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ADMINISTRATIVE OFFENCES LEGISLATION IN RUSSIA AND ABROAD: HISTORICAL AND LEGAL GENESIS

Vladimir N. Zakopyrin (a)*, Tatyana N. Dazmarova (b), Andrey N. Zverev (c),
Viktor P. Timokhov (d), Irina V. Vassilyeva (e)
*Corresponding author

(a) Academy of the Federal Penal Service of Russia, 1, Sennaya str., Ryazan, 390000, Russia, bob503660@yandex.ru
(b) Academy of the Federal Penal Service of Russia, 1, Sennaya str., Ryazan, 390000, Russia, dazmar@yandex.ru
(c) Academy of the Federal Penal Service of Russia, 1, Sennaya str., Ryazan, 390000, Russia, zver83@list.ru
(d) Ryazan Branch of Moscow University of the Ministry of Internal Affairs of Russia named after V. Ya. Kikot', 18, 1-ya Krasnaya str., Ryazan, 390043, Russia, tvp1986@yandex.ru
(e) Academy of the Federal Penal Service of Russia, 1, Sennaya str., Ryazan, 390000, Russia, irina-vas2009@yandex.ru

Abstract

The problem of administrative responsibility is connected with the general problems of legal responsibility and is urgent in the modern period of development of our state. The article reveals the trends in the transformation of administrative offences legislation after the fall of the Soviet Union in Russia and abroad. Legislative amendments are considered in reference to the laws of Eastern and Western European countries, recommendations of the Committee of Ministers of the Council of Europe concerning the regulation of administrative responsibility. Here it is important whether the proceedings are carried out and liability for the crimes committed is ensured only by court or by the administrative procedure. This research proves the necessity of administrative responsibility codification and its influence on security of citizens' and organizations' rights and freedoms. Legislative amendments concerning its division into material and procedural legislation and establishing the principles of administrative responsibility, criteria for distinguishing administrative responsibility from criminal are suggested. The essence and severity of the punishment imposed for committed offence allow to distinguish criminal offences from other types. Based on the type of punishment, such actions are recognized as criminal offences which are punished by deprivation of liberty. So, the type of punishment is one of the main criteria for distinguishing the scope of criminal law and administrative and tort law. The CIS countries also apply such type of punishment as administrative arrest. Arrest as a type of administrative punishment is determined by the poverty of people and difficulties to collect administrative fines.

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Keywords: Administrative responsibility, administrative offence, criminal offence, law principles

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1. Introduction

In some countries administrative torts are forms of criminal acts which are within the scope of general criminal statutes, i.e., administrative torts are criminal offences and along with crimes are included in criminal law, in other states including Russia administrative offences legislation is separated from criminal law and codified (Klepikov, 2015).

At present Russia is on the verge of the administrative offences legislation reforming; new administrative codes drafts have been continually considered, including the revolutionary abolition of the Administrative Offences Code of the Russian Federation, the substitution of administrative offences by criminal ones. Nowadays draft legislation submitted to the State Duma by the Ministry of Justice of the Russian Federation is being considered (Agapov, 2015).

The article considers the most important issues of administrative liability the solution of which allows to determine the vector of development of administrative offences legislation and to protect citizens and organizations from the arbitrariness of administrative authorities.

2. Problem Statement

In the modern world there are questionable approaches to the administrative responsibility existence and its foundations. The difference is manifested not only in the name of the administrative torts themselves, but also in their legal affiliation and in relation to criminal offences and their consequences. So, it raises the question: what ideas, what international law requirements and what trends in the development of national legislation should influence administrative offenses legislation amendments?

3. Research Questions

The subject of the study are the abolished and existing norms of the Russian administrative offences legislation, the administrative offences legislation norms of the CIS and Eastern and Western Europe countries, administrative liability decisions taken by the Committee of Ministers of the Council of Europe, as well as the opinions, views and approaches contained in the juridical literature to the question.

4. Purpose of the Study

The purpose of the work is development of suggestions for administrative offences legislation reforming in Russia and abroad on the basis of the historical and legal analysis of the administrative offences legislation development in Russia and other countries

5. Research Methods

The methodological basis of the study is the dialectic approach as a general scientific cognition method. Besides such research methods as system-based, concrete-historical, formally logical, comparatively legal, sociological analysis were used.

