's name and addresses, personal code, legal person's registration number, bank details and details of legal act on which basis the document must be executed in accordance with the Code of Civil Procedure. In the executive document must be showed place for bailiff's tag about implemented execution's actions.

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NUTARIMAS SKIRTI BAUDĄ KAIP VYKDOMASIS DOKUMENTAS

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Santrauka

Administracinei atsakomybei būdinga tai, kad ji yra labai svarbi teisinė priemonė kovojant ne tik su administraciniais, bet ir kitais teisės pažeidimais. Ypač svarbus profilaktinis administracinės atsakomybės vaidmuo kovojant su piktybiniais viešosios tvarkos pažeidimais, vagystėmis, tarnybiniais piktnaudžiavimais, kelių eismo taisyklių, aplinkos apsaugos, priešgaisrinės apsaugos ir kitais pavojingais teisės pažeidimais. Svarbu ir tai, kad taikant administracinę atsakomybę siekiama ne tik kaltąjį asmenį nubausti, bet ir sudrausminti kitus, pasakyti, jog būtina laikytis įstatymų, užtikrinti, kad būtų vykdomi teisės reikalavimai.

Visuotinis teisės normų privalomumas reiškia, kad kiekvienas teisinis imperatyvas privalo būti įvykdytas iki galo - kiekvieną teisės pažeidimą turi lydėti atitinkamų sankcijų taikymas. To reikalauja teisėtumas ir teisės pažeidimų baudžiamumo principai. Tokia yra teisinio privalomumo prigimtis: iš pradžių teisinių pareigų vykdymas garantuojamas abipuse santykio dalyvių nauda, savanorišku pareigų vykdymu, o kai šių priemonių veiksmingumo nepakanka — asmens turto, o kai ir turto nėra - teisės pažeidėjo asmens laisve ar kita jo teise.

Vienos iš plačiausiai taikomų administracinių nuobaudų yra administracinės baudos. Todėl šios administracinės nuobaudos vykdymas yra labai svarbus visam administracinės justicijos efektyviam funkcionavimui. Administracinių baudų, kaip vienos iš administracinių nuobaudų, vykdymo ypatumas yra tas, kad priverstinis jos išieškojimas išeina už administracinės justicijos ribų ir tampa civilinio proceso reguliavimo sritimi. Todėl administracinių baudų išieškojimas yra reguliuojamas kelių teisės šakų ir dėl to kyla tam tikrų teorinių ir praktinio pobūdžio problemų.

Šiame straipsnyje nagrinėjamas priverstinio administracinių baudų išieškojimo problemos. Priverstinis administracinių baudų išieškojimo procesas prasideda nutarimą dėl administracinės baudos išieškojimo perdavus vykdyti antstoliui. Reikalavimai nutarimui skirti administracinę baudą, kaip vykdomajam dokumentui, nutarimo įsiteisėjimo ir perdavimo priverstiniam išieškojimui tvarka nustatyti Administracinių teisės pažeidimų kodekse. Tačiau vykdomojo dokumento priėmimo vykdyti sąlygos ir priverstinio išieškojimo tvarka reglamentuota Civilinio proceso kodekse⁵ (toliau tekste – CPK). Todėl daugiau dėmesio skiriama ATPK reglamentavimui nustatytam nutarimui skirti administracinę baudą, kaip vykdomajam dokumentui ir šio reglamentavimo santykiui su CPK nuostatomis keliamomis ne teismo išduodamiems vykdomiesiems dokumentams, taip pat CPK Vykdomo proceso normoms, kurių taikymas kelia problemų priverstinai išieškant administracines baudas.

Pagrindinės sąvokos: administracinis procesas, civilinis procesas, administracinė atsakomybė, administracinė bauda.

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⁵ Lietuvos Respublikos civilinio proceso kodeksas. Valstybės Žinios, 2002.04.06, Nr.: 36, Publikacijos Nr.: 1340; Valstybės Žinios, 2002.04.24, Nr.: 42.



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