Örgütsel Davranış Araştırmaları Dergisi
Journal Of Organizational Behavior Research
Cilt / Vol.: 6, Sayı / Is.: 2, Yıl/Year: 2021, Sayfa/Pages: 100-108
https://doi.org/10.51847/DnsGazKwqt
2528-9705

SOME PECULIARITIES OF ADMINISTRATIVE PENALTIES SYSTEM AND THE ORDER OF THEIR IMPOSITION IN RUSSIA

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ABSTRACT

This article is devoted to an important and relevant topic in modern Russian administrative law - the system of administrative punishments and the order of their imposition. The article also draws attention to the legal problems arising in the imposition of administrative penalties. The relevance of this problem lies in arising by officials in the process of bringing to administrative responsibility, imposing punishment and its imposition, caused by gaps in legislation and may lead to a violation of the procedure of bringing to responsibility, and, consequently, also the rights and freedoms of persons brought to responsibility. Study of the experience of foreign countries in the field of legal regulation of those or other public relations and the conclusions made on its basis can be productively applied to similar spheres of human activity arising in the territory of the Russian Federation. The general approach to the definition of administrative law of foreign countries comes down to the totality of legal norms regulating public administration (administrative activity) and control over it. Administrative law of the law of foreign countries considers as the main institutions.
Countries that have implemented their administrative law are divided into two types: 1) France and the countries that have borrowed its legal system; 2) countries where the influence of German law prevails. These two types of states are opposed by countries that ignore the autonomy of administrative law (for example, the United States, Britain, other countries with Anglo-Saxon legal traditions).

Keywords: *Administrative law, Administrative offenses, Administrative penalties, Legal liability.*

INTRODUCTION

The relevance of the research topic. Ensuring law and order and the rule of law are among the key functions of any modern state. They are especially important for the state that calls itself a law-governed state. We should not forget that the concept "rule-of-law state" is a complex and multidimensional phenomenon. The Russian Federation also includes itself among such States in its Constitution (Russian Constitution, 2020). The principle of the rule of law is one of the key principles in ensuring the functions of the Russian State in general and the implementation of public administration. In turn, the institute of legal responsibility - in particular

Geliş tarihi/Recieved: 04.05.2021 – Kabul tarihi/Accepted: 19.09.2021 – Yayın tarihi/Published: 30.09.2021

administrative responsibility - is one of the key links in ensuring the rule of law. This issue has interested us mainly because, in our view, it is one of the most relevant at this time, since the full functioning of the state, its effective management, ensuring human and civil rights and freedoms are inextricably linked to lawful conduct and discipline on the part of both ordinary citizens and legal entities, and on the part of officials, as well as the state authorities themselves in general. At that, acting as a measure of administrative responsibility, administrative punishment is a powerful regulator of public relations to ensure the rule of law, protection of the rights and interests of an individual, a citizen throughout the territory of the state. The extensiveness of public relations covering the sphere of regulation of administrative-legal regulation and norms of administrative responsibility only emphasizes the particular importance of this aspect. Thus, the object of our study is a system of administrative penalties in general. In turn, the subject - features of imposing administrative penalties, as well as problems and difficulties arising in this case.

The purpose of this article is to disclose the concept of administrative responsibility, offence, and administrative punishment, to characterize the system and types of administrative punishment, as well as to determine the rules and procedure of its imposition related to its most prominent problems (Islam *et al.*, 2019).

To achieve the goal we have defined the range of the following tasks: give the definition of administrative offence, characterize its signs, determine the essence, as well as classification of measures of administrative punishment, give the characteristic of types and system of administrative punishments in general, disclose general rules and procedure for imposing administrative punishment, characterize the terms in imposing administrative punishment, determine the main problems in imposing administrative punishment and find their possible solutions.

MATERIALS AND METHODS

To achieve the goalin our article we relied on the works of such legal researchers as Khachaturov, Lipinsky, Malko, Bakhrakh and others.

