

Proletenkova S. E.

**ADMINISTRATIVE AND LEGAL STATUS OF INTERNAL AFFAIRS BODIES  
IN THE FIELD OF COUNTER RELIGIOUS EXTREMISM:  
THE ISSUES OF THEORY**

*Proletenkova Svetlana*

*Evgen'evna,*

*c.j.s. (PhD of jurisprudence), Associate professor, Doctoral student of Federal State Owned Institution "All-Russian Research Institute of the MIA of the RF», Moscow, G-69 GSP-5 (official municipal post #5), 25 Povarskaya street, zip code 123995.*

The article analyzes the theoretical approaches to the concept of "administrative and legal status" regarding the activity of the police to combat religious extremism in the Russian Federation. The author highlights the main elements of this notion and reveals their contents.

**Keywords:** administrative and legal regulation, religious extremism, crime, element, law.

Numerous scientific studies devoted, in recent years, to the issue of combating extremism and radicalism in modern society evidence on the fact that this segment of law enforcement activity is a complex social phenomenon, the consideration of which is possible from various aspects.

From the position of the organization and activity of administrative and jurisdictional authorities it can be defined as a regulated by legal norms law enforcement activity to prevent, detect, suppress extremist offenses, neutralize their consequences, and to bring to responsibility those ones guilty for committing them, in order to ensure the rule of law, public order, public and national security in the State.

Currently the most numerous subject of counteraction against extremist activity, including religious one, is the Ministry of Internal Affairs of Russia, which uses for these purposes its core forces – the police and internal troops. The above is due to the fact that in accordance with the Decree of the President of the Russian Federation No. 1316 from September 06, 2008 "On Certain Issues of the Ministry of Internal Affairs of the Russian Federation" (amended Decrees of the President of

the Russian Federation No. 254 from 01.03.2011, No. 1158 from 05.09.2011) [2] the functions of the major coordinator of all activity to reveal, prevent, suppress and solve crimes of extremist orientation are imposed on internal affairs bodies.

In addition, in accordance with the Federal law No. 3-FL from February 07, 2011 "On the Police" [1] the duty to prevent, detect and suppress extremist activities of public associations, religious and other organizations, and citizens is the responsibility of the police.

Unlike many other administrative and jurisdictional authorities involved in combating extremist activity the police have a developed territorial system and experience of flexible making modifications to it, adjusted everyday communication with population; has an array of information on crime and on the persons who are inclined to commit them; possesses theoretical developments and rich practical experience of combating offenses of various kinds accumulated in the course of activities, and broad resource options for the implementation of permanent and timely combating both crimes and administrative offenses.

In connection with the mentioned information, the issue of administrative and legal status of the internal affairs authorities in the considered area seems relevant.

An analysis of the scientific literature, released in recent years, clearly shows – in legal science has now been formed the idea that "the bodies of internal affairs as a participant of ensuring various kinds of security, as a whole, and their subdivisions, are collective subjects of law, components of executive power, of the state apparatus" [26, 95]. How are exercised their rights and responsibilities in various areas of activity?

Science of the theory of State and law acknowledged that "the rights, freedoms and duties of a subject of legal relations legally established by the State and taken in unity constitute its legal status" [15, 137].

In this case, subjective right is seen as an opportunity to lay claim to a certain line of conduct and appropriate behavior of counterparties (government agencies, officials, legal entities and individuals, as well as any other participants of public relations) by relying on the effect of laws and substatutory normative legal acts [21, 49; 27, 298]. Juridical obligation, in turn, is a type and extent of public-reasonable, intelligent, useful, objectively caused conduct of the subject of law that is designed to bring order to society [20, 306].

M. N. Marchenko absolutely correct points out that exactly legal status is at the heart of the normative expression of the fundamental principles of relations between a subject of law and the State. "At its core, it is a system of standards,

patterns of behavior of subjects, which are encouraged and protected by the state from infringement, and are usually approved by society" [28].