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6. Findings

Before considering optimization of administrative offences legislation the term of the administrative liability should be defined. “The problem of administrative liability is closely related to the general problems of legal liability and is particularly urgent in the modern period of development of our society and state” (Maximov, 2009, p. 21). Legal liability is one of the fundamental categories of legal science.

“In a broad sense the concept of liability can be interpreted as the attitude of a person to society, the state and individuals from viewpoint of performing certain requirements, understanding and recognizing his responsibility and duty by a citizen. In a narrow or special juridical view legal liability is interpreted as the reaction of the state to the committed offence. We will consider legal liability as one of the types of negative reaction (enforcement) of the state to an offence“ (Serkov, 2012, p. 428).

“Administrative liability being one of the types of legal liability consists in the imposing of administrative punishment (administrative sanction) in accordance with the law on the guilty person who has committed an administrative offence” (Knyazev, 2003, p. 428). “It is regulated by the state through legal norms which determine the basis of administrative liability, the measures applied to violators, the administrative violation proceedings, the appealing procedure and the execution of punishments” (Agapov, 2015, p. 27).

Administrative liability as a form of sanctions in the public legal sphere originates in ancient law. “In Roman law as well as in Russian law a fine (poenapecuniaria) was considered as an administrative sanction – a type of monetary revenue raised by the state (i.e., into the budget) – and imposed by a magistrate (i.e. a public official in Republican Rome” (Dugenets, 2006, p. 11).

It should be recognized that currently in Western and Eastern Europe (and not only there) there are different approaches to determining administrative liability and its foundations. The difference consists in the nomination of administrative torts, their legal affiliation and correlation with criminal acts and the consequences of committing these violations.

In the law of Belgium, Germany, Italy, Switzerland, and Portugal administrative torts are types of criminal offences which are within the scope of general criminal statutes, i.e. administrative torts are criminal offences and are included in criminal law along with crimes. Denmark does not recognize all division of punishable acts into different types and uses only one term – a crime. But at the same time some crimes defined by the vehicle and traffic Laws, taxes laws, environmental protection and health care laws etc. are classified as a subject of administrative and tort law. “The legal systems of some countries (Austria, France, the Netherlands, Spain, Greece) are characterized by the separation of administrative and tort legislation from criminal law, that results in non-application of general criminal statutes to administrative torts” (Zakopyrin, 2020, p. 7).

For most countries in Western Europe it is typical that there is no single normative act that integrates corpus delicti of administrative torts. However, most states have laws of a mixed nature which integrate general material statements (on administrative violations, subjects of liability, penalty etc.) and procedural rules of administrative penalties implementing.

In the countries of Eastern Europe and the CIS (Lithuania, Latvia, Poland, Czechia, Slovakia, Kazakhstan, the Republic of Belarus, Russia, Ukraine etc.) administrative offences legislation is separated

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from criminal law and codified. The legislation status in these countries is determined by the influence of the USSR and its legislation on the administrative and tort policy of these countries. Although it is to note that at present the legislation on administrative torts in some countries is a part of the criminal legislation (Estonia, Bulgaria, Slovenia, Serbia, Croatia).

In our opinion it does not matter whether the state legal system classifies administrative offences: either as administrative offences as a part of the administrative legislation or as criminal offences as a part of the criminal legislation. It is important here whether the proceedings are carried out and liability for the crimes committed is ensured only by court or by the administrative procedure.

Legal investigation in administrative proceedings involves consideration by representatives of the police and other Executive authorities, not just the judiciary. This certainly increases the effectiveness of the law, significantly reduces the financial costs of process conducting and increases its efficiency.

Administrative proceedings involve not only the judiciary, but also the police and other executive bodies. It certainly increases the effectiveness of law standards, significantly reduces the financial costs of the procedure and increases its expeditiousness.

Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 04.11.1950), hereafter Convention, namely article 6 proclaims the right to a fair trial. The article covers only the civil judicial procedure and criminal charge. However, the European court of Justice often noted that the term "criminal charge" declared in article 6 of the Convention is autonomous and must be understood only on the basis of the statements of Convention. It means that the removal of certain types of offences from the jurisdiction of criminal courts in the legislation of the participating countries and their transferring to the jurisdiction of other bodies which may mean the recognition of such offences as administrative by the national legislator, has no significance for the European Court. The essence of the offence is determined by the European court of Justice on the basis of the criteria for identifying a particular case as a criminal charge: 1) determining of the offence as a criminal law subject in the legal system of the state; 2) the legal nature of the violation; 3) the nature and severity of the punishment which the offender may incur (see, for example, the ECHR Regulation of 28.06.1984 "Campbell and Fell vs. the United Kingdom" (complaints № 7819/77 and 7878/77).

