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ADMINISTRATIVE LIABILITY: FEATURES OF LEGAL RELATIONS INVOLVING CORRECTIONAL AGENCIES

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The subject of the research is the modern administrative law and administrative procedural doctrine shaping the view of the contents and nature of the legal relationship of administrative liability involving correctional agencies.

The purpose of the article is to confirm or disprove the hypothesis about significant features of legal relations of administrative liability arising, developing and terminating in the field of execution of criminal penalties.

The methodology includes systematic analysis of legal academic literature, interpretation of Russian legislation on administrative offences.

The main results. The static (universal for all law enforcement agencies) structure of the institution of administrative liability acquires its qualitative originality in the process of its practical implementation in the law enforcement activities of the relevant bodies and officials authorized by the state to bring to administrative responsibility through appropriate legal relations. The main part of the legal relations of administrative responsibility that develop in the activities of correctional institutions and pre-trial detention centers are of a security nature. These relations are primarily aimed not at implementing the main tasks of the legislation on administrative responsibility, but at achieving the basic goal of the functioning of penitentiary institutions, i.e. ensuring the public safety of objects of the Federal Penitentiary Service of Russia. Identification and proper procedural registration of the fact of an administrative offense will be the basis for the emergence of the corresponding protective legal relationship. The authors make proposals aimed at improvement of normative regulation and practice of application of administrative coercive measures, enforced by employees of the Federal Penitentiary Service of Russia. It is necessary to radically change the approach to the administrative and jurisdictional practice of correctional agencies by expanding the application of administrative responsibility to convicted persons and persons held in pre-trial detention centers.

Conclusions. Administrative liability relations involving correctional agencies have specific features. The application of such liability is aimed at maintaining the normal legal regime and ensuring the public safety of the relevant penitentiary facility. Administrative responsibility should be applied by correctional agencies to citizens who are located on the territory of the penitentiary institution and pre-trial detention center, civil personnel of the penitentiary system and special agents. A doctrinal definition of the legal relationship of administrative liability involving correctional agencies is formulated by authors.

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1. Introduction

The basic element that combines administrative-coercive measures, material (administrative punishments) and procedural (administrative-procedural measures) is the socio-legal category of administrative responsibility. As rightly pointed out by

N. V. Makareyko, "the role of considering legal liability as a qualitative type of state coercion allows us to get deeper into the essence of the law enforcement mechanism, to understand the role and significance of the applied measures of state coercion, to anticipate and timely diagnose emerging failures and to develop recommendations for their prevention and elimination" [1, p.401].

Developments devoted to the problem of administrative responsibility at the methodological level became the subject of independent scientific research of Russian administrative scientists [2, 3], certain aspects of the institute of administrative responsibility and its implementation in various spheres of public life were reflected in the works of a large number of authors [4-6]. As for the activities of institutions and bodies of the criminal executive system (hereinafter-UIS), the theoretical foundations of administrative responsibility in this area, although it remained beyond the scope of independent scientific understanding, some of its aspects related to the organization of proceedings in cases of administrative offenses in the UIS were considered in the dissertations of V. A. Ponikarov [7], N. A. Melnikova [8], A.V. Kalyashin [9].

The static (universal for all law enforcers) construction of the institution of administrative responsibility acquires a qualitative originality in the process of its practical implementation in the law enforcement activities of the relevant bodies and officials empowered by the state to bring to administrative responsibility through legal relations. in this regard, it seems appropriate to consider the features of the implementation of legal relations of administrative responsibility in the activities of institutions and bodies of the penal system.

2. Target orientation of the legal relationship of administrative responsibility in the penal system

The bulk of the administrative responsibility of legal relations emerging in the activities of correctional institutions and detention facilities, has a security nature, that is, the relationship is directed, first and foremost, not on the implementation of the main objectives of the legislation on administrative responsibility, and to achieve the basic objectives of the prison administration of providing public safety facilities of the FSIN of Russia. In this regard, we should agree with the opinion of E.A. Sergeeva, rightly believing that administrative responsibility, implemented in the activities of the bodies and institutions of the penal correction system is a means of protecting the rule of law in prisons and places of detention [10, pp. 11-12]. This position is consistent with the judgment of P.P. Serkova, stating that an administrative offence may be considered a violation not only of administrative law, but also norms of other branches of law, such as land, housing, economic, etc. This means that legal relations in the sphere of administrative responsibility are inter-sectoral [11, p. 27]. I would also like to note that the protective legal relations of administrative responsibility in the penal system are closely intertwined with the regulatory criminal-executive legal relations, which is manifested in the following. Committing an administrative offense (penal offence) citizen, in addition to the use against him of certain administrative penalties under the law on administrative responsibility shall entail the restriction of his rights under the penal laws, including the right to short-term or long meeting with a person contained in the establishment of the UIS, or the rights of the convicted person, including, to receive parcels, parcels.