Since any legal norm is of representatively-binding nature, it provides for both possible and proper behavior. In this case, the duty is a way to ensure the realization of rights, the prerequisite of their reality and efficiency, and the right is a sphere of power and freedom of action of a subject of law, limited only by the bounds of law.

With regard to the definition of legal status it is worth noting that as a result of a large number of studies on the subject many of the general theoretical concepts of the phenomenon over time have acquired a generally recognized nature and became axiomatic [31, 126-127; 11; 24; 8; 9; 19; 22]. This frees you from having to once again stop at certain points, which do not require additional confirmation.

Perfectly logical seems the notice of D. P. Zvonenko that "administrative and legal status of a particular participant of legal relations is an integral element of the overall legal status of this entity, combines with the statuses established by the norms of other branches of law, in many cases acting as a priority one" [18].

A significant amount of research was devoted to developing the concept of administrative and legal status. So, various theoretical aspects of fundamental categories of administrative and legal science, including administrative and legal status were investigated in detail by well-known Russian legal scholars: G. V. Atamanchuk, D. N. Bakhrakh, I. I. Veremeyenko, N. E. Tikhomirov and others [7; 10; 29; 14; 3; 4; 6; 17; 16; 23; 30; 5].

Not stopping to compare in detail the various approaches to the problem, let's notice only that in general this issue has undergone significant evolution. Gradually the number of elements of administrative-legal status and their place in general structure was being specified in works. The work of scientists in the said direction made it possible to go from a simple enumeration of elements of the specified phenomenon, which took place at the initial stages, to developing methodology in its learning (for example, Tsabiya D. D. among the structural elements of the legal status of a governing body emphasizes: name, procedure and method of formation, the area of activity, tasks and functions, the scope and nature of powers, forms and methods of activity, the source of funding, responsibility, etc. At that, despite the mention of individual elements, such a fundamental element as "competence" is not mentioned [31]).

Formal approach, which existed in the early stages of research, subsequently made it possible to clarify the list of typical aspects necessary to identify administrative and legal status of any public authority [22, 61; 24, 61].

So, today we can say that, without naming individual elements in its structure, the study of this category should answer the following questions: body of which state does this structure perform; which kind of legal forms on the basic content of its activity does this body refer to; who does establish, create and form this body; to whom the body is responsible and is it an independent unit or an included in a complex organization; what is the competence of the body; what is the legal validity of this body acts and what are their names; what state symbols does that body possess; what are the sources of its funding, whether it has the rights of a legal entity, and some others.

All of this is important components of administrative-legal status, however, and even their complete “selection” does not create an exhaustive presentation about the considered scientific category.

In this case, we consider it expedient to accede to the opinion of Doctor of Law Yu. V. Stepanenko about that “legal status is a complex legal structure. During studying its components do not fall within the simplest lists” [33, 99]. Thus, to form a complete understanding of the administrative and legal status of any public authority in this or that area we need a special methodological approach.

The study showed that in comparing the opinions of various scholars, most optimal in relation to this issue was the position of D. N. Bakhrakh.

In his works [12, 13, 57; 89] was proposed the following scheme of administrative and legal status of a state collective subject. Namely, he distinguished three main blocks: a) targeted; b) structural-organizational; c) competence oriented.

At that, with regard to countering religious extremism, the targeted block of elements consists of legally enshrined goals, objectives and functions of the organs of internal affairs in the sphere of combating religious extremism. Structural-organization block of legal status includes: normative regulation of the procedure for the establishment, legalization, reorganization, liquidation of individual structural units that carry out such countering within the framework of the internal affairs, their subordination, establishing and changing of organizational structures, as well as the right to introduce advanced organizational practices contributing to increased activity in the mentioned direction. Competence oriented block of elements consists of a combination of powers of both enforcement bodies in the sphere of combating religious extremism as a whole and separate departments and services. However, in theory it should be noted that the competence oriented block includes two elements: first – a totality of rights and obligations in this sphere, associated with participation in public and authoritative relations (including the right to take

certain acts), second – jurisdiction, legal consolidation of the range of objects, items, cases to which are applied the powers of authority.

