

DISQUALIFICATION FROM DRIVING: ENFORCEMENT IN RUSSIA

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The subject. The article considers the legal basis for the execution of decisions on administrative penalties in the form of disqualification from driving, as well as the prospects for the development of new legislation in the field of road traffic. The article examines the social relations that develop in the process of implementing the jurisdictional powers of the Russian State Traffic Inspectorate in ensuring road safety, preventing and suppressing offenses related to encroachment on motor vehicles, transported goods, the life and health of drivers and pedestrians.

The purpose of the article is to confirm or disprove hypothesis that there are defects in Russian legislative regulation that prevent the effective execution of decisions on the disqualification from driving. They are not eliminated in the draft of the new Russian Code of Administrative Offences.

The methodology of research is the provisions of the general theory of law, the modern science of administrative law and the theory of public administration. The authors used a systematic approach and formal legal analysis. The legislation of the Russian Federation and the practice of its enforcement were studied also.

The main results. In accordance with paragraph 5 of Article 2 of the Russian Federal Law "On the Police", the execution of administrative penalties is one of the main activities of the police. The effectiveness of the entire proceedings in cases of administrative offenses largely depends on the execution of the adopted resolutions. The leading role in the execution of decisions on administrative penalties, in particular, related to the disqualification from driving, belongs to the internal affairs bodies. It is important to note that the execution of administrative penalties in practice is associated with certain difficulties.

Conclusions. The execution of decisions on the imposition of disqualification from driving as an administrative penalty causes difficulties due to defects in legislative regulation, which are not fully resolved in the draft of the new Russian Code of Administrative Offences.

1. Introduction

In the complex of measures aimed at improving the economic and social standard of human life, an important place is taken by ensuring road safety, which is one of the main activities of the Russian state. High road accidents and their consequences in many countries, including Russia, are regarded as a national disaster [1, 2].

The State Traffic Safety Inspectorate of the Ministry of Internal Affairs of Russia (hereinafter referred to as the traffic police) plays an important role in ensuring road safety and the execution of decisions on bringing to administrative responsibility. It enforces not only punishment orders issued by competent officials of the internal affairs bodies, but also judicial decisions on certain types of punishments, such as an administrative fine or deprivation of a special right in the field of road traffic [3].

It should be noted that the execution of administrative punishments in practice meets certain difficulties. So, according to the traffic police in Russia, over the past two years, more than 1,000 traffic fines remain unpaid, and a large number of people evade the delivery of driver's licenses. According to the information of the Ministry of Internal Affairs of Russia, more than 70 motorists and 180 legal entities throughout Russia violated traffic rules more than 1,000 times, did not comply with resolutions on cases of administrative offenses and did not surrender their driver's licenses [4].

2. Entity enforcing the punishment

In addition, oblige the person brought to administrative responsibility to surrender all the relevant certificates he has, or declare their loss to the unit of the authorized body indicated by the judge and explain the consequences of failure to fulfill this obligation (Article 31.3, parts 1, 2 of Article 32.5, part 1 of article 32.6 and parts 11, 2 of article 32.7 of the Code of Administrative Offenses of the Russian Federation) [5].

As a subdivision entrusted with the execution of the decision on the appointment of

an administrative penalty in terms of deprivation of the right to drive vehicles, as a rule, it is necessary to indicate the subdivision of the body whose official sent the case of an administrative offense for consideration to a judge, including in the case of a decision regarding a person residing outside the Russian Federation. And also, in relation to a person residing in the territory of Russia, it is possible to impose the execution of the decision on the imposition of an administrative penalty in terms of deprivation of the right to drive vehicles on a subdivision of the authorized body at the place of residence (at the place of stay) of the person to whom this administrative penalty has been assigned, including in the case of satisfaction of the petition of such a person to consider the case at the place of his residence [6].

It is especially important to note that in connection with the adoption of a new resolution, the said Plenum proposed to declare paragraphs 1 - 12 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of October 24, 2006 No. 18 "On Some Issues Arising in Courts When Applying the Special Part of the Code Of the Russian Federation on Administrative Offenses "(as amended by the resolutions of the Plenum of the Supreme Court of the Russian Federation dated November 11, 2008 No. 23, dated February 9, 2012 No. 2) [7].

