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ON ADMINISTRATIVE RESPONSIBILITY
OF CRIMINAL EXECUTIVE SYSTEM EMPLOYEES

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Discusses the duality of the status of criminal executive system (CES) employee in matters of administrative responsibility for official (service) administrative offenses. Determines the concept of administrative responsibility with respect to an employee of the criminal executive service. On the basis of a critical analysis of articles of the Code on Administrative Offences of the Russian Federation it is alleged on the unacceptability of the mixing disciplinary and administrative responsibility of the special subjects for administrative offenses.

Keywords: administrative responsibility, administrative responsibility of criminal executive service employees, special and general subject of administrative responsibility.

Russian legislation provides for administrative liability, which occurs in cases of administrative offenses, which is recognized by the illicit, guilty action (inaction) of a physical person or legal entity for which the Code on Administrative Offences of the RF [1] (codified federal law) or the laws of the Russian Federation Subjects on Administrative Offences (e.g., the Law of the Vladimir region "On Administrative Offences in the Vladimir region" [2]) establishes administrative responsibility. These legal acts are the main sources of establishing administrative responsibility of physical persons or legal entities who have committed administrative offences.

In order to ensure uniform and correct application of the law, as well as to improve the law-enforcement practice of administrative offences adopts specifying documents of subordinate nature [4]. In addition, public authorities vested with administrative and jurisdictional powers issued the departmental documents (orders): on the officials authorized to draw up protocols on administrative offences [5] and carry out administrative detention; on the establishment of standard forms

of procedural documents; on the determination of execution procedure of certain administrative penalties and application measures to ensure proceedings on the cases of administrative offenses.

The analysis of sources of law in the field of administrative responsibility, showed the absence of many fundamental provisions of theoretical and methodological nature, such as definitions revealing the concept of “administrative responsibility”, “administrative responsibility of persons who have special ranks”, etc.

Science of administrative law took upon itself the function to fill emerging gaps. There are different points of view about administrative responsibility in theory of administrative law.

In reference books, for example, administrative responsibility is seen as responsibility of citizens and officials to the state for committing an administrative offense, as one of the forms of legal liability which is less strict than the criminal liability [11].

For example, A. V. Melekhin believes that administrative responsibility this is a form of legal liability, which is the application of administrative penalties measures for physical persons and legal entities who are guilty of committing an administrative offense [17].

D. M. Ovsyanko understands the administrative responsibility as the use by judges, bodies and officials established by the state administrative penalties measures to physical persons and legal entities for commitment of administrative offenses [18, 227].

According to M. Yu. Buravlev, administrative responsibility in the public service refers to the application in the manner prescribed by law of state compulsion measures for administrative offenses in order to protect the rights and lawful interests of physical persons and legal entities by specially authorized state bodies and officials within their competence provided for by the federal laws and laws of the subjects of the Russian Federation [12].

In the Code on Administrative Offences of the RF are vested the following two legal regime of administrative responsibility of employees of the criminal executive system (hereinafter – CES):

1. In part 1 article 2.5 is vested a special regime for bringing CES staff to administrative responsibility. Thus, for administrative offenses, except ones provided in part 2, employees of CES bodies and institutions bear disciplinary responsibility in accordance with federal laws and another normative legal acts of the Russian Federation regulating the going through the service and their status [3, 6].

The specified allows to speak about actual replacement for CES employees administrative responsibility to the disciplinary responsibility for the commission of certain types of offenses.

2. In part 2 article 2.5 of the Code on Administrative Offences of the RF is provided a common regime (conditions) for bringing to administrative responsibility of CES bodies and institutions [7]. Thus, CES staff for administrative offenses envisaged by articles 5.1-5.26, 5.45-5.52, 5.56, 6.3, 7.29-7.32, chapter 8 article 11.16 (in terms of violations of fire safety outside the place of military service or the passage of military training), chapters 12, 15 and 16, Art. 17.7, by articles 18.1-18.4, 19.5.7, 19.7.2, 19.7.4 and article 20.4 (in terms of violations of fire safety outside the place of military service or the passage of military training) of the Code on Administrative Offences of the RF shall be administratively liable on general grounds.

On the basis of the legal provision the administrative responsibility of CES employees can be divided into the following two types:

1. Administrative responsibility of CES employees on general grounds (general civil), i.e., they act as general subjects of administrative responsibility. For example, for violation of traffic rules; fire safety requirements outside the place of service; for administrative violations in the area of taxes, fees and finances; failure to meet the lawful demands of a prosecutor, investigator or person conducting an inquiry or the official conducting the proceedings on a case of an administrative offense, and etc.

2. Administrative responsibility of CES employees in accordance with the normative legal acts regulating the career program in the Federal Service for Execution of Punishment of Russia in its institutions and bodies and right status, i.e., they act as special subjects of administrative responsibility. Responsibility is conditioned by special features of legal status – the presence of specific ranks of the subject of administrative responsibility (e.g., when disorderly conduct (Article 20.1), firing of a weapon in a non-designated areas (article 20.13), and others).