In general, basing on the approach proposed by D. N. Bakhrakh, it should be noted that the issue about the fact that outside of administrative and legal status remains such an element as the responsibility of a subject of administrative and legal relations for unlawful actions or for unfair execution of its duties seems controversial enough.

Noting the particular urgency and the need for strict development and introduction of anti-extremist measures in the practice of law-enforcement bodies, and the severity of possible consequences of connivance and formalism in this activity, we believe that accountability and responsibility for taking managerial decision in this direction is a part of the competence oriented element of administrative and legal status of Interior Bodies. In this sense, one has to agree with the view of some scholars [25, 169; 32, 34] considering responsibility of a collective subject exactly in such a way.

#### References:

1. Federal Law No. 3-FL from February 07, 2011 “On Police” [Federal’nyj zakon ot 7 fevralja 2011 g. № 3-FZ «O politsii»]. *System GARANT* [Electronic resource], Moscow: 2013.
2. Decree of the President of the Russian Federation No. 1316 from September 06, 2008 “On Some Issues of the Ministry of Internal Affairs of the Russian Federation” [Ukaz Prezidenta Rossiiskoi Federatsii ot 6 sentyabrya 2008 g. № 1316 «O nekotorykh voprosakh Ministerstva vnutrennikh del Rossiiskoi Federatsii»]. *System GARANT* [Electronic resource], Moscow: 2013.
3. Administrative Power as a Type of State Power [Administrativnaya vlast’ kak vid gosudarstvennoi vlasti]. *Gosudarstvo i pravo – State and Law*, 1992, no. 3.
4. *Administrative Responsibility of Citizens in the Soviet Union* [Administrativnaya otvetstvennost’ grazhdan v SSSR]. Moscow: 1989.
5. *Administrative Law and Process. Full Course, second edition* [Administrativnoe pravo i protsess. Polnyi kurs, vtoroe izdanie]. Moscow: 2008.
6. *Administrative Law of Russia* [Administrativnoe pravo Rossii]. Moscow: 2001.
7. *Administrative Law. Textbook of Russian Academy of Public Administration* [Administrativnoe pravo. Uchebnik RAGS]. Moscow: 2003.

8. Alekhin A. P., Karmolitskii A. A., Kozlov Yu. M. *Administrative Law of the Russian Federation* [Administrativnoe pravo Rossiiskoi Federatsii]. Moscow: 1997.
9. Atamanchuk G. V. *State Administration (organizational and functional issues)* [Gosudarstvennoe upravlenie (organizatsionno-funktsional'nye voprosy)]. Moscow: 2000.
10. Atamanchuk G. V. *Theory of State Administration* [Teoriya gosudarstvennogo upravleniya]. Moscow: 1997.
11. Bahrah D. N. *Administrative Law in Russia* [Administrativnoe pravo Rossii]. Moscow: 2000.
12. Bakhrakh D. N. *State Service of Russia* [Gosudarstvennaya sluzhba Rossii]. Publishing House Prospect, 2007.
13. Bakhrakh D. N., Rossinskii B. V., Starilov Yu. N. *Administrative Law. Textbook for Higher Schools* [Administrativnoe pravo. Uchebnik dlya VUZov]. Moscow: Publishing House «Norma», 2007.
14. Bakhrakh D. N. *Soviet Legislation on Administrative Responsibility* [Sovetskoe zakonodatel'stvo ob administrativnoi otvetstvennosti]. Perm: 1969.
15. Vengerov A. B. *Theory of State and Law: Textbook for Law Schools. 3<sup>rd</sup> edition* [Teoriya gosudarstva i prava: Uchebnik dlya yuridicheskikh vuzov. 3-e izd.]. Moscow: Yurisprudentsiya, 2000.
16. Veremeenko I. I. *The Mechanism of Administrative and Legal Regulation in the Sphere of Public Order Protection*. Thesis of a Doctor of law [Mekhanizm administrativno-pravovogo regulirovaniya v sfere okhrany obshchestvennogo poryadka. Dis... dokt. jurid. nauk]. Moscow: All-Union Research Institute of the MIA of the USSR, 1982.
17. Issues of Legality in Public Administration [Voprosy zakonnosti v gosudarstvennom upravlenii] *Pravovedenie – Jurisprudence*, 1993, no. 5.
18. Zvonenko D. P., Malumov A. Yu., Malumov G. Yu. *Administrative Law: Textbook* [Administrativnoe pravo: Uchebnik]. Moscow: Yustitsinform, 2007.
19. Lazarev B. M. *Public Administration at the Stage of Perestroika* [Gosudarstvennoe upravlenie na etape perestroika]. Moscow: 1988.
20. Matuzov N. I. Legal Duties [Yuridicheskie obyazannosti]. *Teoriya gosudarstva i prava – Theory of State and Law*, under edition of N. I. Matuzov, A. V. Mal'ko, Moscow: 2001
21. *General Theory of Human Rights* [Obshchaya teoriya prav cheloveka]. Under edition of E. A. Lukasheva, Moscow: 1996.

