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Zyryanov S. M.

THE PLACE OF ADMINISTRATIVE RESPONSIBILITY IN RUSSIAN LAW[1]

Zyryanov Sergei Mikhailovich,
Doctor of law, Professor, Moscow University of RF MIA,
zyryanov.s@gmail.ru

It is noted that in the administrative-legal science have not been elaborated the essential criteria of delimitation of administrative and criminal responsibility, namely the grounds of application a particular type of legal responsibility.

The author raises the issue on assessment of the degree of social danger of a wrongful act. Here is noted a general legal nature of crimes and administrative offenses as illegal deeds that infringe on legally protected public relations.

Taking into account that the interests of the executive power apply to almost all public relations, and the executive branch actually interferes with (regulate or is trying to regulate) relations in manufacturing, construction, environmental management, education, science, culture, health care, finance, foreign and domestic trade and services, as well as labor, family and other relations, the limits of application of administrative responsibility have wide borders.

Keywords: administrative responsibility, administrative offence, delimitation of administrative responsibility from criminal one, legal nature of administrative offence.

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Recently in administrative science has appeared an interest in the problem of correlation and interrelation of administrative and criminal responsibility. And we must admit that this interest is not accidental. It is due to legislative novelties that significantly change the formed for quite a long, on the scale of existence of the Russian Federation, historical period balance between these two types of legal responsibility.

The first notable proof of this phenomenon was the case when Federal law No. 162-FZ from December 08, 2003 "On Amendments and Additions to the Criminal Code of the Russian Federation" [1] cancelled criminal responsibility for infliction of medium body injuries as a result of road accident, and after almost one year and a half Federal Law No. 38-FL from April 22, 2005 "On Amendments to Article 12.24 of the Code on Administrative Offences of the Russian Federation" [2] established administrative responsibility for this illegal deed.

This was followed by "transfer" by the Federal Law No. 420-FL from December 07, 2011 "On Amendments to the Criminal Code of the Russian Federation and Certain Legislative Acts of the Russian Federation" [3] from the Criminal Code of the RF (hereinafter CC RF) to the Code on Administrative Offences of the RF (hereinafter CAO RF) of the norms providing for responsibility for smuggling (article 188 CC RF – article 16.2 CAO RF), libel (article 129, CC RF – articles 5.60, 17.16 CAO RF) and insult (article 130 CC RF – article 5.61 CAO RF).

By the way, the same Federal Law introduced to CC RF a new article 151.5 that provided criminal responsibility for retail sale of alcohol to minors, which previously formed the composition of an administrative offence under part 2.1 article 14.16 CAO RF.

All these changes took place in the near retrospective. However, one cannot ignore a number of circumstances that are "stumbling block" in resolving the issue about correlation between criminal and administrative responsibility. These are so-called "related" compositions of offences, for example, larceny (article 158 - 160 CC RF) and hooliganism (article 213 CC RF), under certain circumstances they are qualified as minor and in this case are referred to the scope of administrative jurisdiction (article 7.27 and 20.1 CAO RF), and in other cases fall within the scope of criminal jurisdiction. As well as offences for which the legislator has established criminal responsibility for individuals and administrative responsibility for legal entities, employees of which are the guilty individuals: unlawful use of a trademark (article 180 CC RF and article 14.10 CAO RF), falsification of documents (article 327 CC RF and 19.23 CAO RF) and others. We can also recall the institutes of administrative collateral estoppel and replacement of criminal responsibility by

administrative responsibility existed in the Soviet law. Researchers either bypass issues related to these circumstances, or offer conformist solutions that come naturally in conflict with theoretically asserted features allowing delimitation between criminal and administrative responsibility.

Taking into account the above circumstances, it is necessary to answer the question: is administrative responsibility in Russian legislation an independent kind of legal responsibility and, if so, in what extent is it independent, and under what features it can be distinguished from criminal responsibility?

