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## ADMINISTRATIVE-LEGAL STATUS OF A PEDESTRIAN: THE ISSUES OF IMPROVING

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Discrepancy of administrative-legal sanctions applied to violators of traffic rules, depending on the administrative-legal status of the road user, is noted in the article. Here is proposed to change the trend, when sanctions against one road user (driver) are enhanced much more serious than against others (pedestrians). The authors believe that a pedestrian's responsibility has to be more serious than the driver's one.

Attention is accented on the absurdity of some of traffic rules provisions, including when a man pushing stalled car or leading donkeys across a road is a driver and another one rolling a running motorbike on the road is a pedestrian. The author proposes to adjust the current version of the terms of traffic rules "driver" and "pedestrian" in order to avoid their ambiguities.

**Keywords:** traffic rules, pedestrian, administrative-legal status of a pedestrian, road users, pedestrian responsibility for violation of traffic rules.

Occurred in recent years changes in the normative legal framework in the field of road traffic, to a large extent, affected the status of its participants. One of the main categories of road users is pedestrian, features of administrative-legal status of which are investigated in the framework of this article.

Under the term of “administrative-legal status” most scientists understand the totality of contained in legal acts rights and duties, which the subject (participant of social relations) obtains to carry out its vital needs [6, 88]. Any person is a subject of legal interaction, both in general and in specific areas, so its status in public relations is governed by norms of a particular branch of law.

Analysis of the legal literature on combating road traffic accidents (hereinafter - RTA) shows that most of the authors link their researches with activities and responsibilities of drivers of vehicles as the main participants in traffic. Studying the issues connected with the status of pedestrians as road users, as we see it, is given an insufficient attention. However, pedestrians are the least protected category of road users [5, 8]. Among the victims of all RTA, pedestrians’ share is about 40% (in urban areas - up to 60%).

Despite the presence of works dealing with the status of road users [7; 13], administrative and legal status of pedestrian as an independent subject of study has not yet been considered.

The lexical meaning of the word “pedestrian” is defined as “a person that goes by foot” [11].

Pedestrian rights are based on the provisions of part 1 article 27 of the Constitution of the Russian Federation (hereinafter - the Constitution), namely the right to freedom of movement: “everyone, who is lawfully within the territory of the Russian Federation, shall have the right to move freely” [9].

The Federal Law No. 196-FL from December 10 1995 “On the Road Safety” [2] does not contain the notion of “pedestrian”, but in article 2 exists the term of “road user”, which refers to a person who takes part in the process of the road traffic as a driver of an vehicle, pedestrian, passenger of a vehicle.

Chapter 1 of the Road Traffic Rules of the Russian Federation (hereinafter - RTR) contains the definition of the term of “pedestrian” - “a person who is outside a vehicle on a road and does not perform road works. Pedestrians include persons traveling in a wheelchair without an engine, pushing a bicycle, moped, motorcycle, baby buggy or a wheelchair, pulling a sledge, cart” (1.2) [4].

In addition, paragraphs 1.3 and 1.5 of the RTR impose on all road users the obligation to know and comply with the relevant requirements of RTR, traffic signals, signs and markings, as well as comply with the orders of traffic controllers,

acting within the scope of their rights and regulating traffic by special signals, and also to act in such a way that does not cause danger to traffic and does not inflict harm.

It is appropriate to note that in the ratified by Russian Federation core international legal act – the Convention on Road Traffic, concluded at Vienna on 8th of November, 1968 [10] (hereinafter – the Convention), there is no definition of the term of “pedestrian”, and its fundamental rights and duties are enshrined in article 20 “Rules applicable to pedestrians” and article 21 “The behavior of drivers towards pedestrians”.

Pursuant to the Convention provisions, chapter 4 of the RTR regulates the rights and duties of pedestrians.

In road infrastructure for pedestrians are designed footpaths (sidewalks), regulated and non-regulated terrestrial pedestrian crossings, as well as elevated and underground pedestrian crossings.

Pedestrians have to move on sidewalks or pedestrian paths, and in their absence – on roadsides. Pedestrians carrying bulky objects and persons traveling in a wheelchair without an engine can move along the edge of a roadway, if their movement on the sidewalks or roadsides causes interference for other pedestrians.

In the absence of sidewalks, pedestrian paths or roadsides, and in inability to move on them, pedestrians can move along bike path or go in a row on the edge of a roadway (on a road with a dividing strip – on the outer edge of the roadway).

When walking on a roadway, pedestrians must walk facing traffic vehicles. Faces of persons traveling in a wheelchair without an engine, leading motorcycle, moped, bicycle, in these cases should follow the direction of motion of vehicles.

However, the right of a pedestrian to freedom of movement is not absolute, since in accordance with part 3 article 55 of the Constitution it may be restricted by federal law. So, according to subparagraphs 7 and 20 paragraph 1 article 13 of the Federal Law No. 3-FL from February 07, 2011 “On Police” [3] (hereinafter – the Law “On Police”), to carry out its responsibilities the police is given the right to temporarily restrict or prohibit the movement of pedestrians on the streets and roads, and not to miss citizens to specific areas and facilities, oblige them to stay there or leave these areas and facilities in order to protect the health, life and property of citizens, to conduct investigative and search activities.