3. Procedure of disqualification enforcement

The entry into force of the decision should also be considered the moment of commencement of enforcement proceedings in a case of an administrative offense, which ended in the issuance of a decision on deprivation of the right.

By the time of the initiation of enforcement proceedings, the procedure for bringing to the attention of the person brought to administrative responsibility of the decision on the appointment of an administrative penalty is closely adjacent. According to Art. 29.11 of the Administrative Code of the Russian Federation, a decision in a case of an administrative offense is announced

immediately after the end of the consideration of the case. A copy of the resolution is handed over against receipt to the person in respect of whom it was issued, or his legal representative, or sent to the specified persons within three days from the date of the resolution.

In accordance with the provisions of Art. Art. 31.2. and 31.3. Of the Administrative Code of the Russian Federation, a decision that has entered into legal force in a case of an administrative offense appeals to the execution by a judge, body, or official who issued this decision. The appeal to execution is, firstly, the moment of the beginning of the direct execution of the decision, and secondly, the actions towards the direction of the decision to the subject of its enforcement.

It should be emphasized that a decision in a case of an administrative offense is subject to execution from the moment it enters into legal force, however, such a legislative decision does not exclude the possibility of appealing these decisions in the manner prescribed by the norms of Ch. 30 of the Code of Administrative Offenses of the Russian Federation («Revision of decisions and decisions in cases of administrative offenses»).

It is important to note that not any person can be deprived of a special right, but only the one to whom it was previously granted. So, for example, not any driver can be deprived of the right to drive a vehicle, but only the one to whom it was granted (within the meaning of the current Code, a driver is any person driving a vehicle, regardless of the presence or absence of the right to drive a vehicle). The course of the term of deprivation of a special right begins from the day the decision on the appointment of an administrative penalty enters into legal force.

Within three working days from the date of entry into force of the decree on deprivation of the right to drive a vehicle, a person deprived of a special right must submit a driver's license to the internal affairs body executing this type of administrative punishment. In case of loss of the specified document, notify the authorized body about it at the same time. If, after three working days after the entry into force of the decision on

the appointment of an administrative penalty in the form of deprivation of the right to drive vehicles, the driver's license or a statement about its loss has not been received by the State Traffic Inspectorate, the guilty person is considered to be evading the delivery of the driver's license. From this moment, the period of deprivation of the right to drive vehicles is interrupted.

Taking into account the low executive discipline of the punished drivers, the State Traffic Safety Inspectorate, together with the Federal Bailiff Service (hereinafter referred to as the FSSP), decided to collect unpaid fines using technical means of photo and video recording and traffic police inspectors, who were transferred to the database of persistent defaulters of fines and deprived driver's licenses. Traffic police officers detain vehicles and hand them over to bailiffs, who arrest them.

Together with the FSSP, they began to strengthen control over the debtors of the traffic police after a number of incidents. So, on Butyrskaya Street on January 24, 2020, the driver, driving a BMW, drove into the oncoming lane, which led to the death of a person and damage to six more cars. It turned out that the perpetrator of the accident had 650 unpaid administrative fines, most of which were for exceeding the established speed. The car, which had a completely massive accident in April 2021 in the center of the capital on the Garden Ring, has been recorded more than 400 times by cameras for speeding since the beginning of the year.

Behind the wheel was a blogger who became famous for shooting videos with recklessness on the roads. The driver of this car turned out to be a blogger known for scandalous pranks, Edward Beale. Judging by the video footage, the blogger moved in the middle lane before entering the tunnel under Novy Arbat. However, at some point, it sharply rebuilt into the next lane, and then, either turning the steering wheel to the left, or pinching the accelerator, flew into the oncoming lane. At the same time, after the accident, as reported in the Department of Transport of the capital, he moved into the back seat, and tried to imagine that he was a passenger, and his unknown friend was driving.

According to the Department of Transport of the capital, since the beginning of the year, this car has exceeded 245 speeding by 20-40 km / h, 104 speeding by 40-60 km / h, 48 speeding by 60-80 km / h and 23 speeding by 80 km / h. But no fines were issued. As it turned out, the registration of the car was terminated by the previous owner of the car in January this year. From that moment on, the car moved around the city with fake license plates.