Administrative responsibility is a product of Soviet law, although it is assumed that its appearance in our country is due to the judicial reform of 1862, when in criminal legislation were separated criminal misconducts – deeds of a small public danger, which required implementation of court procedure in a simplified manner. Analysis of the legislation on administrative offenses, some elements of which are shown below, does not allow us to make a different conclusion, except that even now consideration of administrative responsibility as a legal responsibility for minor criminal offenses is correct.

Despite the fact that administrative responsibility in the USSR was applied very widely, in the literature it was taken for granted, without justification of its separation as such. So, S. S. Studenikin in his textbook of administrative law of 1945 gave a description of acts of management – compulsory regulations (decisions) issued by authorized state bodies and establishing for the entire population or for specific groups or institutions, enterprises and organizations those or other obligations, breach of which is punishable under administrative law [15, 69]. Hence, it can be concluded that administrative responsibility ensures compliance with the acts of administration.

Then S. S. Studenikin listed the principles of application of administrative penalties, including: "administrative penalty may be imposed for the offense which does not contain signs of a criminally-punishable deed. Criminal penalty cannot be replaced by administrative penalty, as well as it is unacceptable to bring to criminal responsibility in cases where for an administrative offense provide for administrative responsibility" [15, 72]. Sign of administrative offense – punishability (as in the Code on Administrative Offences or a law on administrative offences of the subject of the Russian Federation) corresponds to this principle in the modern administrative law.

The textbook "Soviet Administrative Law" of 1958 says about the Administrative Code of the Ukrainian SSR, adopted in 1927 (in other Soviet republics similar acts were not accepted). At that, the authors of the textbook indicated that,

despite of its considerable volume, the Code covered mainly the legislation relating to the activities of the police, as well as to the activities of local Soviets in the field of protection of public order and security [14, 16]. In the section of the textbook devoted to public service, we find that particular form and procedure for application of administrative penalties are characteristic for administrative responsibility. At that, this impact is applied by authorized bodies to persons that are not under official subordination of those bodies [14, 70]. Administrative responsibility in this textbook was viewed as a form of administrative coercion – administrative penalties – warning, fine, correctional labor in administrative order (not in all the Union republics), administrative detention and confiscation of property that were imposed for administrative offences [14, 94].

Interesting that these measures sometimes really could not be considered as measures of responsibility. Thus, a warning could be applied to violators of administrative-legal norms at the lack of awareness of offender about the acts which were violated by it, i.e., in the absence of fault of the person who committed an illegal deed. And the purpose of its application – administrative impact against accidental offenders, education of workers to respect the rules set out in normative legal acts [14, 94]. Application of fines, as was pointed out by the authors of the textbook, was provided for by the laws, regulations and compulsory decisions of the USSR departments and even by the decisions of the local Councils of Deputies of Workers and their executive committees. At the same time, administrative detention was provided for by the decrees of the Presidiums of the Supreme Soviets of the Union Republics for disorderly conduct, profiteering. Judges imposed this punishment. Administrative punishments for violations of traffic rules were imposed by police officers in the place of violation or in police department. And here we are again faced with administrative responsibility beyond the scope of public administration.

So, already at that time administrative responsibility: a) was established by acts of administration and legislative acts; b) was ensuring sanctions for regulations acting in the sphere of public administration and in other spheres of public life; c) was applied by officials and judges.

In preparation for the first codification of the legislation on administrative offenses in the Soviet administrative science the issues of administrative responsibility have been given much attention [17, 39-41; 10, 9-10; 11, 245-249; 12, 45-55; 13, 32-38]. On the merits the debate ended that the main criterion for the delimitation of administrative offences and crimes was a sign of social danger. Due to the fact that the legislator had not included this sign in the legal definition of administrative offense, it was suggested to consider administrative offenses socially harmful, but

not socially dangerous. In our opinion, this is a demagoguery, because crime is also socially harmful, moreover, the presence of inflicted harm as a consequence of the tort and the determination of a causal link between the deed and the inflicted harm is required for qualification of a crime (almost all corpus delicti are substantive, in contrast to administrative offences). Every crime has a public importance, if public-law responsibility is established for it. Since, there is established civil-law responsibility for purely private cases. The objectives of the legislation on administrative offenses include, inter alia, protection of public safety – it is directly specified in article 1.2 CAO RF. Finally, why we should establish public-law responsibility for deeds that do not pose social danger? And hardly anyone dares to say that a citizen in a state of intoxication and driving at the same time a vehicle does not represent a danger to society. Of course, it does. By the way, a committed offence, by and large, does not represent public danger; the danger has already been implemented in it.