Administrative and legal responsibilities of a pedestrian can be divided into:

- Absolute ones, that is, directly based on the requirements of normative legal acts in the field of road safety and not dependent on any specific circumstances, imposed to each (compliance with traffic regulations, health regulations, etc.);

- Relative ones, that is, generated by the unlawful actions of a pedestrian. These include the obligation to undergo coercive measures (delivering, administrative detention, personal examination and inspection of things, the seizure of objects and documents, etc.) and the duty of the enforcement of sentences and other corrective actions used by authorized entities (payment of an administrative fine, the termination of the commission of an offense).

In the matter of administrative and legal status of a pedestrian special place is occupied by administrative responsibility. In Chapter 12 of the Code on Administrative Offences of the RF[1] (hereinafter – CAO RF) pedestrian as a person, in respect of which institutes a case on an administrative offense, appears in 3 formulations – part 1 article 12.29 (violation of traffic rules by a pedestrian or passenger of a vehicle), part 1 (violation of traffic rules by a pedestrian, passenger of a vehicle or other road user (except for the driver of the vehicle), which caused obstruction in the movement of vehicles) and part 2 (violation of traffic rules by a pedestrian, passenger of a vehicle or other road user (except for the driver of the vehicle) negligently causing mild or moderate bodily injury to a victim) article 12.30 of the CAO RF. As punishment, to a pedestrian can only be assigned an administrative fine, the maximum amount of which is 1500 RUR (under part 2 article 12.30 of the CAO RF).

On the other hand, we also should review the articles providing responsibility for violations of traffic rules by other road users – drivers, in part concerning their violations of the rights of pedestrians.

So, according to part 2 article 12.15 of the CAO RF, for driving a vehicle on pedestrian or bicycle paths or sidewalks, in violation of traffic rules, the driver shall be punished with an administrative fine in the amount of 2000 RUR.

Part 3 article 12.19 of the CAO RF, which stipulates responsibility for stopping or parking of vehicles on the pedestrian crossing and within 5 meters in front of it, except for the forced stop and the case under part 6 article 12.19 of the CAO RF, or violating the rules for stopping or parking of vehicles on the sidewalk, except the case under part 6 article 12.19 of the CAO RF, shall be punished by administrative fine of 1,000 RUR. In accordance with part 6 article 12.19 of the CAO RF, the specified above violation committed in the city of federal importance Moscow or St. Petersburg entails a penalty of a fine of 3000 RUR.

In accordance with article 12.18 of the CAO RF, failure to meet the requirement of the Traffic Rules to give way to pedestrians, cyclists or to other road users (except for drivers of transport vehicles) shall entail imposition of an administrative fine from 800 to 1000 RUR.

On the basis of the several considered by us aspects of the administrative and legal status of a pedestrian, we can draw the following conclusions.

First, should be reversed, of course, negative trend, when sanctions against one road user (driver) are much more serious than against the other (pedestrians), i.e. the legislator apparently thinks that a driver carries greater social danger, than a pedestrian.

The existing paltry sanctions against pedestrians often lead to a situation where such persons committing serious offenses are actually exempt from responsibility, what does not meet the requirements of traffic safety and causes difficulties in law enforcement practice. It seems, that noting the priorities provided to pedestrians in road traffic (see paragraphs 8.3, 6.13, 8.11, 9.9, 12.4, 13.1, 11.5, 13.8, 14.1-14.6, 17.1 of TR) their responsibility must be even stricter than the driver's one. Arguments on the need to revise administrative sanctions against pedestrians, toward tightening, were pronounced back in the 1970's [5, 435].

Second, in our view, the conceptual apparatus needs to be clarified. So, paragraph 1.2 of traffic rules states that the driver – is a person who drives a vehicle, drover leading on road pack, riding animals or herd. At that, a person leading a motorcycle is equated to a pedestrian. However, the situation seems quite illogical when a man pushing stalled car or leading donkeys across a road is a driver and another one rolling a running motorbike on the road is a pedestrian. In this connection, we believe, it is advisable to adjust the current version of the terms of traffic rules “driver” and “pedestrian” in order to avoid their ambiguities.

Third, the title of chapter 4 of traffic rules, which is directly designated to the participation of pedestrians in road traffic, needs to be amended. It is thought that the title of the chapter “Responsibilities of Pedestrians” does not exactly match the content, as it regulates not only responsibilities, but also rights. It should be noted, that there is no reference to the rights either of pedestrians or drivers, as well as of passengers, in traffic rules. However, in many countries of the world traffic rules regulate not only responsibility, but also rights of road users (e.g. by traffic rules of the Republic of Belarus) [12].

In the very chapter 4 should also be included some responsibilities similar to the contained in paragraph 2.1.1 of TR responsibilities of drivers, in particular:

- to keep identity documents about oneself and on request of police officers to transfer to them for check (stipulated in subparagraph 2 paragraph 11 article 13 of the Federal law “On Police”);
- to stop at the request of police officers (this is, in our view, logically follows from the first duty);

- to pass a medical examination for intoxication at the request of officials who have the right of state supervision and monitoring of traffic safety and operation of vehicles (according to paragraph 6 part 1 article 4.3 of the CAO RF, committing of an administrative offence in a state of intoxication is an aggravating factor).

In our opinion, the theme that has been considered in the article has both theoretical and practical significance. An array of open to study and waiting for its researchers issues stay outside the normative framework and scientific papers. And we invite to discussion on the issue scholars and practitioners in the field of administrative law and road safety.

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