In addition, we have analyzed such normative-legal acts as the Constitution of the Russian Federation, the Code on Administrative Offences of the Russian Federation, and others. Also, the article used such methods and techniques as comparative, legal, historical, formal-legal, technical-legal, and others.

Thus, in this article, we will try to convey all the important aspects of this topic, draw conclusions based on the information we have provided and propose possible solutions to the existing problems in law enforcement.

Being a common method of state influence, administrative coercion includes different measures. At that, in the doctrinal environment, their classification is still a debatable issue. Traditionally, among them, there are distinguished three groups: preventive measures, preventive measures, and measures of responsibility (Telegin, 2014; Yasmina *et al.*, 2020). Under administrative-preventive measures are understood coercive measures used to prevent an administrative offense, ensure public safety (for example, checking of documents of citizens, inspecting of hand luggage, stopping and inspection of vehicles). Measures of administrative suppression are understood as measures of coercive nature aimed at stopping

unlawful actions and their harmful consequences (for example, the requirement from a citizen to stop unlawful actions, removal from driving of a vehicle of a person, in respect of whom there are sufficient grounds to believe about his state of intoxication or lack of proper documents certifying his right to drive). There are, as we noted earlier, other classifications. In particular, Osintsev (2018). Depending on the stages of development of threats to security distinguishes: measures of detection of threats to security (obtaining information about illegal acts and persons involved in them), measures of administrative-legal suppression (prompt termination of an illegal act committed prevention of consequences caused by them), measures of administrative-legalrestoration (elimination of consequences caused in consequence of an illegal of a wrongful act), measures of administrative responsibility (application of administrative punishment for the commission of wrongful act), and measures of administrative-legal deterrence (non-provision of additional benefits, rights or statuses for violation of administrative rules or committing an administrative offense). It is worth noting that regardless of the classification, according to most authors, its invariably important place is occupied by measures of administrative responsibility, expressed in the form of administrative penalties.

Administrative responsibility, in turn, is a type of legal responsibility. By legal responsibility Khachaturov and Lipinski understand normative, guaranteed, and secured by state coercion, as well as persuasion and encouragement, the legal obligation to comply with and fulfill the requirements of the rules of law, the implementation of which is realized both in lawful behavior of subjects, approved or encouraged by the state, and in case of its violation by the obligation of the offender to suffer a conviction, restriction of rights of property or personal non-property character (Khachaturov & Lipinsky, 2007). It must be noted that legal responsibility is a kind of social responsibility, which acts as a generic concept due to legal responsibility. Legal responsibility stands out brightly against other types of social responsibility such as moral, religious, family, or corporate responsibility. So, Khachaturov and Lipinski identify several features of legal responsibility. First, legal responsibility is based on legal norms: it is formally defined, clear, detailed, and generally binding. Secondly, legal responsibility is guaranteed by the state. Thirdly, legal responsibility is ensured by both state coercion and state persuasion. Fourthly, the consequences of legal liability can be state approval or encouragement as well as condemnation or punishment. And fifthly, legal responsibility is carried out in a procedural form. One of the key problems in the science of administrative law is the problem of analyzing the essence of public administration and its correlation with the category of executive power, which is enshrined in the Constitution of the Russian Federation (Tekueva *et al.*, 2018; Al-Hemaid *et al.*, 2020).

It is also worth noting that in the institute of administrative responsibility there is no concept of "conviction" as in criminal law. However, there is the so-called in the scientific community "administrative punishment" for one year term. The basis for this is the provision of the norm of article 4.6. Code on Administrative Offences of the RF (hereinafter CAO RF) (Code on Administrative Offences of the Russian Federation: Federal Law dated 30.12.2001 N195-FZ, 2001). Under this article, a person in respect of whom an administrative penalty has been imposed for committing an administrative offense is considered as subjected to this punishment from the date of entry into legal force of the decision to impose an administrative

penalty until the expiry of one year from the date of completion of this decision. The state of "administrative punishment" means a different attitude to the imposition of punishment on a person who has committed an administrative offence. In particular, for example, such a person cannot be imposed an administrative penalty in the form of a warning, since this type of punishment is already the mildest in the system of administrative punishments. Consequently, after the expiry of this period, the person is no longer considered to be subjected to administrative punishment.