In the Omsk region, a driver was detained, who was deprived of the right to drive a vehicle for numerous traffic violations for a period of 32 years. Such examples are not isolated. In the last year, the number of those deprived of certificates for a period of more than 10 years is decreasing. At the same time, such facts take place [9]. At the same time, according to the traffic police, in 2020, 84% of violators paid fines on time. If this does not happen, the traffic police sends materials under Art. 20.25 of the Administrative Code (evasion from the execution of an administrative penalty) to the court.

This article provides for a punishment in the amount of two times the amount of the unpaid fine, in the form of administrative arrest or compulsory labor. In accordance with the law, in order to collect a debt, a driver of a transport may be prohibited from traveling abroad, the effect of his rights may be limited and his property may be seized. The arrest of the car by bailiffs, and subsequently its sale at auction, are applied in case of non-payment of fines in the amount of more than 3 thousand rubles.

4. Cancellation of the resolution in the process of execution of punishment

However, the traffic police officers do not always lawfully draw up protocols on administrative offenses. In some cases, the Supreme Court of the Russian Federation overturned the decision to revoke a driver's license due to an error in the protocol, incorrect determination of the engine power of a vehicle, or when administrative liability was applied only on the basis of testimony from the traffic police. The Supreme Court has become very strict on the procedure for medical examination of drivers

in a state of intoxication and exempts the latter from punishment in case of violations of the established procedure for its conduct.

For example, the Supreme Court of the Russian Federation considered the complaint of the citizen N., who was sentenced by the magistrate to the deprivation of a driver's license for a period of 1 year. All further instances upheld this decision. However, the Supreme Court of the Russian Federation, having studied the materials of the case, came to a different conclusion. The fact is that according to the instructions for conducting a medical examination, measurements should be taken twice with an interval of 20 minutes. The medical workers did not fulfill this condition. The procedure was violated, and therefore the Supreme Court of the Russian Federation considered that such an examination could not be unequivocal proof that the driver was driving while intoxicated. There are many such examples [10].

Thus, inadequate qualifications of medical workers, and sometimes traffic police officers, a low level of road safety, significantly affect the internal component of the country's national security, affect the constitutional rights and freedoms of citizens, are factors that negatively affect the provision of public security in the Russian Federation. This is a public concern and increases the importance of road safety. [11]. Solving this issue requires strengthening the discipline of drivers, pedestrians and other road users and, consequently, increasing the effectiveness of legal action on them.

5. Disqualification of driving in new draft of Russian Code of Administrative Offenses

Consideration and adoption of the draft new Code of Administrative Offenses of the Russian Federation (hereinafter referred to as the Code of Administrative Offenses) in the State Duma, we believe, will eliminate this problem [12]. However, in Chapter 20 of the new draft Code of Administrative Offenses, the legislator, as always, solved this problem by toughening and increasing administrative fines several times. Will this help ensure road safety? I think not. This measure appears to only increase the scale of corruption.

Foreign experience shows the need for the development of the road network, the safety of the transport structure, the technical excellence of traffic regulation and other measures. No country in the world has succeeded in solving security issues by toughening punishment.

For example, Article 20.38 "Violation of the rules for the movement of a heavy and (or) large-sized vehicle" of the draft Code of Administrative Offenses suggests to establish administrative liability for the movement of a heavy and (or) large-sized vehicle in excess of the permissible dimensions of the vehicle by more than 5, but not more than 15 centimeters without special permission (with the exception of cases of fixing an administrative offense by special technical means operating in automatic mode that have the functions of photography, filming, video recording), or exceeding the dimensions specified in a special permit by more than 5, but not more than 15 centimeters (with the exception of cases of fixing an administrative right violation by special technical means operating in an automatic mode, having the functions of photography and filming, video recording), or in excess of the permissible mass of a vehicle or the permissible axle load of a vehicle with funds by more than 2, but not more than 10 percent without a special permit, or with an excess of the mass of the vehicle or the axle load of the vehicle specified in the special permit, by more than 2, but not more than 10 percent. As a sanction, the legislator proposes an administrative fine of one hundred thousand rubles. Drivers of vehicles belonging to foreign carriers and owners, but not foreign carriers, will act as the subject of the offense.

For similar acts in excess of the permissible dimensions of the vehicle or the permissible axle load of the vehicle without special permission, liability will be provided for up to five hundred thousand rubles.

