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## THE LAW ENFORCEMENT BY THE ADMINISTRATIVE JURISDICTION BODIES

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### ADMINISTRATIVE PENOLOGY: THE ISSUES OF LEGAL THEORY

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The subject. The article is devoted to the analysis of the effectiveness of administrative punishment enforced to persons with deviant behavior of an immoral orientation, and the development of proposals for improving the effectiveness of administrative punishment from a penological point of view. The subject of the research is administrative punishment and the legally fixed type and limits of administrative-tort sanctions, which allow administrative jurisdiction bodies and courts to enforce a specific type and measure of administrative punishment aimed at forming the legality of the behavior of an administrative delinquent.

The purpose of the article is to confirm or disprove hypothesis that increasing the effectiveness of administrative punishment will significantly reduce the repetition of administrative offenses due to the educational impact on the consciousness and behavior of administrative delinquents, their moral education. The author analyzes the effectiveness of administrative fine by the repetition of administrative offenses (on all-Russian and regional statistics) and develops proposals for improving the effectiveness of administrative punishment. The methodology. The results of this research were achieved through the use of general scientific methods in the framework of observation, comparative, logical interpretation of legal acts, statistical analysis as well as through the analysis of law enforcement practice.

The main results. The analysis of law enforcement practice has shown the ineffectiveness of the administrative punishment imposed on persons with deviant behavior of an immoral orientation. In this regard, the author suggests penological conditions for improving the effectiveness of rule-making and law enforcement practice, points out the need to ensure interaction and cohesion of jurisprudence, sociology of law and legal psychology, methods of persuasion and coercion in the development and application of administrative sanctions measures. It provides maximum flexibility of the final decision, the possibility of taking into account legal, social, psychological, economic and other nuances of the case in order to maximize the impact on the consciousness and behavior of a person for his subsequent correction and re-education, the formation of a persistent habit of lawful behavior. The author also proposes to provide for administrative liability for failure to comply with official warnings about the inadmissibility of actions creating conditions for commission of crimes, of administrative offences or of the inadmissibility of the continuation of antisocial behavior.

Conclusions. The issues of increasing the effectiveness of the appointment and execution of administrative punishment need increased attention of the state and urgently require a targeted approach to punishment first of all.

## 1. Introduction

Cardinal social changes in society, acute and urgent problem situations in human life, reflecting the complexity and inconsistency of social development, contribute to the destruction of previously accepted norms, values and behavioral patterns of the individual, who subsequently leads an immoral lifestyle (drunkenness, alcoholism, drug addiction, prostitution, petty hooliganism). Non-compliance of a person's behavior with generally recognized values, norms of morality and law is considered deviant (deviant) behavior. Such behavior requires socio-psychological correction, a complex impact on the human psyche — his mind, emotions and will. Therefore, administrative punishment for persons with deviant behavior of an immoral orientation should be appropriate, aimed at education and correction, be differentiated and individualized, and methods of persuasion and coercion should be applied at each stage of the administrative-tort process during the implementation of administrative-tort procedures, enter into the punishment itself and remain in a post-punitive state in order to comprehensively affect the consciousness and behavior of the delinquent. Then the law enforcement officer will have the opportunity to impose a really enforceable administrative penalty, the purpose of which is to prevent the commission of new offenses both by the violator himself and by other persons, and to form in them a persistent habit of lawful behavior [1, p.171; 2; 3, p. 82; 4; 5].

Let us turn to the study of ways to effectively assign and execute administrative punishments in the framework of a new scientific direction — administrative penology, the central elements of the subject of which are administrative punishment and those phenomena that form the legally fixed type and limits of administrative-tort sanctions, the conditions for the appointment and execution of administrative punishments, the mechanism for the effectiveness of the process of appointment and execution of administrative punishment and the individual socially fair decisions of courts and administrative jurisdiction bodies based on this.

Penological studies of the effectiveness of

administrative punishment ultimately consist in the development of measures and proposals for the formation of administrative-tort sanctions that allow the law enforcement officer to assign and implement the execution of individual punishment that forms the legitimacy of the behavior of the administrative delinquent and provides a generally preventive purpose of punishment.

## 2. Analysis of the effectiveness of administrative penalties based on statistics

How effectively administrative punishment is applied to persons who deviate from social and moral norms can be judged by the repetition of administrative offenses.