Being complex in its structure, the system of administrative penalties does not exclude the presence of certain difficulties and problems in its implementation. At that, most often the latter appear already in the process of imposing administrative punishment. This issue is extremely important because from the side of the state and authorized bodies should ensure normal functioning of the system of administrative punishments. Also, this issue remains highly debatable in the doctrinal environment, as many authors have an individual approach to a particular problem.

There are some difficulties in imposing such type of administrative punishment as "deprivation of a special right". In particular, as noted by Askerov (2013). The legislator in the CAO RF does not provide this sanction for legal entities. Article 3.8. CAO RF mentions only physical persons. At the same time, for example, Article 26 of the RF Federal Law "On Weapons"("On Weapons": Federal Law of 13.12.1996 N 150-FZ, 2021) provides for the annulment of a license to purchase weapons or a permit for storage of weapons issued to a legal entity, by the court based on an application of the body that issued the said license or permit, if within the period of administrative suspension of activities of a legal entity prescribed by the court the violations of rules in the field of circulation of weapons and cartridges to it, which resulted in imposing a penalty in the form of administrative suspension of activities of this legal entity, have not been eliminated by it. Thus, in practice, we see that the norms of the CAO RF do not provide imposition of punishiment in the form of "deprivation of a special right" on a legal entity, while in the rest of the federal legislation it is allowed, which, in this case, leads to the contradiction. In turn, as a solution to this problem, it is possible to provide an opportunity to impose deprivation of a special right in respect of legal entities, by supplementing article 3.8. CAO RF. Also, as an alternative, it makes sense to amend Article 1.1. CAO RF, adding to the sources besides CAO RF and relevant laws on administrative offences also federal laws, as well as supplementing article 3.8. CAO RF with the list of special rights, which can be deprived both individual and legal entities. There are also other problems associated with this type of administrative punishment. In particular, according to article 3.8. CAO RF "deprivation of a special right in the form of driving cannot be applied to a person who uses a vehicle due to disability". At the same time this rule provides several exceptions, according to which administrative punishment in the form of deprivation of the special right to drive vehicles can be imposed in respect of a person recognized as disabled, in cases of: driving a vehicle while intoxicated; giving it to a person who is intoxicated; repeated commission of this administrative offence; evasion from undergoing medical examination for intoxication; abandonment of a special right to drive vehicles in a state of inebriation. Article 3.8. CAO RF stipulates that "deprivation of the special right in the form of the right to hunt may not be applied to persons for whom hunting is the principal legal source of livelihood. In turn, exceptions are provided only for violation of the established time limits according to huntingrules, as well as the use of

inadmissible tools and methods. In addition, the legislator does not take into account at all that violation of other rules of hunting by the same entities may also be repeated, which, in turn, allows the possibility of abuse by this category of persons.

