



ADMINISTRATIVE RESPONSIBILITY OF CONVICTS: QUESTIONS OF THEORY AND PRACTICE

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ABSTRACT

Objective: This study aims to analyze the substitution of administrative responsibility of convicts in Russia, highlighting theoretical and practical challenges in holding imprisoned individuals accountable for administrative offenses. The article comprehensively examines the substitution of administrative responsibility of convicts.

Methods: The study employs a dialectical approach, integrating comparative legal analysis, sociological methods, statistical evaluations, and formal logic techniques (analysis, synthesis, deduction, and induction).

Results: The authors considered the point of view of scientists on the concept of such responsibility, the problems that arise when convicts, sentenced to imprisonment, are brought to one or another type of responsibility when committing an act, that has signs of an administrative offense and disciplinary misconduct, related to the lack of consolidation of this category of persons as a special subject of administrative responsibility. In addition, the article highlights the problems, associated with bringing people to imprisonment, to administrative responsibility, and suggests ways to solve them by amending the current legislation.

Conclusion: The study emphasizes the necessity of legislative amendments to formally establish convicts as a special subject of administrative responsibility. It





proposes the inclusion of a dedicated article in the Russian Administrative Code to address these legal ambiguities.

Keywords: Administrative responsibility, Disciplinary responsibility, sentenced to imprisonment, Special subject, Correctional institutions.

1 INTRODUCTION

Administrative responsibility in the Russian Federation is one of the components of a larger institution, namely legal responsibility. It is impossible not to notice the important role of such responsibility in ensuring and maintaining law and order in society. The legal mechanism for regulating the bringing of convicts to legal responsibility is of great importance for the development of modern penitentiary science. In our opinion, the administrative and legal status of such a category of people should play an important role in bringing a convicted person to administrative responsibility. When determining such a status, it is necessary to consider certain features, since it is a synthesis of the norms of various branches of law, the dominant place in which it is occupied by penal enforcement law, regulating public relations in the process of execution of criminal punishment. At the same time, the effect of the relevant norms of the constitutional, criminal, administrative, labor, civil, etc. is not excluded (Polovchenko, 2023; Polovchenko, 2021a; Polovchenko, 2021b)

The commission of any offenses, including administrative ones, is a serious problem not only for the offender and his relatives, but also for the society as a whole, because non-compliance with administrative legislation and the commission of socially harmful acts by a person may already indicate the insufficiency of his legal culture and be one of the reasons for committing crimes in the future. Currently, regulatory legal acts do not contain a definition of the concept of administrative responsibility, which gives rise to a scientific discussion about the definition of an essential set of characteristics necessary for a more complete and clear formulation of such an important legal definition.

In this regard, there is a natural interest in studying one of the substitutions of administrative responsibility, namely the administrative responsibility of convicts. In our study it is proposed to consider in more detail the concept of administrative responsibility of convicts, serving criminal sentences in the form of imprisonment in correctional institutions of the penal enforcement system (hereinafter referred to as the





penal correction system), analyze the procedure and identify problems that arise when bringing these persons to administrative responsibility, as well as propose solutions.

2 MATERIALS AND METHODS

The methodological basis of the study was the dialectical method, which assumes the consideration of objects in an integrated manner, in interrelation with each other. The following general scientific methods were used in the research process: comparative legal, concrete sociological, statistical, methods of formal logic (analysis, synthesis, deduction, induction, etc.).

3 RESULTS AND DISCUSSION

Currently, in the scientific works of scientists, engaged in the study of issues in the field of administrative law of Russia, attention is drawn to the development of problems of bringing convicts of different categories to administrative responsibility for committing offenses. However, in our opinion, scientists are not making enough attempts to expand the conceptual framework in this area. An example of this, as we think, is the lack of author's definitions of administrative responsibility of convicts. We believe, that such a concept will represent a significant contribution to the development of the science of administrative law as one of the leading branches of Russian law.

To deduce the theoretical position of one of the types of administrative responsibility, we think it necessary to consider the point of view of scientists on the very concept of such responsibility.

Thus, Dodin (Dodin, 1965, pp. 1-15) and Agapov (Agapov, 2015, p. 21) assign the most important role in determining administrative responsibility to the application of sanctions for committing an administrative offense, which, in our opinion, somewhat narrows this concept and does not reflect the whole picture. Scientists, such as Alekhin, Karmolitsky, Kozlov (1997, p. 222), Rossinsky (2022, p. 15), Kozhevnikov (2018, p. 16-18) adhere to points of view, that differ from the above and are similar to each other, who distinguish administrative responsibility primarily as the type of legal responsibility, as well as emphasize the special status of the law enforcement officer,





however, to our mind, due attention is not paid to the procedural form of the implementation of administrative punishment measures in this point of view.