3. The basis for the emergence of a legal relationship of administrative responsibility in the penal enforcement system

The basis for the emergence of the legal relationship under study is a legal fact in the form of an illegal action of the relevant subject, which generates a dynamic change in its legal status and the formation of its special administrative and legal state-administrative punishment. Today, various opinions are expressed in the legal literature regarding the basis for the emergence of legal, including

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administrative, liability. Some authors believe that "legal responsibility arises from the moment of committing an offense, regardless of whether the offender is aware of the fact of its commission, or not, whether it was discovered by authorized entities" [12, p.75], others - that responsibility is realized from the moment of applying procedural preventive measures [13, p. 161-162], and others - from the moment of bringing charges [14, p. 21-23]. In the opinion of the fourth, the relations of responsibility arise with the adoption of the relevant law enforcement act [15, p. 11].

In our opinion, a legal fact that gives rise to a relationship of administrative liability in the penal system, is an administrative offence and identified a competent officer of the institution (authority) of the Federal penitentiary service of Russia against the established and provided by the state normal legal regime of functioning of the corresponding object UIS.

In this context, it is the identification and proper procedural registration of the fact of an administrative offense that will be the basis for the emergence of the corresponding protective legal relationship.

4. The subject structure of the legal relationship on the application of administrative coercion measures, enshrined in the legislation on administrative responsibility, by the bodies of the criminal executive system

The composition of the legal relationship under consideration is represented by the following categories of its participants.

The first category includes entities that have the right to apply the entire set of coercive measures provided for by the Code of Administrative Offences of the Russian Federation. This category of subjects should include:

- heads of correctional institutions, pre-trial detention centers;
- Chief State Sanitary Doctor of the Federal Penitentiary Service of Russia, his deputies;
- chief state sanitary doctors of territorial bodies of the Federal Penitentiary Service of Russia, their deputies.

The same category should include other entities that have the right to apply certain administrative and coercive measures stipulated in the Code of Administrative Offences of the Russian Federation.

The second category of participants in the legal relationship on the application of measures of administrative coercion, enshrined in the legislation on administrative responsibility, is represented by subjects in respect of which they are applied (may be applied) appropriate enforcement measures. These include:

- citizens on the territory of the institution executing punishment (jail), including in the restricted area facilities within the system, which is fully subject to the requirements of the legislation on administrative responsibility;
- civil personnel of the penitentiary system performing labor duties at the facilities of the Federal Penitentiary Service of Russia, its territorial bodies and institutions;
- persons sentenced to deprivation of liberty and persons in respect of whom a preventive measure in the form of detention has been chosen.

It should be borne in mind that officials of the Federal Penitentiary Service of Russia are empowered to appoint and execute the only material measure of administrative coercion provided for by law – administrative punishment in the form of an administrative fine for a limited list of administrative offenses.

Among the elements of administrative offenses that are in the exclusive administrative jurisdiction of employees of the Federal Penitentiary Service of Russia, it is necessary to highlight Part 2 of Article. 19.3 of the administrative code "Disobedience of a citizen (except for convicts serving the penalty of imprisonment in a penal institution, and individuals suspected or accused of committing crimes and detained in other institutions) a lawful order or request of the employee of body or establishment criminally-Executive system, a soldier or other person in the performance of their duties to ensure the safety and security of these institutions, the maintenance in them of the established regime, guarding and convoying convicts (suspects, accused)" and article 19.12 Administrative Code of the Russian Federation "Transfer or attempt to transfer prohibited items to persons held in penal institutions or temporary detention centers". In addition, a separate group should also be allocated

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administrative offenses that infringe on the health, sanitary and epidemiological welfare of the population and public morality, offenses in the field of property protection, in the field of environmental protection and nature management, in the fields of industry, construction, energy and business activities, which are detected by officials of the Federal Penitentiary Service of Russia in the process of sanitary and epidemiological supervision at

5. Modern problems of regulatory and legal regulation of legal relations of administrative responsibility that develop in the activities of employees of the Federal Penitentiary Service of Russia

The implementation of the enforcement officials of the Federal penitentiary service of Russia legal relations on the use of administrative coercive measures stipulated by the legislation on administrative responsibility in the UIS does not fully meet the requirements of current legislation.