The lack of prospects of further discussions on this matter is clear, it seems, for everybody.

At the same period the work of A. P. Shergin about administrative jurisdiction was published. The scientist observes in it that depending on the subject matter the interpretation of the concept of jurisdiction gets each time the sectorial tone (criminal-law, civil-law, administrative and other types of jurisdictions). Respected professor points to the unifying them essence of jurisdictional way to protect social relations, which consists in reviewing by a competent authority of a legal case on the merits and taking in respect of it a public-authoritative decision [16, 8].

Describing administrative jurisdiction, the scientist draws attention to the social environment, in which this method of law enforcement operates, and notes that for the understanding of legal nature of the administrative jurisdiction the fundamental role is played by the relation with the aims and tasks of public administration, the dependence on them. The tasks of public administration, in turn, are exercised primarily through the law-enforcement activity of public administration bodies [16, 30].

Public administration is a self-managed system for which offenses are perturbations that disrupt public relations. Jurisdiction allows elimination of "entropy" and the process of disorganization, bringing the system to a new state. However, it appears that also in the sphere public administration administrative jurisdiction coexists with criminal-legal and disciplinary one, since officials of state bodies sometimes commit crimes or disciplinary misconducts, although administrative misconducts are, according to A. P. Shergin, the bulk of offenses in the considered area. Administrative misconducts are different due to the fact, that by their nature

and actual circumstances they are relatively simple, consideration of cases on them and taking decisions does not require complicated procedure for the collection, verification and evaluation of the evidence on the case, what is typical for criminal jurisdiction [16, 31].

A. P. Shergin's assessment of the institute of replacing criminal responsibility by administrative responsibility in respect of those persons who commit crimes that do not pose great danger to society is of interest. In his view, this example illustrates the close interrelation between criminal and administrative responsibility, the unity of their purposes. Analyzed institute expands the possibilities of using administrative and jurisdictional method of law enforcement in combating crimes [16, 37]. Let's recall that article 31.1 of the Criminal Code of the RSFSR provided for the possibility of replacing criminal responsibility by administrative one regarding cases of crimes, for which imposed punishments in the form of deprivation of liberty for a term not exceeding one year or another, lighter punishment.

Respected professor wonders whether the application of administrative penalties to persons, against whom criminal case has dismissed on the grounds of article 50.1 of the Criminal Code of the RSFSR, means changes in the legal classification of the committed by them deeds, and what is the nature of the activity to review cases on such offenses and the application of administrative penalties [16, 38]?

The scientist believes that the legal classification of wrongful deed does not change, because the law allowed replacement of the type of responsibility only regarding a terminated criminal case, and not regarding materials of check. Indictment in a criminal case and proving the existence of corpus delicti was mandatory. Ground for termination of a criminal case in the framework of this institute is different from termination of a criminal case for lack of corpus delicti. At the same time, law-enforcement (jurisdictional) activity of a judge regarding a terminated criminal case, which culminates in the appointment of an administrative penalty, is exactly administrative and jurisdictional one, since criminal jurisdiction regarding a terminated criminal case is no longer possible [16, 39].

The problem is that those criminal cases, in respect of which it was impossible to apply the institute of replacement of criminal responsibility by administrative one under article 50.1 of the Criminal Code of the RSFSR, did not refer to the scope of public administration.