We believe that administrative liability should be understood as a type of legal liability. expressed in the totality of actions of authorized legal entities, aimed at identifying the fact of violation of administrative law and all the necessary circumstances and bringing the guilty person to justice, in compliance with the procedures, established by law (Guzeeva, 2023).

In our opinion, scientific literature does not pay enough attention to such a type of administrative responsibility as the administrative responsibility of convicts. The commission of offenses by people sentenced to imprisonment and serving sentences in correctional institutions of the penal system, is a serious problem not only for the staff of such institutions, but also for society. Violation of the current legislation by convicts may indicate the presence of certain problems both in the norms, designed to regulate the procedure for serving such punishments, and in the work of the officials as well. We think, the emerging problems have a special impact on the achievement of the global goals of the penal enforcement legislation, enshrined in Article 1 of the Criminal Code of the Russian Federation, since the commission of an offense by a convicted person is an obstacle to achieving the goal of his correction.

Currently, the scientific discussion is mainly based on the difference of points of view when bringing convicts imprisonment to administrative or disciplinary responsibility, when committing an offense containing signs of both an administrative offense and a disciplinary misconduct.

Due to the lack of a clear distinction in the application of a certain rule of law for a specific offense, the law enforcement officer has the right to choose the rule of one of the branches of law at his discretion. Currently, practitioners, when there is a violation of the law by a convicted person, which provides for a variation in the imposition of disciplinary or administrative responsibility, in most cases tend to use the norms of penal enforcement legislation. From our point of view, to eliminate a conflict in the application of the norm of a particular branch of law, it is necessary to legislate the special legal status of convicts and the imposition of a certain type of the violation committed.

We should also say, that certain issues of the institution of bringing to administrative responsibility such a category of persons as convicts were studied in the scientific works of some scientists, for example V. A. Ponikarov, D. A. Grishin, N.





V. Rumyantsev, V. V. Gorovoy, E. F. Naruslanov, V. V. Zhuravlev, A.V. Zarubitsky, V. A. Utkin, N. G. Vodneva, D. A. Rudakov, M. D. Artemyev, V. V. Kaledintsev, A. G. Uporov, A.M. Smirnov, S. I. Pakanich, N. A. Melnikova, E. V. Senatova, however, in the works considered by us, the authors do not give their own definitions of the administrative responsibility of convicts.

We believe it necessary to consider the approaches, proposed by scientists, to determine the type of responsibility, to which it is necessary to involve persons. serving sentences in places of deprivation of liberty, in case of violation of norms, that have dual regulation by related branches of law, for a comprehensive review of the institution of administrative responsibility and a proposal of our approach.

From our point of view, one of the main problems in bringing convicts to administrative responsibility is the lack of consolidation of such a category of persons in the norms of administrative legislation as a special subject of such responsibility. In our opinion, a special subject of an administrative offense should be understood as persons, whose features of bringing to administrative responsibility are directly fixed in Chapter 2 of the Administrative Code of the Russian Federation, namely: officials, military personnel, citizens called up for military training, persons with special ranks, foreign citizens, stateless persons, foreign legal entities, owners (possessors) of vehicles, as well as owners or other possessors of land plots or other real estate objects (Ponikarov, 2022, pp. 305-309).

In connection with the above mentioned, based on the literal interpretation of the norms of administrative law, a convicted person, who has committed an administrative offense, should be brought to administrative responsibility on a general basis. However, some of the types of punishments provided for by the Code of Administrative Offences of the Russian Federation (hereinafter referred to as the Administrative Code of the Russian Federation) cannot be applied to such a category of persons due to their stay in correctional institutions. In addition, the very peculiarity of the administrative and legal status of these persons and the extension of the norms of penal enforcement law to them does not allow us to conclude about the identity of citizens, who are serving criminal sentences in correctional institutions and those who are not serving such sentences.

Also, a certain difficulty is the presence of related structures in the norms of administrative and penal enforcement law, which are administrative and disciplinary offenses, respectively. In this case, the law enforcement officer has a situation in which





he has the right to use administrative discretion in choosing the responsibility to which the perpetrator should be brought. From our point of view, this fact is definitely a flaw in the legislator and is subject to settlement through amendments to the relevant regulatory legal acts.

There are various points of view on this issue in the scientific discussion, which, in our opinion, need to be considered. For example, V. A. Ponikarov considers it necessary to bring convicts to administrative responsibility for committing violations, that have all the formal signs of an administrative offense, that is, convicts should be brought to administrative responsibility on a general basis (Ponikarov, 2022, pp. 242-243). A similar point of view is held by Grishin (2022), who believes that convicts, serving sentences in places of deprivation of liberty, should be held accountable in accordance with the norms of penal enforcement legislation, except in cases where administrative responsibility is specifically established by the article of the Code of Administrative Offenses of the Russian Federation (Administrative Code of the Russian Federation).