22. *Bodies of the Soviet State of the Whole People* [Organy Sovetskogo obshchenarodnogo gosudarstva]. Under edition of B. N. Topornin, B. M. Lazarev, M. A. Shafir, Moscow: 1979.
23. *Legal Relations in the Mechanism of Administrative and Legal Regulation in the Sphere of Public Order Protection* [Pravootnosheniya v mekhanizme administrativno-pravovogo regulirovaniya v sfere okhrany obshchestvennogo poryadka]. Kiev: 1982.
24. Pronina V. S. *Central Bodies of National Economy Administration* [Tsentral'nye organy upravleniya narodnym khozyaistvom]. Moscow: 1971.
25. Sergienko L. A. On the Status of the Subjects of Law in the Formation of Information Society [O statuse sub"ektov prava v usloviyakh formirovaniya informatsionnogo obshchestva]. *Instituty administrativnogo prava Rossii – Institutes of Administrative Law of Russia*, Moscow: Institute of State and Law of the Russian Academy of Sciences, 1999.
26. Stepanenko Yu. V. *Theoretical and Applied Problems of Activity of Internal Affairs Bodies in Transport*: thesis of a Doctor of law [Teoreticheskie i prikladnye problemy deyatel'nosti organov vnutrennikh del na transporte: Dis. dokt. jurid. nauk]. Moscow: All-Russian Research Institute of the MIA of Russia, 2004.
27. *Theory of State and Law* [Teoriya gosudarstva i prava]. Under edition of N. I. Matuzov, A. V. Mal'ko, Moscow: 2001.
28. *Theory of State and Law: Textbook* [Teorija gosudarstva i prava: Uchebnik]. Under edition of M. N. Marchenko, Moscow: Zercalo, 2004.
29. *Theory of Public Administration. Course of lectures. 4<sup>th</sup> edition* [Teorija gosudarstvennogo upravlenija. Kurs lekcij. 4-e izdanie]. Moscow: 2006.
30. Tihomirov Yu. A. *Theory of Competence* [Teorija kompetentsii]. Moscow: 2001.
31. Tsabiya D. D. The Status of a Management Body [Status organa upravleniya]. *Sovetskoe gosudarstvo i pravo – Soviet State and Law*, 1978, no. 2.
32. Yakimov A. Yu. *Status of a Subject of Administrative Jurisdiction and Problems of its Realization* [Status sub"ekta administrativnoi yurisdiksii i problemy ego realizatsii]. Moscow: 1999.