For other violations of the rules for the movement of heavy and (or) large-sized vehicles, liability is provided in the form of imposing an administrative fine on the vehicle driver in the amount of one thousand to one thousand five hundred rubles; for officials responsible for

transportation - from five thousand to ten thousand rubles; for individual entrepreneurs - from twenty thousand to thirty thousand rubles; for legal entities - from fifty thousand to one hundred thousand rubles.

In chapter 21 of the Administrative Code, article 21.9. for exceeding the established speed, it imposes fines four times more than in the current legislation. For example, for exceeding the established speed of a vehicle by more than 20, but not more than 40 kilometers per hour, an administrative fine is provided in the amount of three thousand rubles, and for an amount of more than 40, but not more than 60 kilometers per hour - in the amount of four thousand rubles. In turn, exceeding more than 60 kilometers per hour will already entail the application of an administrative fine in the amount of five thousand rubles or deprivation of the right to engage in activities related to driving vehicles for a period of four to six months.

For repeated speeding by more than 40 or 60 kilometers per hour, an administrative fine in the amount of ten thousand rubles or deprivation of the right to engage in activities related to driving vehicles for a period of one year is provided.

There are many such examples in the new draft Code of Administrative Offenses. But it is worth considering - how realistic is it in modern economic conditions to collect such fines, will drivers be able to pay them? And to what extent such decisions are expedient, justified and permissible if the amount of fines imposed by the traffic police on Russian drivers in 2019 has already exceeded 100 billion rubles. The number of speeding orders, in turn, has crossed the 100 million mark. This follows from the data of the traffic police of the Ministry of Internal Affairs of Russia.

An analysis of the statistics of administrative offenses in the field of road traffic shows another important trend: in 2019, the traffic police stopped previously opened cases by 8% more than a year earlier. Severe punishments also began to be applied less frequently: 354.5 thousand citizens were deprived of their driver's licenses (-15%), 144.7 were subjected to

administrative arrest (–6.4%), 840 thousand were fined (–2%). This can be explained by the deterioration in the quality of materials prepared for submission to the court.

Another reason is the reduction in traffic police personnel in 2018. The number of employees has decreased, but the work intensity has remained the same. At the same time, the total number of materials that the traffic police sent to the courts against violators exceeded 1.66 million, that is, increased by 2.2% compared to the previous year.¹ Whether the adoption of the new Code of Administrative Offenses will help solve the problems discussed in the article is a moot point.

The text of the Code of Administrative Offenses was submitted to the State Duma in December last year, and the document was almost immediately subjected to sharp criticism on all counts: the business considered the project punitive and untimely, and the deputies pointed out that the authors did not take enough care of the interests of citizens. The experts who participated in the first consideration (representatives of the Prosecutor General's Office, the Supreme Court, the Central Bank of the Russian Federation, the Ministry of Internal Affairs, the FSSP, the Russian Union of Industrialists and Entrepreneurs) also agreed that the Code needs significant amendments.

According to Yu.V. Avrutin, AP. Shergin, Yu.N. Starilov and V.R. Kisin et al., The new Concept of the Law does not imply the elimination of existing conflicts between the norms of the Code of Administrative Offenses of the Russian Federation and the Constitution of the Russian Federation. Many administrative officials rightly note the inconsistency of the provisions of the current Code on the powers of the constituent entities of the Russian Federation to establish administrative responsibility of part 3 of Art. 55 of the Constitution of the Russian Federation, which defines the possibility of restricting human and civil rights and freedoms only by federal laws.

Recognizing that the legislation on administrative offenses is related to the restriction of human and civil rights and freedoms, the Concept agrees with the preservation of the powers of legislators at all levels of public authority to establish such restrictions by including legal norms on administrative offenses «in a single legislative act for the appropriate level of government.»[14]. According to V.R. Kisin, the Concept notes that there is a need for scientific understanding and analysis of the existing practice of applying the Code of Administrative Offenses of the Russian Federation and a critical assessment of the effectiveness of its norms. Such comprehension and analysis, as the author notes, began long before the adoption of the Concept. They are reflected in numerous scientific publications and dissertations that have not received due attention from the developers of the Concept. The above and other inherent shortcomings cast doubt on the significant improvement of the current administrative-tort legislation as a result of the unconditional implementation of the provisions contained in this Concept. Therefore, it seems that at present the Concept itself needs a deep scientific understanding. Correction of a number of its provisions would make it possible to eliminate the existing shortcomings of the administrative-tort legislation and avoid introducing dubious novelties into it [15].