In turn, Rumyantsev and Gorovoy (2019) adhere to a similar position and believe that convicts should be brought to administrative responsibility for acts containing all the formal signs of an administrative offense. In addition, the authors propose to expand the powers of employees of the penal enforcement system (CIS) in terms of drawing up protocols on administrative offenses for certain types of administrative offenses, as well as to empower the head of the institution of the CIS with the authority to consider such cases.

Developing this topic, Rumyantsev & Zhuravlev (2020) come to the conclusion, among other things, about the need to expand the powers of employees of the Criminal Justice System in terms of drawing up protocols on cases of administrative offenses. The authors also think it necessary to consider the administrative and legal status of the convicted person and make appropriate changes to it, but do not indicate specific proposals.

Gorovoy & Naruslanov (2019) in their works also summarize the need to bring convicts to administrative responsibility exactly on the basis of Article 1.4 of the Administrative Code of the Russian Federation.

Zarubitsky (2018) come to conclusions similar to the position of Rumyantsev and Gorovoy (2019) in terms of concerning the expansion of the powers of employees and heads of institutions of the Criminal Justice System. In particular, the authors





propose to include in the list of compositions for which the employees of the Criminal Investigation Department have the right to draw up protocols on administrative offenses, the compositions provided for in Article 7.17 of the Administrative Code of the Russian Federation, and legislatively assign the authority to review such cases to the heads of correctional institutions.

Diametrically opposite is the position of such scientists as S. I. Pakanich, N. A. Melnikova and E. V. Senatova, who, in their writings, come to the conclusion that when bringing to justice a convicted person, complicated by the competition of legal norms of administrative and penal enforcement law, it is necessary to bring them to disciplinary responsibility exactly.

According to Pakanich (2022), the gradual inclusion of the norms of administrative law, establishing the types of offenses and responsibility for them in the norms of penal enforcement legislation, is justified and reflects the trend of transformation of the most important public relations concerning the rights, freedoms and legitimate interests of suspects, accused and convicted, which allows to specify the legal status of this category of citizens in modern society.

Senatova (2016) rightly notes that bringing to disciplinary responsibility those, sentenced to imprisonment for acts, that have all the signs of an administrative offense, is legitimate, since for this contingent they have been transformed into norms of penal enforcement legislation in the form of disciplinary offenses.

In turn, Melnikova (2019) proposes to bring convicts to disciplinary responsibility for non-compliance with regime requirements, as most often happens in the practical activities of employees of institutions and bodies of criminal justice, by fixing in the Administrative Code of the Russian Federation the norm on the specifics of administrative responsibility of convicts in places of deprivation of liberty. In addition, we agree with the position of the said author that the logically correct solution would be to use a legal technique in relation to convicts, that excludes competition of legal norms, an example of which is Article 2.5 of the Administrative Code of the Russian Federation.

Summarizing the above, we consider it necessary to amend the Administrative Code of the Russian Federation in terms of clearly fixing the need to bring convicts to disciplinary responsibility for committing offenses that have signs of both an administrative offense and a disciplinary misconduct. Thus, there will be a legislative





consolidation of such a category of citizens, as convicts, as a special subject of administrative responsibility.

Analyzing the administrative responsibility of those, sentenced to imprisonment, we also come to conclusions about the presence of a number of significant problems. The first of such problems, that arise when bringing convicts to imprisonment to administrative responsibility, we propose to identify the lack of knowledge of employees of institutions and bodies of the criminal justice system in the field of administrative law, which can have a negative impact in the case of incorrect qualification of an administrative offense (for example, some compositions differ in motivational and the target setting of the subject of the offense).

Also, in some penal institutions, a situation persists in which some of the convicts belong to a certain subculture, an employee, who prepares and collects the necessary documents to bring the guilty person to administrative responsibility, may have certain difficulties in obtaining explanations from both the offender himself and from persons who witness the commission of an offense, which for some administrative offenses are a constituent element (for example, Article 20.3 of the Administrative Code of the Russian Federation) (Aitimov et al., 2015).

Also, among the problematic issues in bringing to administrative responsibility those, sentenced to imprisonment, can be attributed the long period of time required to collect primary materials and send them under the jurisdiction of the person authorized to draw up protocols on administrative offenses, as well as time to collect the necessary materials, send the protocol and other materials for consideration of the case of an administrative offense in the court and its decision. Another problem that arises when bringing convicts to administrative responsibility is expressed in the expenditure of additional resources necessary to organize the convict's participation in the court session by escorting such a person directly to the courtroom or using video communication in institutions with such technical capability.