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In accordance with Part 1 of Article 1.4 of the Administrative Code of the Russian Federation, "Persons who have committed administrative offenses are equal before the law. Individuals are subject to administrative liability regardless of gender, race, nationality, language, origin, property and official status, place of residence, attitude to religion, beliefs, membership in public associations, as well as other circumstances." This provision corresponds to part 2 of art. 10 of the Criminal Code of the Russian Federation "When executing sentences, convicted persons are guaranteed the rights and freedoms of citizens of the Russian Federation with exceptions and restrictions established by the criminal, penal and other legislation of the Russian Federation". However, neither the administrative code nor in the code, is not established special conditions of use in relation to persons sentenced to deprivation of liberty coercive measures ensuring proceedings on administrative offence and administrative penalties. Thus, convicted persons held in places of deprivation of liberty are subject to administrative responsibility for the commission of such administrative offenses, which are provided for, for example:

- Article 5.61 of the Administrative Code of the Russian Federation “Insult”,
- Article 5.62 of the Administrative Code of the Russian Federation “Discrimination”,
- Article 6.1.1 of the Administrative Code of the Russian Federation “Beatings”,
- Article 6.13 of the administrative offences code of the Russian Federation "Propaganda of narcotic drugs, psychotropic substances or their precursors, plants containing narcotic drugs or psychotropic substances or their precursors and their parts containing narcotic drugs or psychotropic substances or their precursors, a new potentially dangerous psychoactive substances",
- Article 7.27 of the administrative code “Petty theft”,
- Article 20.3 of the Administrative Code of the Russian Federation "Propaganda or public display of Nazi paraphernalia or symbols, or paraphernalia or symbols of extremist organizations, or other paraphernalia or symbols, the propaganda or public display of which is prohibited by federal laws".

However, the offenses are treated by law enforcers as envisaged by Article 115 of the penal code violations of the established order of punishment, the list of specific compositions in the code, not installed, with the exception of willful violations of convicts to the imprisonment of the established order of punishment.

This approach is difficult to accept for the following reasons.

This approach contradicts the doctrinal principle of the inevitability of punishment, as well as the fundamental principle of legislation on administrative responsibility – the principle of equality before the law (which does not provide for any exceptions and special conditions for the application of measures to ensure the production of an administrative offense and bringing to administrative responsibility in relation to convicted persons and persons in custody). This approach also does not correspond to the one set out in ch. 1 of

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article 1.8 of the administrative code is the provision that a person who committed an administrative offence in the territory of the Russian Federation, is subject to administrative liability in accordance with this Code or the law of the Russian Federation about administrative offences, with the exception of cases stipulated by international Treaty of the Russian Federation.

The absence of the authority of the officials of the penal system to draw up reports on administrative offenses in the above-mentioned structures is not and cannot be the basis for refusing to initiate administrative and jurisdictional proceedings. In accordance with part 1 of art. 28.1 Cao RF, in addition to direct detection by the officials authorized to draw up protocols on administrative offences, the sufficient data specifying in availability of event of an administrative offense, the reasons for his excitement are: "received from law enforcement and other state bodies, local governments, from public associations the materials, the containing data specifying in availability of event of an administrative offense; messages and statements of individuals and legal entities, as well as messages in the mass media containing data indicating the presence of an event of an administrative offense."

Sharing, in general, the prevailing opinion in the science of penal enforcement law on an independent form of legal responsibility-disciplinary responsibility of convicts [16, p. 84; 17, p. 7-8; 18, p. 15; 19, p. 8] is different from the disciplinary responsibility of workers and employees and the administrative responsibility of citizens, special legal nature, the nature of the legal relations arising in the process of serving the sentence and the terms of the order of execution and serving, require thinning limits of distribution enforcement of rules governing the grounds and procedure for the appointment of disciplinary sanctions to convicts in case of revealing in their actions the characteristics and composition of a particular administrative offense. In this regard, we consider it possible to radically change the approach to the administrative and jurisdictional practice of institutions of the penal enforcement system by expanding the scope of application of legislation on administrative responsibility in relation to convicted persons and persons held in pre-trial detention centers, which will fully comply with the requirements of the current criminal executive and administrative tort legislation.

In this case, the development of legal administrative responsibility will be implemented in several different (atypical) from the classical perception of the order, namely:

1) identification and proper fixation of the official UIS actual data, indicating the presence of an administrative offense;

2) establishing the identity of the convicted person (person in custody) who has committed an act that has signs of the relevant administrative offense, receiving and recording his explanations;

3) identification of witnesses, obtaining and recording their explanations on the fact of the committed act, which has signs of an administrative offense;

4) sending (if necessary) materials about the event of an administrative offense, the identity of the offender, as well as the subjects of an administrative offense for conducting an appropriate study (examination);

5) sending the collected materials on an administrative offense to the body authorized to draw up a protocol on the relevant administrative offense.

