

## **THE PROBLEMS OF ENFORCEMENT OF DECISIONS ON THE DEPRIVATION OF THE DRIVER'S LICENSE**

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The subject of research is legal regulation and practice the enforcement of punishment on deprivation of the license permitting to drive a variety of vehicles.

The purpose of this article to show that even for such well-established for many years, narrow and specific law enforcement procedure as the execution of administrative punishment in the form of deprivation of the license there is is very typical whitespace in legal regulation leading to conflicts and risks of enforcement.

**Methodology.** The analysis of administrative-legal actions of officials of State Traffic Safety Inspectorate and State Technical Supervision Authority, as well as legislation on the enforcement of their decisions on cases of administrative offences.

**Results.** It is possible to identify the main causes of the problem of law enforcement, placing them in order of importance:

1. The lack of the necessary normative legal acts, regulating the procedure of interaction of the bodies of Rostekhnadzor with the traffic police authorities, courts (judges), and the rules of procedure of the issuance of the certificate of the tractor operator-the machinist after the end of the period of deprivation, the absence of an approved format (sample) medical certificate, etc., i.e. a very significant omissions of administrative-legal regulation.
2. The failure of judges to the provisions of part 2 of article 32.5 of the administrative code of submitting to the authorities of state technical control of decisions on deprivation of the right of management by a tractor, self-propelled machine or other types of equipment for execution.
3. Insufficient level of interaction of police with the Gostekhnadzor for the execution of administrative punishment in the field of traffic.
4. The lack of access of authorities of state technical control for Federal information system, integrated into the necessary parts of the information system of internal Affairs bodies and the State information system on state and municipal payments (GIS GMP).

The fragmentation of administrative-legal regulation first of all necessitates considerable strengthening of coordination in the execution of judgments of the judges on deprivation of drivers of the right of control of the vehicle in terms of deprivation of the right of management by a tractor, self-propelled machine and other types of equipment.

In order to solve this problem the authors propose the organization of a number of organisational measures.

Developed one of possible algorithms of interaction of the organization and uniformity of actions of officials of the specified services for the execution of penalties of deprivation of rights management.

Conclusions. The question of the effectiveness of the existing norms of administrative law regulating the execution of deprivation of the driver's license, requires additional justification.

In the long term it is required the creation of a single Federal interagency information area. Common use of it by the judges, employees of State Traffic Safety Inspectorate and State Technical Supervision Authority, court bailiff, etc.) will minimize legal risks.

**Keywords:** deprivation of driver's license, vehicle, self-propelled vehicle, judge's decree, driver's license of tractor operator-driver, State Traffic Safety Inspectorate, State Technical Supervision Authority, coordination, information

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## **1. Introduction**

Professor Yu.A. Tikhomirov, exploring the theory of legal risks and methods of their diagnosis at the stages of law-making and law enforcement, said that even a carefully constructed mechanism of the latter does not guarantee a consistent, correct and profound realization of legal principles and laws. The so-called "smooth legal effect" is often accompanied by the emergence of unforeseen situations and the occurrence of failures. Deviation is an inevitable companion of the legal norm, and in order to avoid damage to the rule of law, the law and order should systematically analyze and improve the legal practice, anticipate and eliminate risks, prevent conflicts and achieve the goals [1, p. 60-61].

## **2. The subject of the study**

Execution of decisions on cases of administrative violations, including cases in the field of road traffic, has repeatedly become the subject of attention of administrative scientists [2; 3; 4; 5; 6; 7; 8; 9; 10; eleven; 12; 13]. In this article, using an example of analyzing the administrative and legal actions of the officials of the State Traffic Inspection on the execution of judgments on depriving the right to drive a vehicle, we will try to show that even for such a narrow and special area of law enforcement that has been established for many years, both the execution of an administrative punishment in the form of deprivation of a special right is highly characterized by the illegality of legal regulation, entailing conflicts and the risks of law enforcement, to anticipate and prevent which is an important task of legal science.

