Universal Decimal
Classification 342.9

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THE CORRELATION OF ADMINISTRATIVE OFFENCE AND DISCIPLINARY OFFENSE

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The comparative-legal analysis of normative legal acts and scientific legal literature allowed the author to identify features that distinguish administrative offences from disciplinary offences, as well as to show their similarities.

Keywords: wrongful deed, administrative offence, disciplinary offence, responsibility, composition, signs.

The problems of qualification of unlawful conduct are always debatable and actively discussed in conditions of development of civil society. In enforcement practice, the most controversial and ambiguous issues should be recognized the issues of referring a wrongful deed of a public servant to administrative offence or to disciplinary offence. There is also no single position on the content and correlation of the concepts of an offence and misconduct among theorists of law. Most scholars have expressed the view that offenses are publicly dangerous, and disciplinary misconducts do not contain the signs of public danger. There are also other positions. At that, the scientists emphasize different approaches to the content of a misconduct and offence. So, a group of authors, under edition of A. S. Pigolkin, depending on the areas of social life, in which wrongful misconducts are committed, nature of inflicted by them harm and peculiarities of punishment for committing them divides misconducts into three categories – administrative, disciplinary and civil-law ones [12, 165].

Misconduct, according to M. I. Nikulin, is a means of resolving contradictions between the need (real or falsely understood) of a man and prescription (ban) formulated in administrative-legal norm. This contradiction is not antagonistic,

is not long, the attempt to solve it through a misconduct is usually not caused by anti-social essence of the offender, but is due to the weakening of internal self-control and to the deformation of the evaluation criteria of social danger of its deed. To some extent this state of offender is due to the fact that the borders between the administrative misconduct, especially when it concerns technical norms, and allowable conduct sometimes are insufficiently justified and understandable [11, 81-82].

M. N. Kobzar-Frolova is of the opinion that misconducts are less dangerous in their nature and in their consequences differ, for example, from an offense and crime. They are committed not in the criminal-law sphere and not by criminals, but by ordinary citizens in various fields of economic, commercial, labor, administrative, cultural, family, production activities and entail not punishment, but penalties [8, 19]. Similar position is taken by N. I. Matuzov and A. V. Mal'ko [9, 209-210].

A. V. Melekhin defines offense – as a guilty, wrongful deed of a sane person causing harm to others and to society that entails legal responsibility, administrative offense – a wrongful deed with negative consequences that violates generally obligatory rules (norms) of doing certain state and socially significant affairs [10, 411].

Expressed the view that offence and misconduct are identical in content. So, D. N. Bakhrakh, B. V. Rossinskii i Yu. N. Starilov indicate that after the adoption of the Code on Administrative Offences of the RF (hereinafter CAO RF) only the name of "administrative offense" can be used in other legal acts. "But in scientific and other literature, in oral speech it is allowed to use the second name – "administrative misconduct" [5].

Given the divergence of views, it is important to understand the essence and content of the concepts of "administrative offence" and "disciplinary offence", to determine their differences and similarities.

In legal dictionary misconduct is interpreted as a wrongful deed (offence) that is less dangerous than a criminal offence. Misconducts include: administrative offence, civil offence, disciplinary offence [13].

The Law "On the Status of Judges in the Russian Federation" [1], in accordance with the note to article 4 of the Code of Honor of Russian Judges, under a misconduct, which discredit honor and dignity of a judge, understands such action or omission, which is not criminal one.

Disciplinary offence in the encyclopedic dictionary of Brockhaus and Efron is treated as a wrongful guilty violation of labor or service discipline by an employee (worker), for which provide for disciplinary responsibility [14]. Disciplinary

offences are associated with infringements of production, service, military, educational, fiscal discipline, internal work regulations of different organizations, institutions, enterprises and other government institutions. The main penalties are: reprimand, admonishment, demotion, reduction in rank, reduction in grade, deprivation of bonus, dismissal.