There is no consensus among experts regarding the application of administrative responsibility in the draft Code of Administrative Offenses by the constituent entities of the Russian Federation.

For example, Professor of the Department of Administrative and Municipal Law of the Saratov State Law Academy, Doctor of Law, Professor Alexander Yurievich Sokolov and Associate Professor of the Department of Administrative and Municipal Law of the Saratov State Law Academy, Candidate of Law Oleg Anatolyevich Lakaev believe that the draft Code of Administrative Offenses of the Russian Federation Subjects of the Russian Federation in the field of legislation on administrative offenses, it is proposed to include the establishment of administrative responsibility for violation of the

rules and regulations provided for by laws and other regulatory legal acts of the constituent entities of the Russian Federation, municipal regulatory legal acts in cases provided for by federal laws (clause 1, part 1 of Art. 1.4). According to the authors, it seems unnecessary to indicate the cases provided for by federal laws as an additional condition for establishing administrative responsibility at the level of the constituent entities of the Russian Federation. The relevant issues go beyond the exclusive jurisdiction of the Russian Federation, as well as the joint jurisdiction of the Russian Federation and its subjects, and according to Art. 73 of the Constitution of the Russian Federation, outside the jurisdiction of the Russian Federation and the powers of the Russian Federation in matters of joint jurisdiction of the Russian Federation and the constituent entities of the Russian Federation, the constituent entities of the Russian Federation have full state power. Consequently, the establishment of administrative responsibility on these issues by the legislators of the constituent entities of the Russian Federation does not imply prior authorization by federal law [16].

Similar judgments of the authors are applicable to the determination of the jurisdiction of cases of administrative offenses provided for by the laws of the constituent entities of the Russian Federation, "in the cases provided for by this Code" (clause 2, part 1, article 1.4). An independent determination of the composition of administrative offenses punishable under the administrative-tort legislation of the constituent entities of the Russian Federation should also imply an independent determination of the jurisdiction of cases of administrative offenses without prior authorization by the federal legislator.

So, for example, one can agree with the opinion of Professor V.E. Sevryugin, who speaks about the imperfection and practical destruction of the institution of administrative responsibility in the new draft Code of the Russian Federation on Administrative Offenses. In his opinion, the strengthening of the punitive, repressive function of the Administrative Code, which is

losing its main administrative purpose and gradually turning into a code of criminal offenses, cannot be supported. Representatives of the Ministry of Justice have expressed similar criticisms.

The development of the draft Code of Administrative Offenses of the Russian Federation incites hatred of lawmaking. Pavel Krashenninikov, head of the State Duma Committee on State Building and Legislation, told reporters about this. «We think this document is no good at all,» he said. According to him, the document does not contain «cross-cutting» articles, and the fines in accordance with it increase several times.² In his opinion, the bill will hardly be supported by the parliament.

The Ministry of Justice, which has prepared a draft of the new Code of Administrative Offenses of the Russian Federation, explained that the document "reflects the proposals of the Ministry of Internal Affairs of Russia." In this case, we are talking about increasing the limitation period for bringing to administrative responsibility up to one year. Now a decision on a case on an administrative offense cannot be issued after two months from the date of the offense (or three months if the case is being considered by a judge). Such proposals concerning changes in the current norms of the Code of Administrative Offenses of the Russian Federation served as a continuation of the critical remarks of administrative scientists. Earlier, the secretary of the general council of the United Russia party, Andrei Turchak, criticized the new draft of the Administrative Code. According to him, the document provides for the toughening of repressive mechanisms, which contradicts the proposals voiced in the message of the President of Russia to the Federal Assembly. Among such mechanisms, Turchak attributed the increase in fines, the introduction of confiscation of movable property in favor of the state and the establishment of new restrictions on travel abroad. The document presupposes, in particular, a radical toughening of punishments for drivers. Independent experts and human rights activists

agree with the opinion of the party functionary.

6. Conclusions.

The execution of resolutions on the imposition of administrative punishment in the form of disqualification from driving a vehicle causes difficulties due to defects in legislative regulation, which are not fully resolved in the draft of the new Russian Code of Administrative Offences.

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