We suppose one can agree with this opinion just partially. As mentioned above, it is not important to classify administrative offences as a part of the administrative legislation or as criminal offences as a part of the criminal legislation. It is important here whether the proceedings are carried out and liability for the crimes committed is ensured: by court or by the administrative procedure.

The legal nature of the violation as a criterion for definition of right to a fair trial influences the identification of the essence of the offence only in the sense of administrative tort distinguishing from a disciplinary one, since disciplinary responsibility initially means administrative liability in order of subordination. It is the third feature that allows to distinguish criminal offences from other types. Based on the types of punishment actions which are punished by deprivation of liberty are defined as criminal offences. The type of punishment is one of the main criteria of a criminal and administrative-tort law distinguishing.

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Administrative liability is imposed for offences making harm to social relations significantly less than criminal offences do. As a result such illegal acts are referred to as administrative offences (violations).

On this theoretical basis we will consider the genesis of administrative offences legislation in Russia.

"A retrospective analysis of the administrative offences legislation indicates a tendency to increase of variety of administrative penalties types, the sum of which develops the appropriate system. In the 1920-s of the twentieth century there were only three types of administrative penalties: deprivation of liberty till two weeks; compulsory labor without deprivation of liberty till one month, fine" (Banchuk, 2008, p. 231).

In 1980 the Supreme Soviet of the USSR passed the "Fundamentals of Legislation on administrative offences of the USSR and the Union Republics", hereafter Fundamentals. The Fundamentals established the principles and general statutes of regulatory regime in the sphere of considered social relations. The Fundamentals provided for the following types of administrative penalties: 1) warning; 2) fine; 3) compensated seizure of the instrument or the direct subject of the committed administrative offence; 4) appropriation of the object of the instrument or the direct subject of the committed administrative offence; 5) deprivation of the special right granted to this citizen (driving licence suspension, hunting licence); 6) correctional labor; 7) administrative arrest. Correctional labor and administrative arrest were imposed only by court, the maximum period of administrative arrest was 15 days. Arrest as a type of administrative punishment in our opinion was put into effect because of the absence of property by citizens (poverty of people) and thus because of fine recovery difficulties. Later such type of punishment as administrative deportation of noncitizens out of the country was put into effect. On the basis of the Fundamentals later Administrative Offences Codes were subsequently passed in the republics of the USSR, including Administrative Offences Codes of the RSFSR in 1984 (Pankova, 2014).

In December 1991 the Soviet Union ceased to exist and fifteen former Soviet republics gained state independence. Many CIS countries continued to use the old (Soviet) administrative offences legislation for several years, and only at the beginning of the XXI century began to develop their own codified national legislation. Russia was not an exception and in summer of 2002 it brought into force the new Russian Administrative Offences Code (AOC RF).

Types of administrative penalties implemented in the CIS countries since the breakup of the Soviet Union have not changed significantly; some countries put into effect additional administrative penalties: disqualification (Russia, Belarus, Latvia), administrative suspension of activity (Russia), administrative ban on visiting of venues of official sports competitions in days of their carrying out (Russia, Belarus). The largest number of administrative penalties types is provided in Russia. Armenia keeps aloof of the CIS countries, in spite of the old administrative offences legislation (1985) it abolished such type of administrative punishment as administrative arrest. Administrative arrest as a type of punishment is not used in most European countries, because it concerns deprivation of liberty, but deprivation of liberty, as mentioned above, is one of the main criteria for distinguishing the scope of criminal and administrative-tort law. "It is positive that, in contrast to the administrative offences legislation of the Soviet Union (in

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the Administrative Code of the RSFSR there were only six articles regulating the duty of judges to institute administrative proceedings)" (Fateev et al., 2011, p. 376), nowadays almost all types of administrative penalties are imposed by court. Administrative authorities have the right to impose only two administrative penalties – a warning and an administrative fine. Thus, it can be noted that in Russian legal system, as well as in the legal systems of the former Soviet Union republics the concept of administrative liability and the scope of administrative and legal regulation have much in common with most countries in Western and Eastern Europe. In Russia and the CIS countries administrative offences are analogous to those ones which are considered in some countries as minor criminal offences.