Along with the above, the following problem, in our opinion, can be formulated as: the absence of the actual possibility of applying all types of administrative penalties prescribed by law, due to the detention of persons sentenced to imprisonment in correctional institutions. Of the entire list of administrative penalties, in the prevailing majority of cases, a warning and an administrative fine are applied to the category of persons indicated by us, which, in essence, do not have proper adverse consequences





for the violator, which may indicate a weak general and private prevention of this type of responsibility for such citizens.

Along with others, another problematic aspect in bringing to administrative responsibility those sentenced to imprisonment is the limited powers of employees of institutions and bodies of the criminal justice system in this matter. Bringing to administrative responsibility under articles for which employees of institutions and bodies do not have the authority to draw up protocols on administrative offenses, on the initiative of these persons, may be carried out when they detect signs of an administrative offense, submit an appropriate report on the detection of signs of an administrative offense, collect the necessary materials, containing data indicating the presence of an administrative offense event and sending these materials under the jurisdiction of the person authorized to consider the relevant case of an administrative offense.

Employees of institutions and bodies of the penal enforcement system may not always act as independent subjects of production, however, they assist authorized subjects not only in initiating administrative proceedings, but also in collecting materials, interviewing the violator, witnesses of the commission of an offense, ensuring passage to the secure territory of the correctional institution of an official, and so on.

With regard to bringing to administrative responsibility convicts held in correctional institutions, employees of such institutions also have the right to draw up protocols on administrative offenses for a fairly narrow range of such offenses, fixed in paragraph 5 of part 5 of Article 28.3 of the Administrative Code of the Russian Federation.

In contrast to administrative responsibility, bringing a convicted person to disciplinary responsibility, in our opinion, has more positive sides. To our mind, the main positive differences between disciplinary and administrative liability are the prompt bringing of the guilty person to justice, the non-necessity of bringing third parties who are not employees of the criminal justice system to the procedure, reducing the amount of time from the moment of committing an offense to the imposition of punishment, a greater number of negative consequences for the guilty person, and others.

In our opinion, these positive factors of bringing convicts to disciplinary responsibility confirm our position on the need to bring convicts held in places of





deprivation of liberty to disciplinary responsibility exactly if they violate norms, that have dual regulation by related branches of law, since this decision will contribute to increasing the role of general and private prevention, maintaining law and order in correctional institutions as well as the stabilization of the operational situation.

4 CONCLUSIONS

Summing up, it is worth noting that, despite the existence of different opinions on the issue of bringing convicts to justice if they violate norms that are double regulated by related branches of law, there are no proposals in the theory of administrative law on the development and consolidation of the concept of administrative responsibility of those, sentenced to imprisonment. In our opinion, in order to generalize and concentrate the components of such a substitute of administrative responsibility as the administrative responsibility of convicts, as well as for the development of the science of administrative law, in the conceptual apparatus of administrative legislation, the administrative responsibility of convicts should be understood as the type of legal responsibility, expressed in the totality of actions of authorized subjects of law aimed at establishing the fact of violation of the norms of administrative law by a person, found guilty of committing a crime in court, and all necessary circumstances and bringing him to responsibility, provided for by the legislation on administrative offenses, in accordance with the procedure established by law.

In addition, in order to eliminate conflicts in the application of the norms of a particular branch of law, it is necessary to legislate the special legal status of convicts and impose a certain type of responsibility for the violation by amending the relevant normative legal acts, since the lack of consolidation of such a category of persons as convicts as special subjects of administrative responsibility is a flaw on the part of the legislator.

We propose to amend the Administrative Code of the Russian Federation by supplementing it with Article 2.6.3 "Administrative liability of persons sentenced to imprisonment", which should be worded as follows: "Article 2.6.3. Administrative liability of persons sentenced to imprisonment:





1. Convicted persons, serving a criminal sentence in places of deprivation of liberty, shall be brought to administrative responsibility on general grounds, except in cases when similar acts are recognized by the penal enforcement legislation as violations of the established procedure for serving a sentence."

2. In part 2 of this article it is necessary to point the specific elements of administrative offenses, transformed into violations of the established procedure for serving sentences (for example, Articles 6.24, 7.27 of the Administrative Code of the Russian Federation, and so on).

In addition, it is necessary to expand the powers of employees of institutions and bodies of the criminal justice system to draw up protocols on administrative offenses against convicts serving sentences in correctional institutions, which will also partially solve existing problems in the field of bringing such persons to administrative responsibility.

The proposed changes, in our opinion, are able to eliminate the existing confusion and develop uniform rules for bringing convicts to one or another type of responsibility when they commit an act, that formally has all the signs of an administrative offense according to the norms of both administrative and penal enforcement legislation, as well as partially solve the problems that arise in this case.

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