Let us turn to the analysis of law enforcement practice on the example of two regions of Russia: Magadan and Bryansk regions.

So, in 2018, 8217 administrative offenses were registered on the territory of the Magadan region, of which 5266 were committed repeatedly (this is 64% of the total number of administrative offenses) by 1,325 offenders. In 2019, respectively-8,227, of which 4,960 were committed repeatedly (which was 60%) by 1,413 offenders.

A detailed analysis showed that in the Magadan region in 2018, the largest number of administrative offenses committed by the same delinquent was 40, 39, 36 violations; in 2019 — 42, 41, 39.

Let's consider separately the administrative statistics of the delinquent who committed the largest number of administrative torts in 2018 — 40. Of the 40 administrative offenses, 37 are qualified under Article 20.21 of the Administrative Code of the Russian Federation, for which in 34 cases the penalty is imposed in the form of administrative arrest, for the rest-a fine.

In 2019, the largest number of administrative torts committed by delinquents was 42 torts, of which 26 administrative torts were qualified under Article 20.21 of the Administrative Code of the Russian Federation — all were sentenced to administrative arrest; the remaining violations were mostly administrative composition under Article 17.7 of the Administrative Code of the Russian Federation in the amount of 12 torts, for which a fine was imposed.

A similar pattern of administrative tort is observed in the Bryansk region. Thus, in 2018, 91,476 administrative offenses were registered, of which 61,957 were committed repeatedly (this is 67.7% of the total number of administrative offenses) by 13,528 offenders. In 2019, respectively, there were 92,297 offenses, of which 65,152 were committed repeatedly (which was 70.6%) by 8,765 offenders.

The largest number of administrative offenses committed in the Bryansk region by the same delinquent in 2018 was 119, 117; in 2019 — 124, 122.

Thus, we can safely state that private prevention in the prevention of recidivism and general prevention of administrative penalties for immoral torts of delinquents with deviant behavior are ineffective and require a radically new approach in the prevention of offenses and crimes, as well as in the use of individual means of influencing human consciousness and behavior [6, p. 37; 7, p. 10].

We believe that in other regions of Russia, the picture of administrative tort with persons of deviant behavior of an immoral orientation is no different. This is primarily due to the well-established administrative-tort policy: the lack of a comprehensive approach to structuring administrative-tort sanctions, educational measures through the use of methods of persuasion and coercion, a full and purposeful mechanism for choosing the type and size of individual administrative punishment and its execution [8; 9; 10; 11; 12, p. 169].

In support of this statement, let us turn to other statistics. We will analyze the law enforcement practice that has developed in relation to persons with deviant behavior, whose actions pose a higher public danger in comparison with the previous category of citizens-persons who are subject to administrative supervision.

Thus, according to the Ministry of Internal Affairs of Russia, in 2018 the number of offenses under Part 1 of Article 19.24 of the Administrative Code of the Russian Federation was 82,217, under Part 3 of Article 19.24 of the Administrative Code of the Russian Federation — 137,272, the repetition rate was 167%; in 2019, respectively, under Part 1

of Article 19.24 of the Administrative Code of the Russian Federation - 82,186, under Part 3 Article 19.24 of the Administrative Code of the Russian Federation-145,205, repeatability - 177% .

The appeal to this article is not accidental, namely, to persons who have previously committed crimes, in respect of which administrative supervision is established with restrictions on rights and freedoms, as well as imputed duties, in order to prevent them from committing crimes and (or) offenses, to provide them with individual preventive influence [13, p.135; 14, p. 25-26].

However, this category of persons brought to criminal and administrative responsibility (under Part 1 of Article 19.24 of the Administrative Code of the Russian Federation) knowingly commits repeated similar administrative offenses provided for in Part 3 of Article 19.24 of the Administrative Code of the Russian Federation, neglecting the established state restrictions and obligations, which also indicates the ineffectiveness of the administrative punishment imposed, the lack of educational impact on the consciousness and behavior of a person.

We appeal to statistics that demonstrate the effectiveness of a specific type of administrative punishment — an administrative fine imposed on drivers.

As of June 2020, 82 drivers in Russia have more than one thousand unpaid fines, 340 — more than five hundred, 10,300 persons — more than one hundred and 25,800 — more than fifty. Such road users, aware of their impunity, intentionally commit offenses, creating a threat to road safety, which calls into question the effectiveness of the administrative penalty (fine) and the mechanism of the process of its appointment and execution.