We would like to note the importance of administrative offences legislation codification. Administrative offences legislation codifying contributes not only to the optimization of law enforcement, but also may increase the quality of human rights and freedoms protection. Citizens and other legal subjects must know and observe the laws. Recently some countries and Russia particularly are characterized by excessive law-making, there appear a lot of laws, including those regulating administrative liability. It begs the question how ordinary citizens can navigate a rich body of laws, if it is difficult for practicing lawyers. In our opinion in the sense of redundancy of law-making it is necessary to put the question of state bodies constitutional responsibility to the public.

Recommendation No. R (91) 1 of the Committee of Ministers of the Council of Europe "On Administrative Sanctions" (13.02.1991) suggests the governments of the member States of the Council of Europe to take into account in law and in practice that a person cannot be subjected to administrative punishment twice for the same offence on the basis of the same legal norm or the others which protect the same public interest (principle 3). However, Russian administrative offences legislation codifying did not protected Russia against a multiplicity of legal acts establishing administrative liability. "There are many examples of administrative offences that continue to be included in sectoral laws" (Bacilo & Khamaneva, 2001, p. 42). Disconcertingly the legislator does not seem to notice conflicts between the Administrative Code of the Russian Federation and certain laws for a long time, in fact it discredits one of the main ideas of codification and the unity of law enforcement practice. However, the recommendation No Rec (2004) 5 of the Committee of Ministers of the Council of Europe "On the compliance inspection of draft laws, current legislation and administrative practices in accordance with the standards established in the European Convention on human rights" (12.05.2004) recommends for member states systematic compliance inspection aside from draft laws which may hurt the rights and freedoms protected by the Convention, but also compliance inspection of current laws in accordance with the provisions of the Convention.

There are also serious problems with the severity of administrative penalties. It is to say that Russia does not have a balanced administrative and punitive policy. The fact is that many generally accepted international principles of administrative liability have not been officially captured in the administrative offences legislation. Professor Dugenets believes, that "it is the principles that should play a significant role in the implementation of the main provisions of the administrative liability institution" (Serkov, 2012, p. 31). In the context of administrative liability it is to note that "its principles serve as one of the essential identification attributes indicating the independent status of the institution in the system of administrative law" (Knyazev, 2003, p. 39). The principles of administrative liability serve as a

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supporting structure for legal regulation of state-administerial relations, being the main component of the subject of the administrative liability institution. The importance of the principles in determining of the administrative liability development vector as an institution as well as administrative offences legislation cannot be understated.

AOC RF enshrines the following "principles of administrative offences legislation: 1) the Principle of equality before the law (article 1.4, AOC RF); 2) the presumption of innocence (article 1.5, AOC RF); 3) ensuring the rule of law when applying administrative enforcement in connection with an administrative offence (article 1.6, AOC RF)" (Vitruk, 2009, p. 107). Unfortunately, only the above mentioned principles are explicitly provided in the Administrative Offences Code of the Russian Federation. "The principles of legal liability are not always fully established in the Constitution of the Russian Federation and in the current (sectoral) legislation" (Studenikina, 2014, p. 291).

The Administrative Offences Code of the Russian Federation for the first time put into force an article on the presumption of innocence (article 1. 5). However, this article was later supplemented with an amendment, according to which for certain types of offences recorded automatically by special technical means the burden of proof of innocence falls on the owner of the vehicle or the owner of the land, held administratively liable. However, the Committee of Ministers of the Council of Europe (recommendation No R 1 of the Committee of Ministers of the Council of Europe "On Administrative Sanctions", Principle 7) offers to lay the burden of proof exclusively on the administrative authority in order to protect citizens and organizations from the arbitrariness of the authorities.

If we turn to foreign experience, we will see that many near-abroad countries normatively establish a rather large list of principles of administrative offences legislation (Azerbaijan Republic, Kazakhstan, Republic of Tajikistan, etc.), if the legislation consists of a single code or principles of administrative liability, if the administrative offences legislation of the country consists of material and procedural codes (the Republic of Belarus, the Republic of Estonia). It should be noted that "it is a progressive way to separate codifying of material and procedural administrative-tort rules" (Maximov, 2009, p. 65; 14, p. 27).