There are also problems in imposing such a type of administrative punishment as "expulsion of foreign citizens or stateless persons from the RF". In particular, as noted by Osokina (2015). Osokina, often in imposing this administrative punishment judges do not take into account the fact that these categories of citizens have underage children who are not citizens of the Russian Federation. At that, this fact does not exclude the application of forced expulsion. Nevertheless, this feature is not specified in the norm of article 3.10. of the CAO RF, which leads to several errors and inaccuracies. The author notes that in the operative part of the decision on the case of an administrative offense should be spelled out that a foreign citizen is subject to administrative expulsion from the Russian Federation exactly together with minor children with the indication of their names. The situation would also be greatly facilitated by introducing an appropriate addition to the norm of Article 3.10 of the CAO RF, revealing that a foreign national is subject to administrative deportation together with his minor children who do not have Russian citizenship. It should be noted that in the draft of the new CAO RF this aspect has already attracted the attention of the legislator and this issue may be solvedsoon. However, at the moment the legislator finds a different approach. In particular, paragraph 3 of article 4.14. of the draft, CAO RF (Nikolaevna, 2017; Vasilyev *et al.*, 2021) states that "administrative expulsion cannot be applied to foreign citizens permanently or temporarily residing on the territory of the RF, foreign military servicemen, foreign minors or stateless persons, as well as foreign citizens and stateless persons who are in a registered marriage or have actual marital relations with the citizen of RF, and (or) have minor children, disabled children, or disabled parents who are RF citizens. From this it can be seen that the legislator tends to liberalize punishment, in particular, to refuse to apply expulsion to persons who are not only married to a citizen of the Russian Federation but who even have de facto marital relations. Nevertheless, this issue is still open, and new adjustments to the text of the draft law will be possible soon.

The difficulties and problems arise during imposing administrative arrest. In particular, Dolgikh and Suponina (Dolgikh & Suponina, 2014; Akhtanina, 2020; Baranova *et al.*, 2020) note that according to part one of article 32.8 of the CAO RF the decision to impose a penalty in the form of administrative detention should be executed by internal affairs bodies immediately after its pronouncement. At that, the meaning of the word "immediately", which is repeatedly used in CAO RF by the legislator, is not disclosed. Hence, it follows that it can be interpreted differently by a law enforcer, depending on subjective perceptions of the concept and circumstances at the moment, in general. It is worth noting that under the general rule established by part one of article 31.1. of the CAO RF, the decision on an administrative case comes into legal force after the expiration of the deadline established for its appeal by article 30.3. of the CAO RF, - that is, after ten days as a general rule. At the same time, under Article 30.5 of the CAO RF, a complaint against a ruling on administrative arrest shall be considered within one day from the moment of filing the complaint, if the person brought to administrative responsibility is serving an administrative arrest. At the same time, the CAO RF itself does not contain a norm, according to which a protest against the decision on

administrative arrest would suspend its execution. It follows that formally the decision of punishment in the form of administrative arrest is executed by internal affairs bodies even before it enters into legal force, and the person in respect of whom the proceedings are carried out is deprived of the constitutional right to protect their rights and freedoms. Based on the above, the legislator should better elaborate the provisions of the CAO RF regarding the execution of administrative detention to correct this contradiction. Of course, immediate execution of a ruling on administrative detention may be conditioned by a special, specific nature of this type of administrative punishment. However, its conjunction with the restriction of fundamental and inalienable human rights contributes to the fact that the legal norms regulating the procedure for its appointment and execution should be thought thoroughly not to be in contradiction with the provisions of the Constitution of the Russian Federation.

There are also contradictions and problems in imposing such type of administrative punishment as disqualification. In particular, Lipinski (Lipinsky, 2003; Musaeva & Zagidiev, 2018; Fakhrabad & Abedi, 2019) draws attention to the inconsistency between the duration of administrative punitive impact and the duration of punitive criminal-legal impact. He notes that article 47 of the Criminal Code of the RF (Criminal Code of the Russian Federation: Federal Law dated 13.06.1996 N 63-FZ, 2021) established that deprivation of the right to hold certain positions or engage in certain activities is established for a period of one to five years as the main type of punishment and from six months to three years as an additional punishment.

Administrative disqualification, which acts as an administrative analogue of this criminal penalty, is established for a period of six months to three years. Thus, there is a coincidence of the limits of punitive criminal-legal and administrative-legal impact. Hence, it follows that theoretically possible for committing an administrative offense assignment of administrative punishment in its duration more severe than that provided for in the Criminal Code of the RF for a more socially dangerous act - a crime. It follows that perhaps the legislator should more closely consider and eliminate the above contradiction in terms of correlation of the same types of punishment.