Traffic rules are applied to all vehicles. Deprivation of the driver's license means that the person is deprived of the right of driving other vehicles referred to in the footnote to Art. 12.1 RF of the Administrative Code (hereinafter - Administrative Code) "A vehicle ... is a motor-vehicle with a displacement of the internal combustion engine is greater than 50 cubic centimeters or the maximum motor power more than 4 kW, and the maximum design speed of 50 kilometers per hour, and its trailers, subject to state registration, and in other articles of this chapter *as tractors, self-propelled road-building and other self-propelled vehicles, transport tools* to manage that in accordance with the legislation of the Russian Federation on road safety is given a special right".

## **3. Examples of problematic situations with enforcement of the deprivation of the driver's license**

Citizen N. was detained for driving a personal car while being intoxicated. He works as a tractor driver in ZAO "Urozhai", has a driver's license as a tractor driver. Decision of the judge came for execution in the department of the State Traffic Inspectorate. Citizen N. gave the driver's license to the specified unit. It began during the term of the deprivation of the driver's license. After the expiry of the period of deprivation, citizen N. passed the examination of his knowledge of the Traffic rules, presented a medical report on the absence of medical contraindications to the management of the vehicle, after which the driver's license was returned to him. During the entire period of deprivation of the special right of citizen H. continued working in the company as a tractor driver. The driver could be brought to administrative responsibility under Article 12.32 of the Code of Administrative Offenses of the Russian Federation for admission to driving of a driver who does not have the right to drive a vehicle, which entails the imposition of an administrative fine of twenty thousand rubles. The legal entity should be imposed to an administrative fine of one hundred thousand rubles (according to the note to Art. 12.32 of the Administrative Code of the administrative offenses provided for in this Article, persons engaged in entrepreneurial activities without forming a legal entity, shall bear administrative responsibility as legal entities).

#### **4. Causes of problems with the enforcement of decisions on deprivation of the right to drive.**

It is possible to single out the main reasons for the law enforcement problem under consideration, placing them in order of importance:

1. Absence of the necessary regulatory legal acts regulating the interaction of the Gostehnadzor bodies with the bodies of the State traffic inspectorate, courts (judges), as well as the procedure for issuing the tractor driver's license after the end of the period of deprivation, the absence of an approved format (sample) of the medical certificate, etc.

2. Failure of judges to implement the provisions of Part 2 of Art. 32.5 of the Administrative Code of the Russian Federation in terms of the direction of Gostekhnadzor decisions about deprivation of the right to drive a tractor, self-propelled machine or other types of equipment for execution.

3. Insufficient level of interaction of the State Traffic Inspectorate with Gostehnadzor for execution of administrative punishments in the field of traffic.

4. The lack of access to the federal information system integrated with the information system of the internal affairs bodies and the State Information System on state and municipal payments (GIS GMP).

It should be noted that the urgency of the problem is increasingly growing due to the continuing increase in the number of self-propelled vehicles in possession of citizens (and, accordingly, the number of issued certificates entitling the management of this equipment): tractors, snowmobiles, quadrocycles, quadricycles, etc. The lack of information in Gostehnadzor about the deprivation of the right to manage, the stage of execution of the decision on deprivation of this right, the availability of a driver's license can lead to non-compliance with the principle of the inevitability of punishment in case of not bringing of the driver to criminal liability in the presence of the objective side of the criminal offense.

#### **5. Regulatory base of execution of administrative penalty of deprivation from driving (self-propelled machines).**

Basic administrative and legal provisions, normalizing the order of execution of administrative punishment in the form of deprivation of the right vehicle (self-propelled machines) management are the following.

Article 32.5 of the Administrative Code of the Russian Federation identified bodies exercising decision on deprivation of a special right.

Decision of the judge on the deprivation of the right to drive a vehicle, except for a tractor, self-propelled machine and other types of equipment, is performed by officials of the internal affairs bodies (Part 1, Article 32.5 of the Code of Administrative Offenses of the Russian Federation).

Decision of the judge on deprivation of the right to manage a tractor, self-propelled machine or other types of equipment is performed by officials of bodies exercising regional state supervision

in the field of technical condition of self-propelled vehicles and other types of equipment (Part 2, Article 32.5 of the Code of Administrative Offenses of the Russian Federation).