A. P. Shergin also writes that in determining a method to protect certain public relations we should be based on a realistic assessment of deeds' danger. Not all offences, which are beyond of criminal jurisdiction, cease to be socially dangerous. The fight against them must be implemented through administrative or disciplinary

jurisdiction, and not only through measures of social influence. The ratio of criminal and administrative jurisdiction the scientist describes through the process of narrowing of the first and enlargement of the scope of the second, at that, reverse process is not excluded. Anatoly Pavlovich draws attention to the phenomenon, which was noted in those years in the foreign legislation of bourgeois states, where the aggravation of criminal repression, its expansion "was hidden under the guise of administrative penalties imposed for certain offenses, which in case of introduction of so-called state of emergency were automatically replaced by criminal penalties" [16, 50-51]. Currently, there is also a similar but more primitive phenomenon in the Russian legislation, when criminal legislation is subject to decriminalization and criminal responsibility for certain deeds is replaced by administrative one.

Of course, A. P. Shergin could not ignore the institute of administrative collateral estoppel, in which as the basis of criminal responsibility for certain offenses the legislation provided for preliminary application of administrative penalties. In this case, according to the respected professor, there is a manifestation of the principle of economy of legal means, since the main burden in combating against such offenses lies on administrative jurisdiction [16, 51].

However, in our opinion, in this case we are dealing with a deep, essential contradiction that lies in the fact that administrative jurisdiction is focused on law enforcement in the field of public order, the rules of social life, personal property rights (administrative collateral estoppel was applied, for example, to family rowdies, petty theft). And criminal jurisdiction already defended managerial relations, since the measures of administrative coercion proved insufficient. Thus, by means of criminal responsibility was carried out state-authoritative impact to the person who did not respond to managerial influence. It turns out, that the spheres (social areas), which Anatoly Pavlovich considers as fundamental (generic) for this or that type of jurisdiction, may switch to the diametrically opposed!

Significant contribution to the theory of administrative responsibility was made by I. A. Galagan. However, we must admit, that he focused his attention on the procedural issues of administrative responsibility, passing by the issues of delimitation of crimes and administrative offences.

I. A. Galagan indicated the presence of a system commonality in procedural forms of various types of legal responsibility, which is predetermined by a number of circumstances of public-law nature. Among them: the unity of the sphere of state-legal activity, which is the law enforcement activity of the state; the unity of the nature of substantive legal relations, within the scope of which legal responsibility occurs and is exercised (the scientist highlights protective legal relations

– criminal-law, civil and administrative-tort and etc.); the commonality of normative base for all types of legal responsibility, formed by law enforcement norms, secured by punitive sanctions; the commonality of signs for substantive content of the various types of legal responsibility, which consist in the fact that legal responsibility always acts as a measure of state coercion that is well-defined and formulated in the punitive sanction of the norm of law, lies in the public condemnation of a deed and offender, consists in causing to it adverse legal consequences, occurs for the violation by a guilty person of its legal responsibilities; the commonality of foundations of different types of legal responsibility; the commonality of functions, goals, tasks , substantive-legal principles of imposition different types of legal responsibility in the mechanism of public administration [6 , 13].

N. V. Vitruk writes that administrative responsibility is an independent type of responsibility in public law [5]. At that, on the one hand, he agrees with O. A. Kozhevnikov, who alleges that protection of regulatory norms is carried out with help of not only administrative, but also other types of legal responsibility, what does not give grounds to link administrative responsibility with the existence of only one branch of administrative law [8, 13-14], on the other hand, notes that administrative responsibility provides functioning and implementation of the norms of all sectors of private and public law. Next, the scientist claims that the features of administrative responsibility are defined by the nature of administrative offenses as a ground for the emergence of administrative responsibility and legal consequences that occurred in the process of their application.

Regarding the differences between danger and harmfulness, N. V. Vitruk notes that, of course, such terminological distinction is possible and recalls that earlier administrative torts used to be called misdemeanors as opposed to crimes – criminal torts.

Important, that N. V. Vitruk notes the homogeneity of the social nature of administrative offences and crimes, what allows mobility of the distinction between them and possibility of criminalization and decriminalization of deeds.

Thus, it must be noted that the administrative-legal science has not worked out the essential criteria of delimitation of administrative and criminal responsibility, or rather, the foundations of application specific type of legal responsibility.

Formal criteria derive from legal definitions of CC RF and CAO RF, under which a crime is distinguished by the signs of public danger and bringing to criminal responsibility solely by the criminal law. Administrative offense is distinguished in that it also can be committed by a legal entity, and the fact that administrative responsibility may be also established by the laws of the subjects of the Russian

Federation. But these formal signs do not disclose the essential distinctions between crimes and administrative offenses.