### **3. The result of the analysis and suggestions for improving the effectiveness of administrative punishment**

To date, despite the ongoing permanent changes in the administrative legislation, the law enforcement officer who appoints and (or) executes an administrative penalty does not have the opportunity to apply individual educational punishment with the implementation of complex psychological and pedagogical measures, methods of persuasion and coercion, aimed at positive socio-

psychological correction, which should lead not only to accountability for what they have done before the law, but also to the re-socialization of the individual, socially adapting it to the established norms and values of society.

It is worth noting the lack of full-fledged use of methods of persuasion and coercion both in the process of assigning and executing administrative penalties, and in the content of administrative and tort sanctions necessary for a comprehensive educational impact on the administrative delinquent.

Examining the effectiveness of administrative and legal sanctions, L. L. Popov noted that "persuasion and coercion as methods of public administration are social phenomena, because they find their manifestation in the nature of relations between participants in specific social relations. These methods, representing a system of ways of organizing the influence of the state (management body, official) on the consciousness and behavior of people (a specific object of management), are a necessary condition for the normal functioning of society as a whole, any state association, any management process" [15, p.19].

The use of a complex influence on the consciousness and behavior of a person will justify itself only if these measures are formed on the basis of personal qualities that determine the moral character and personality of a person.

A. N. Deryuga pointed out that "the study of the offender's personality is of great scientific and practical importance, since without determining the specific characteristics of persons with antisocial behavior, as well as the mechanisms of its formation, it is unlikely that it is possible to effectively prevent and suppress illegal acts, organize the fight against both individual types of administrative offenses and their totality" [16, p.142].

It follows that it is not possible to fully correct the behavior of citizens only by legal methods, as evidenced by the number of administrative offenses and their recidivity.

In addition to material and (or) physical, administrative punishment should also have a psychological (emotional) character, and its purpose should be to prevent the commission of

new offenses both by the violator himself and by other persons, to form in them a persistent habit of lawful behavior through their education, moral and psychological transformation of their consciousness using methods of persuasion and coercion that affect consciousness, will and reason [6; 17, p. 8; 18].

Many outstanding administrative scientists (L. V. Koval, I. I. Veremeenko, D. N. Bakhrakh, A. S. Dugenets, V. I. Mayorov, A. I. Kaplunov, A. N. Deryuga, V. V. Golovko, A.V. Butkov, I. V. Maksimov, O. S. Rogacheva, D. A. Lipinsky, A. A. Musatkina, M. Ya. Savvin, A. A. Kudryavaya), studying the effectiveness of administrative punishment, noted that the purpose of punishment should include the correction and re-education of the offender [1, p. 170-171; 19, p.12; 20; 21, p. 174; 22, p. 19-20; 23, p. 425-445; 24, p. 34; 25; 26, p. 24-43; 27, p. 265; 28, p. 6; 29; 30, p. 653].

The effectiveness of the application of administrative punishment directly depends on the mechanism of the process of assigning and executing administrative punishment, on the clear administrative-procedural regulation of the administrative-tort process and administrative-tort procedures, as well as on the professionalism of the law enforcement officer [31, p.4].

The interrelation and consistency of the implementation of administrative-tort procedures and administrative-tort processes of administrative-tort legislation ensure the order of appointment and inevitability of the execution of administrative penalties.

The effectiveness of punishment depends on the orderly and organized administrative and jurisdictional activities of judges, administrative and jurisdictional bodies and other law enforcement agencies at each stage of administrative and jurisdictional activities. A. P. Shergin stressed in this regard that the entire process should be subordinated to the maximum achievement of the goals of administrative jurisdiction and, above all, its educational goals [6, p. 127].

When resolving administrative cases, in addition to the legal one, a socio-psychological approach is also necessary, which allows us to determine what precedes an administrative tort, what provoking factors in the human psyche caused deviant behavior. Obviously, the area under

consideration is in the subject area of psychology, sociology, is available to a competent law enforcement officer who has completed specialized training in psychology courses (psychology of deviant behavior, legal and social psychology), who has the skill of a reasonable and balanced attitude to the educational process and is able to choose the appropriate punishment for individual educational purposes.