Regulations on state supervision over the technical condition of self-propelled vehicles and other equipment in the Russian Federation approved by the RF Government Decree of December 13, 1993 No. 1291 "On State Supervision over the Technical Condition of Self-Propelled Machines and Other Types of Equipment in the Russian Federation", defined Gostekhnadzor as a supervising body. It includes state inspections of executive authorities of the subjects of the Russian Federation and state inspections of cities and districts. Direct state supervision is entrusted to government surveyor specified state inspections.

The procedure for admission of citizens to driving self-propelled vehicles and issue certificates of tractor operator (tractor driver) bodies of state supervision over the technical condition of self-propelled vehicles and other equipment in the Russian Federation is regulated by the RF Government on July 12, 1999 No. 796 "On approval of the Rules for admission to the management of self-propelled vehicles and the issuance of certificates of a tractor driver (tractor operator)" (hereinafter - Rules).

The Rules understand self-propelled vehicles as tractors, self-propelled road-building machines and other terrestrial, trackless motor vehicles with independent drive, having an internal combustion engine of more than 50 Cu.Centimeters or an electric motor with a maximum power of more than 4 KW (with the exception of motor vehicles with a maximum design speed exceeding 50 Km / h, and combat self-propelled equipment of the Armed Forces of the Russian Federation, other troops, military formations and bodies performing tasks in the field of defense and state security).

The right to operate self-propelled vehicles is confirmed by one of two documents: the certification of a tractor driver (tractor operator), as well as a temporary certificate for the right to operate self-propelled vehicles.

From our point of view, it is the fragmentation of administrative and legal regulation that first of all raises the need for a significant increase in coordination in the implementation of judgments on depriving drivers of the right to drive in terms of depriving them of the right to operate a tractor, self-propelled machine and other types of equipment.

According to professor A.P. Shergin, administrative responsibility "is the main legal tool to counteract administrative tort which is the second threat to the existing order after the crime" [ 2, p. 67 ]. At the same time professor pointed out that "the extensive practice of administrative sanctions by judges and numerous bodies of executive power are not always perfect, it is linked to violations of the rights and legitimate interests of citizens, officials and organizations that create excessive tension in the relations between the authorities and society" [14 , p. 67 ] .

## **6. Arrangements for improvement of interaction of state bodies with the execution of the decision on deprivation of driving rights**

In order to solve the problem believe the possible organization of the event, which can be divided into the following types:

1. Issues that do not require legislative changes (organization of tripartite cooperation at the level of the Russian Federation: the courts, Gostekhnadzor bodies, bodies of internal affairs);

2. Issues requiring changes in legislation (harmonization with the modern requirements of normative legal acts regulating the activities of the Gostekhnadzor and internal affairs bodies in the part in question).

More detail on the urgent measures that can be implemented at the level of the Russian Federation. It seems expedient to hold trilateral meetings with the participation of judges, traffic police and Gostekhnadzor to develop a single algorithm of interaction (for obtaining copies of court orders, judgments entry into force, withdrawal of licenses, determine the start of calculating the term of deprivation of special rights, etc.). In fact, the need to ensure uniformity in the organizational activities of officials of traffic police and Gostekhnadzor on execution of administrative punishment of persons deprived of the right to drive in the course of proceedings on administrative violations.

As part of the performance standards contained in h. 4.1 Art. 32.6 of the Administrative Code requires the regulation of the interaction of services in terms of return certificates of tractor operator (tractor driver) upon the expiration of deprivation of a special right for the administrative offenses provided for [by Chapter 12 of](#) the Administrative Code, after the payment of the established order imposed administrative fines for administrative violations in the field of traffic .

In conducting these workshops encourage further study the possibility of exchange of information on whether the driver the right to drive vehicles, self-propelled machines, administrative punishment, stages of their execution, etc. electronic.

## **7. Conclusions**

The desirability of maintaining the existing rules of administrative law governing the execution of judgments on deprivation of a right to drive a tractor, a self-propelled machine or other types of equipment by officials of the bodies exercising regional state supervision in the field of technical condition of self-propelled vehicles, in our view, require additional study and is now the subject of scientific research in the Omsk Academy of the Ministry of Internal Affairs of Russia. In our view, all these problems are solved in the article, but they should be solved as quickly as possible.

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