It seems possible to offer another formal criterion associated with the term of "administrative". Application of the term by the legislator must have some value. At least the external difference between criminal and administrative responsibility is determined exactly by these words: "criminal" and "administrative". However, there can be variants.

First, let's suppose that the definitions of "criminal" and "administrative" are needed to reflect the juridical nature of responsibility. Criminal responsibility is established by criminal law – CC RF, while administrative responsibility – by administrative legislation – CAO RF and laws on administrative offences of the subjects of the Russian Federation.

Second, the term of "administrative" may mean an area in which torts are committed. This area must be the same as the subject of administrative law – area of managerial relations. However, the area of managerial relations, which is subject to the interests of executive authority, includes virtually all public relations. Executive power actually interferes with (regulate or is trying to regulate) relations in manufacturing, construction, environmental management, education, science, culture, health care, finance, foreign and domestic trade and services, as well as labor, family and other relations. Executive power exercises management in the field of public order – let's recall famous works and I. I. Veremeenko and M. I. Eropkin [4, 7]. Consequently, domestic crime also enters the field of view of administration. Narrow understanding of administration as a managerial apparatus does not meet the range of relations protected by administrative responsibility; on the contrary, intra-managerial relations are protected for the most part by disciplinary responsibility rather than by administrative one.

Third, the definitions of "administrative" and "criminal" can refer to entities that exercise responsibility. Criminal responsibility is exercised by court. Administrative jurisdiction has always been considered as part of the executive and administrative activity, one of the types of law enforcement activity [9, 65]. But administrative responsibility is only "mostly" a prerogative of administrative bodies. We have already given the data, that in individual cases decisions were given by judges. And the current CAO RF assign a rather extensive range of administrative offenses to the jurisdiction of justices of peace, judges of the courts of general jurisdiction, including military courts and judges of arbitration courts.

Fourthly, finally, these terms may be relevant to the order of proceedings. Crimes correspond to criminal court procedure, and administrative offences – proceedings

on cases of administrative offences. That's for sure! These two juridical processes have significant differences. Moreover, proceedings on cases of administrative offences are closer to civil court procedure, rather than to criminal one, although common sense requires otherwise. Even in courts of general jurisdiction cases of administrative offences were considered by judicial divisions for civil cases. The same is evidenced by assigning cases relating to administrative offences in entrepreneurial activity to the jurisdiction of judges of arbitration courts. No one thought to assign to the arbitration court consideration of criminal cases concerning business crimes

Perhaps it is possible to suggest some other formal reason for delimitation administrative and criminal responsibility. But from the analysis of given above it follows that the administrative responsibility is established by the acts of administrative, rather than criminal legislation and implemented by a wide range of subjects in independent administrative-jurisdictional (administrative-tort) proceedings (in the administrative process). There are no essential reasons except for degree of public danger.

As for the degree of public danger, then it is not a constant value. In different historical periods one and the same acts may be of greater or lesser public danger. You may remember the time when one was criminally responsible for any theft of Socialist property (law on three spikelets), for non-payment of utility bills – these examples are now perceived as working of a sick imagination.

By the way, the degree of public danger lies in the basis of the classification by type of crime. In accordance with part 1 article 15 CC RF, there are different minor offences, crimes of average gravity, grave crime and especially grave crimes. If you continue with this classification, should administrative offences be defined as minor crimes?

And the last question: who and how estimates the danger of this or that wrongful deed? The answer is simple – the subject of the estimation is the legislator, which, by virtue of collegiate management, has the properties of objectivity of its decisions. Although, of course, these decisions are influenced by many subjective factors.

And judging by the changes that are taking place in interrelations of the criminal law and the legislation on administrative offenses, it can be argued that administrative offenses are distinguished from crimes by established by the legislator degree of public danger and its own administrative and procedural order of proceedings. And this means that crimes and administrative offences as wrongful deeds against protected by law public relations have a common legal nature.

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