So, under the administrative responsibility of CES employees, for the protection of the rights and lawful interests of physical persons and legal entities by specially authorized state bodies and officials within their competence, we can determine the application in the manner prescribed by federal law and established by the state of administrative penalties to the employee of the Federal Service for Execution of Punishment of Russia of its institutions and bodies for administrative offenses in accordance with the provisions of article 2.5 of the Code on Administrative Offences of the RF.

Let us consider problems of the content of part 1 article 2.5 of the Code on Administrative Offences of the Russian Federation, relating to special rules of bearing responsibility for administrative offenses by CES employees in accordance with the normative legal acts regulating the order of service passage and their status.

As previously mentioned, in this case, the administrative responsibility is essentially replaced by the disciplinary responsibility.

In the normative basis of administrative responsibility is of great importance sub statutory legal acts, which contain either guidance to law enforcement bodies, and recommendations for their proper understanding and application, as well as examples of procedural and other documents.

Thus, some of the executive bodies of state power recommend bodies (officials) that have been granted the right to impose administrative fines in respect of servicemen, soldiers and officers of bodies of internal affairs instead of imposing penalties submit materials on offences to relevant authorities for resolving the issue of bringing the perpetrators to disciplinary responsibility [8].

When transferring materials in practice there may be a situation where, at the discretion of heads (commanders) authorized to impose disciplinary sanctions, the guilty persons may be being subjected to disciplinary punishment: to announce demerit, to assign service duty out of turn (for CES employees passing service as cadets), and possibly even to release them from punishment. Such decision of issue contradicts with the principles of equality before the law and equal administrative responsibility for guilty deeds. The list of heads' positions and their rights for the application of rewards and imposition of disciplinary sanctions are determined in annex 17 to the Instructions on the application of the Regulation on the service in the internal affairs bodies of the Russian Federation in institutions and bodies of criminal executive system.

Besides in the definitions "breach of service discipline by CES officer", enshrined in article 34 "Regulation on the Service in the Internal Affairs Bodies of the Russian Federation", it is an guilty action (inaction), which resulted in a violation of Russian legislation, disciplinary statute, official regulations (job description), the internal regulations (of subdivision), or it is expressed in non-compliance with the requirements of official conduct or non-fulfillment (improper fulfillment) obligations under the contract, job responsibilities, orders, directives and instructions of direct superiors and immediate commanding officer, if for the specified action (inaction) the Russian legislation does not establish administrative or criminal liability.

In the “Instructions on the application of the Regulation on the service in the internal affairs bodies of the Russian Federation in institutions and bodies of Criminal Executive System” administrative responsibility of CES employees is not provided. It refers to the disciplinary responsibility of the relevant employees. Thus, in view of the fact that the disciplinary and administrative responsibilities differ from each other, then the provisions of part 1 article 2.5 of the Code on Administrative Offences of the RF require editing [9].

For guilty committed administrative offenses the current legislation provides for various types of administrative penalties. Under the law an administrative penalty is a prescribed by the state measure of responsibility for committing an administrative offense, and is used to prevent the commission of new offenses, both by the offender and other persons (article 3.1 of the CAO of the RF). Normative regulations on administrative penalties are set out in chapter 3 of the Code on Administrative Offences of the RF. Based on the features of service in Criminal Executive System, as well as on inexpedient use of a number of administrative penalties and in accordance with law administrative arrest is not applied to them. So, in accordance with part 2 article 3.9 of the CAO of the RF administrative arrest is established and shall be imposed only in exceptional cases, for certain types of administrative offenses and may not be applied to persons who have special ranks, including CES staff.

In the practice are used existing auxiliary measures, which lead to the most qualified and effective enforcement of the law [14, 20].

Finally, let us focus on reforming the legislation on administrative responsibility, which implied the development of the Administrative Procedure Code of the RF, but this project approved by an act of the President of the country [10], was not fated to come true, even though the scientific community had devoted to this problem quite a lot of attention [13, 15]. In current legislation the procedural norms are concentrated in section IV of the CAO of the RF, which is called the “Proceedings on Cases of Administrative Offences”.

Plenipotentiary on human rights in RF noted that the administrative proceeding – this is the only procedural branch, which does not have its own Procedural Code. Deeming timely and urgent the development and adoption of an Administrative Procedure Code, he turned to the federal executive and legislative authorities to expedite the preparation and submission of the relevant bill to the State Duma as a legislative initiative of the Government of the Russian Federation, assuming its priority review in the Federal Assembly – Parliament of the Russian Federation [19].

Today, there are several projects of the Administrative Procedure Code, including those proposed by M. Ya. Maslennikov [16].

All this leads to the conclusion that the researched Institute of administrative liability of CES employees is not legislatively developed, has no wide application in practice and is not developed enough in theory. We believe that the administrative responsibility of CES employees as of special administrative responsibility subjects is better to transfer to the category of administrative responsibility of general subjects (on general basis) and comprehensively develop exactly this Institute.

In this connection, in order to enhance the role of administrative responsibility as one of the means of ensuring the rule of law and discipline in the Criminal Executive System, everyone's equality before the law and exclude the replacement of administrative responsibility to disciplinary one, in our opinion it is expedient to exclude from the CAO of the RF provided for by part 1 article 2.5 exemptions in part of bearing by the CES employees disciplinary responsibility for administrative offences.

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