Administrative and administrative activities within the framework of the initiated administrative and jurisdictional proceedings at the subsequent stages of the development of the corresponding continuing protective legal relationship of administrative responsibility are not carried out by officials of the UIS. The authority to draw up a protocol on an administrative offense, as well as to consider the relevant case, passes to the officials of executive authorities designated in the Administrative Code of the Russian Federation or to the court.

to date, the proposed mechanism (procedure) for implementing the legal relationship of administrative responsibility is applied in the event of an administrative offense under article 20.3 of the administrative code of the Russian Federation (propaganda or public display of nazi attributes or symbols, or attributes or symbols of extremist organizations, or other attributes or symbols, propaganda or public display of which is prohibited

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by federal laws).

6. By-law regulatory and legal regulation of legal relations of administrative responsibility implemented in the activities of officials of the penitentiary system

Implementation relations for the application of administrative coercive measures stipulated by the legislation administrative responsibility of criminal Executive system is carried out under conditions of incomplete departmental sub-regulations of this direction of law enforcement and the lack of a unified system of departmental materials administrative and jurisdictional practice in the institutions and bodies of the FSIN of Russia.

The Russian code of administrative offences contains a number of binding legal provisions requiring the adoption of the Federal service of execution of punishments of normative legal documents for the implementation of individual administrative procedures within the administrative-jurisdictional proceedings, the Federal penitentiary service of Russia it is necessary to adopt normative acts establishing the rules of equipment designated areas of the penal system for the detention of persons, detained for an administrative offense and the procedure for storing and recording items and documents seized in accordance with Article 27.10 of the Administrative Code of the Russian Federation. The absence in the penal system today these normative documents is due, in our opinion, the fact that in accordance with the presidential decree dated 13.10.2004 № 1314 "Questions of Federal service of execution of punishments" feature on the organization and provision of production on Affairs about administrative offences, subordinate agencies and bodies of the penal correction system has not been selected as independent public functions, implemented by the Central management body of criminal Executive system, as indicated among other functions in the established sphere of activities [20, p.116]. At the same time, it should be noted that most state bodies that perform law enforcement functions and in practice apply the Code of the Russian Federation on Administrative Offenses, distinguish this area of activity as an independent one and reflect it in the relevant regulatory legal acts. To streamline the procedure for the use of officials UIS enforcement measures enshrined in the law on administrative responsibility, it is necessary to develop separate departmental regulatory legal act of the Federal penitentiary service or the Ministry of justice of the Russian Federation in the form of instructions (methodical instructions) that reinforce the organization of activities of officials of bodies and establishments of criminally-Executive system in the production on Affairs about administrative offences.

The absence of a system of departmental materials administrative and jurisdictional practice in the institutions and bodies of the FSIN of Russia creates uncertainty in the security system quantitative and quality indicators of administrative delightest in the Russian prison system. This circumstance is due to the following. The materials on the perfect UIS administrative offences shall be submitted by the institutions of the penal correction system of the territorial bodies of the FSIN of Russia, depending on the species of revealed administrative offences and powers of officers of the Federal penitentiary service of Russia and other law enforcement agencies (court) in his consideration of various structural subdivisions of the Central apparatus (the mode control and supervision, the main operational management, organization of medical care) and does not accumulate in a single database. In this regard, today it is not possible to establish a unified prison system database on the number and types of administrative offences in the institutions and bodies of the penal correction system; the number, types and amount of assigned administrative penalties; the persons committed the offence, including the time, place and circumstances of Commission of the offence; to identify on the basis of the identified indicators of the level of administrative delictate FSIN of Russia; to carry out a study of the dynamics of administrative delectate, to conduct a systematic predictive and preventive work in this field.

The introduction of a unified information base that reflects the indicators of administrative and jurisdictional practice in the Federal Penitentiary Service of Russia will not only solve the above-mentioned problematic issues, but also create prerequisites for the formation of a program for

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intersectoral accounting of administrative offenses, the need for the formation of which is rightly pointed out today by administrative scientists [22, p.13-14; 23, p. 21].

7. Conclusions

On the basis of generalization of the revealed features of the implementation in the penitentiary system of administrative coercive measures laid down in legislation on administrative offenses offers a definition of the legal and administrative responsibility with the participation of bodies and institutions of the penal system.

This is due to the committed and identified a competent officer of the institution (authority) of the FSIN of Russia an administrative offence, the particular having of a security for fulfillment of tasks of the penal legislation and the legislation on detention in nature, lasting protective relationship, which, are, on the one hand, officials of the Federal penitentiary service of Russia with a right to apply coercive measures provided for in the Code of the Russian Federation about administrative offences, on the other - citizens in the territory of the institution executing punishment (SIZOs), civilian personnel of UIS, developing in provided by the legislation of typical, and atypical, order, directed to the maintenance of normal legal regime and ensuring public security of the relevant object UIS.

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