The difficulties and errors arise in the execution of the other type of administrative punishment as compulsory works. In particular, Gaidareva and Poddubny (2015) argue that often the list of compulsory works in municipalities is very small and compulsory works themselves, as free community service, are mixed with public paid works. Also, as noted by the authors, there are frequent cases of overlapping lists of compulsory works and correctional works, which is unacceptable due to their essence in general. In addition, it is noted that there are cases when the heads of some municipalities in the list of objects of compulsory works include private or commercial enterprises, where compulsory works should not be served according to Russian law. Also, special difficulties in determining the type of compulsory works arise in rural settlements, where the underdeveloped infrastructure in general and the lack of adequate material support are often one of the factors. In turn, the solution to these problems can be found in a better regulatory regulation of this aspect, expressed, in particular, in preventing the coincidence of lists of compulsory and correctional works and their clearer spelling.

Thus, we have considered some of the main problems arising in the process of imposing administrative penalties and proposed possible ways to solve them.

RESULTS AND DISCUSSION

So, having considered this issue in details, a number of conclusions can be drawn from all of the above. We have disclosed the concept and main features of administrative responsibility and offence. Under administrative responsibility is understood a type of legal responsibility, which consists of two provisions. Firstly, in compliance of subjects with the requirements of administrative and legal norms, which is implemented in their lawful conduct, which is approved or encouraged by the state (positive (prospective) aspect of administrative responsibility). And, secondly, in the obligation of a subject of administrative offense to undergo deprivations of state-authoritative nature for committing an administrative offense (negative (retrospective) aspect of administrative responsibility). At that, returning to the retrospective administrative responsibility, it is worth highlighting an administrative offense, which acts as its factual basis. It, in turn, according to part one of article 2.1. CAO RF recognizes a wrongful, guilty action or inaction of an individual or legal entity, for which this Code or the laws on administrative offences of the subjects of the Russian Federation establish administrative responsibility. An administrative offence has its composition, without the presence of at least one element of which there is no fact of an administrative offense and as such bringing to administrative responsibility. So the object, objective side, subject, and subjective side of an administrative offence are the elements of an administrative offence.

CONCLUSION

We have also considered the general rules, as well as the procedure for imposing administrative penalties. In particular, administrative punishment may not be aimed at humiliating human dignity or causing physical suffering to a person who has committed an administrative offence. Administrative penalties must be imposed within the limits prescribed by the law which provides for liability for specific offences. When imposing an administrative penalty, the nature of the offence committed, as well as the offender's personality and property status, are taken into account. Mitigating circumstances (e.g. remorse, state of great emotional disturbance, or concurrence of severe circumstances) and aggravating circumstances (e.g. commission of an offence by a group of persons, in a natural disaster, or under the influence of alcohol) also play an important role in determining the punishment.

In addition, we have considered some of the problems arising in the process of imposing administrative penalties and proposed possible ways to solve them. In particular, first, legal researchers note that in the CAO RF "deprivation of a special right" of legal persons is not provided for, while similar measures take place in the norms of federal laws. Secondly, there is a gap relating to "expulsion from the RF of foreign citizens or stateless persons". Often in imposing this type of administrative punishment judges do not take into account the fact of having underage children, who are not citizens of the Russian Federation, in respect of the person in respect of whom this measure is applied. There are also issues relating to the moment of enforcing administrative detention, as well as disqualification, where there is inconsistency in the duration of administrative punitive impact with the duration of punitive criminal-law impact in a similar criminal punishment. Also, there are certain inaccuracies in normative regulation when imposing compulsory works.

Thus, all the important aspects of the topic have been considered and the objectives have been achieved.

ACKNOWLEDGMENTS: The authors thank Ms. Marina Tekueva for their help in identifying eligible participants.

CONFLICT OF INTEREST: None

FINANCIAL SUPPORT: None

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