The need for a comprehensive individual approach to sentencing is confirmed by the results of a survey of persons who have repeatedly served administrative sentences in the form of arrest. So, when interviewing persons with obvious immoral tendencies, suffering from alcoholism, who do not have a permanent income or place of residence, the question: "You knowingly committed an offense for which you are serving a sentence of arrest?" - 74% of respondents answered positively, 19% - negatively, 7% of respondents found it difficult to answer. 25% of respondents answered positively, 63% — negatively, and 12% gave the answer "I don't know" to the question: "After serving your sentence, will you give up the subsequent violation?"

The results of such a survey showed a disappointing picture, namely: most of the respondents intentionally commit offenses in order to incur an administrative penalty in the form of arrest, since this environment is comfortable for them. In other words, for persons with deviant behavior, the established administrative punishment is favorable and, paradoxically, for some of them it may be a reason for committing a new offense.

This state of affairs indicates the ineffectiveness of administrative punishment against persons with deviant behavior, and also negatively affects the effectiveness of the work of law enforcement agencies with this category of citizens. Therefore, the decision to increase the effectiveness of administrative punishment against these individuals will also increase the efficiency of law enforcement agencies, providing them with an additional opportunity to attract personnel to combat other types of offenses.

Undoubtedly, in the prevention and prevention of offenses, a general preventive effect

is also used: legal education, legal information; social adaptation; social rehabilitation and other methods that favorably affect the state of security of the state, society and citizens. Thus, according to I. V. Maksimov, "an important factor in the prevention of offenses is the education of all members of society in the direction of developing positive morals, beliefs and views, and finally, morality" [32, p. 93].

#### **4. The proposal to increase the effectiveness of the implementation of the legal institution**

In accordance with clause 3 part 1 article 17 of the Federal law of June 23, 2016 No. 182-FZ one of the forms of preventive action is the official announcement of the caution (caution) on the inadmissibility of actions that create the conditions for the Commission of offences or non-continuation of antisocial behavior.

The implementation of this legal institution is ensured in accordance with the specified Federal Law and Order of the Ministry of Internal Affairs of the Russian Federation No. 119 of March 4, 2020 "On certain issues of declaring by the internal affairs bodies of the Russian Federation an official warning (warning) about the inadmissibility of actions that create conditions for the commission of crimes, administrative offenses, the resolution of which is attributed to the competence of the police, or the inadmissibility of continuing anti-social behavior".

However, the legislation does not provide for liability for non-compliance with these warnings, which does not provide protection for public relations in the field of protection of compliance with mandatory requirements adopted by state authorities (their officials).

We believe that in order to increase the effectiveness of this form of preventive action, Chapter 19 of the Administrative Code of the Russian Federation should be supplemented with an administrative composition that provides for administrative responsibility for non-compliance with these warnings.

#### **5. Conclusions**

To implement a full-fledged complex of sentencing and execution of punishment, it is necessary to use legal tools with a psychological,

pedagogical, social approach, with a systematic implementation of resocialization measures in relation to delinquents. This requires improving the effectiveness of the implementation of administrative-tort procedures and administrative-tort processes of administrative-tort legislation, rule-making and law enforcement practice by ensuring interaction and cohesion of jurisprudence, sociology of law, legal psychology, legal statistics and other branches of law and knowledge, as well as methods of persuasion and coercion, which ultimately will allow for maximum flexibility of the decision, taking into account the legal, social, psychological, economic and other nuances of the case under consideration.

In each specific case, the law enforcement officer must provide for all the circumstances of the committed administrative offense, the peculiarities of the socio-biological status of the administrative delinquent, his material and psychological state, and subsequently form such an individual punishment that will cause the guilty person to feel the justice of the punishment he has suffered, strengthen respect for the law, the rule of law and the law enforcement officer.

Studying the effectiveness and application of administrative penalties,

A. S. Dugenets notes that "the question of the effectiveness of administrative penalties and their application is of great theoretical and practical importance, but unfortunately, to date, has no clear legal authorization" [33, p. 40-41; 34, p. 155-156]; the same view is held by and I. V. Maksimov [35, p. 131].

Obviously, preliminary and purposeful socio-psychological research is required, contributing to the development of specific methods and criteria of punishment, with the help of which it will be possible to effectively influence the future behavior of the administrative delinquent by forming his respect for the law, legal norms and morals.

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