Code of the Republic of Kazakhstan has established the following principles: 1) legality; 2) equality before the law and the courts; 3) the presumption of innocence; 4) the principle of guilt; 5) prohibition of repeated administrative sanctions; 6) the principle of humanity; 7) person immunity; 8) respect the person's honor and dignity; 9) privacy and confidentiality; 10) the inviolability of property; 11) the independence of the court (judges) and body (official) authorized to judge administrative offences cases; 12) exemption from the obligation of giving evidence; 13) ensuring the rights to competent legal assistance; 14) publicity of legal proceedings on administrative violations; 15) safety provision during the proceedings; 16) freedom to challenge procedural decisions and appeal procedural actions; 17) judicial remedy of rights, freedoms and legitimate interests of a person. The AOC of the Republic of Belarus defines the following principles of administrative liability: legality, equality before the law, inevitability of liability, fault-based liability, justice and humanism.

In our opinion, the following principles of administrative liability should at least be established: legality, equality before the law, inevitability of responsibility, fault-based liability, justice and

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proportionality of administrative penalties, independence and disaffection of authorities, humanism, individualization of punishment and prevention of offences.

The lack of a particular normative consolidation of the administrative liability principles entails extreme instability of the administrative offences legislation (during last five years about 1000 amendments were developed), sanctions for administrative offences often significantly exceed sanctions for crimes (for example, according to article 7.5 of the AOC RF an administrative fine for citizens can reach five hundred thousand rubles, while for criminal offences the penalty starts from five thousand rubles).

However, "in 1998 the Constitutional Court stated that the initiation of liability for an administrative offence and establishment of specific sanctions that limit a constitutional right shall comply with the requirements of justice, must be proportionate to the constitutionally enshrined aims and protected legal interests, as well as the nature of the offence (the decision of the Constitutional Court of the Russian Federation, May 12, 1998 № 14-P)" (Lazarev, 1996, p. 68).

Summing up the article, we would like to note the following.

1. The urgency of administrative offences legislation codifying. Administrative offences legislation codifying contributes not only to the optimization of law enforcement, but also may increase the quality of human rights and freedoms protection. This positive experience of Russia can be adopted by other states.

2. As we have noted, it is not significant whether the state legal system classifies administrative offences: either as administrative offences as a part of the administrative legislation or as criminal offences as a part of the criminal legislation. The important issue is the fact that allows to distinguish criminal offences from other types of violations. These are the essence and severity of the punishment (deprivation of liberty) that may be imposed on offender. In Russia there is an optimal practice of administrative proceeding: the administration imposes a warning and a fine, other punishments are imposed only by court, thereby the Russian administrative offences legislation fits into the international community and satisfies the requirements of international law.

3. There is a need to divide administrative offences legislation into material and procedural legislation and accordingly to define the principles of administrative liability and the principles of administrative offences proceedings.

4. The initiation of liability for an administrative offence and establishment of specific sanctions shall comply with the requirements of justice, must be proportionate to the constitutionally enshrined aims and protected legal interests, as well as the nature of the offence The Russian legislator should at least decide volume of the fine (raise the criminal fine, for example, till 100 thousand rubles) and establish a just criterion for separating administrative offence from crime.

7. Conclusion

The reforming of administrative offences legislation in the countries signed the Convention "On the Protection of Human Rights and Fundamental Freedoms" (Rome, 04.11.1950) should be based on international acts adopted in accordance with the Convention, taking into account the specific of national legislation. Based on the results of the study, we would like to note the following:

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1. The urgency of administrative offences legislation codifying. Administrative offences legislation codifying contributes not only to the optimization of law enforcement, but also may increase the quality of human rights and freedoms protection. This positive experience of Russia can be adopted by other states.

2. It is not significant whether the state legal system classifies administrative offences: either as administrative offences as a part of the administrative legislation or as criminal offences as a part of the criminal legislation. The important issue is the fact that allows distinguishing criminal offences from other types of violations. This is the essence and severity of the punishment (deprivation of liberty) that may be imposed on offender. In Russia there is an optimal practice of administrative proceeding: the administration imposes a warning and a fine, other punishments are imposed only by court, thereby the Russian administrative offences legislation fits into the international community and satisfies the requirements of international law.

3. There is a need to divide administrative offences legislation into material and procedural legislation and accordingly to define the principles of administrative liability and the principles of administrative offences proceedings.

4. The initiation of liability for an administrative offence and establishment of specific sanctions shall comply with the requirements of justice, must be proportionate to the constitutionally enshrined aims and protected legal interests, as well as the nature of the offence. The Russian legislator should at least define volume of the fine (raise the criminal fine, for example, till 100 thousand rubles) and establish a just criterion for separating administrative offences from crimes.

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