Legal issues of disciplinary responsibility are at the junction of sciences of administrative and labor law. Traditionally, legal literature considers disciplinary responsibility as labor responsibility [6, 54-59]. However, there is a position, according to which there is allocated an especial (special) disciplinary responsibility – disciplinary responsibility of public servants that does not refer to labor responsibility [7, 18-20]. According to the latest, there are two types of disciplinary responsibility: the general one provided for by the Labor Code of the RF, and the special one, which public servants bear in accordance with the statutes and regulations on discipline. The list of penalties under the general disciplinary responsibility provided for by article 192 of the LC RF is exhaustive. Employers cannot establish any additional disciplinary penalties. In the statutes and regulations on discipline may provide for more severe penalties that differ from those imposed on workers of labor collectives under general disciplinary responsibility. It should also be noted that offender is brought to account for disciplinary offenses by its leader, that is, by the subject of linear power, and bringing to administrative responsibility is exercised by the representative of the authorities, by the subject of functional power in respect of persons, who are not in service subordination to it.

In the Labor Code the legislator (with some exceptions) all violations of labor legislation divides into administrative offenses and disciplinary offenses. In accordance with paragraph 3 article 39 of the Labor Code of the Russian Federation: "representatives of employees participating in collective negotiations shall not, without a prior consent of the body authorizing their representation, be subject to a disciplinary penalty, transferred to another job or dismissed on the employer's initiative, except for the cases of terminating their labor contracts due to committing a misconduct..." [3].

N. I. Matuzov, A. V. Mal'ko among disciplinary offenses emit such kind as corporeal offenses (misconducts). To the latter authors refer: causing by workers and employees of material damage to their enterprises, institutions and organizations, for which provide justice restorative sanctions – withholding part of salary, obligation to reimburse the cost of damaged items etc. The authors also distinguish such kind of misconduct as procedural misconducts, which include: failure to appear in court for questioning by an investigator, refusal to voluntarily submit

a material evidence, etc. Sanction is a coercive delivering on summon to an interested official or body [9, 209-210].

There is no single concept of disciplinary offense as the ground of disciplinary responsibility of public servants in the current legislation on public service and public service relations. So, according to article 57 of the Federal Law No. 79-FL from July 27, 2004 "On Public Civil Service of the Russian Federation" [4], disciplinary offense recognize as "non-performance or improper performance by a civil servant through its fault of assigned to it official duties", for which "the representative of employer has the right to impose disciplinary sanction". At that, disciplinary offence of civil servants is expressed in violation of service discipline (article 56).

Thus, disciplinary offence, for example, of a public servant can be defined as illegal, guilty action (inaction) of the public servant (civil servant, military serviceman, public servant of a law enforcement agency), expressed in violation of service discipline, which does not entail administrative or criminal responsibility.

Consequently, the signs of a disciplinary offence are: wrongfulness, guiltiness, and punishability. A disciplinary offence is to be exercised in the form of action of a worker (employee) or inaction. The latter, in turn, can have more serious consequences and correspond to signs of a crime. The ground for disciplinary responsibility is guilty failure to perform those responsibilities, which are enshrined in labor agreement, employment contract or official regulations.

Disciplinary offences are characterized by the following features:

1) are always of illegal nature, at that, the object of interference of these deeds is very specific – it's labor (service) discipline;

2) can be expressed in the form of both action and inaction of an employee;

3) deeds are limited to the framework of that civil authority, where an employee carries out its work;

4) have a small degree of public danger.

Disciplinary sanction is applied directly after the revealing of a disciplinary offence. The fact of imposing on an employee (public servant) of a disciplinary sanction is fixed in a particular individual act issued by the employer, a copy of which with stating the grounds of its application is given to the employee on receipt. Thus, the procedural order of application of disciplinary sanction is quite simple. Except for the application of penalties to public officials of law enforcement agencies and military personnel. So, a prerequisite of application disciplinary sanction to an employee of customs body in connection with violation of service discipline is conducting of an official investigation in a particular procedural form.

It is important to note the fact that a public servant can be also brought to administrative responsibility, equally as for an offence, which contradict to administrative prohibition, a disciplinary sanction can be imposed to the public servant (article 2.4 CAO RF)

The legal concept of administrative offence is laid down in part 1 of article 2.1 CAO RF. A wrongful, guilty action (inaction) of a natural person or legal entity, which is administratively punishable under this Code or the laws on administrative offences of the subjects of the Russian Federation, shall be regarded as an administrative offence. Administrative offence has such characteristics as: wrongfulness, guiltiness and punishability. Administrative offence is committed in the form of action (inaction).

Administrative offence can be only guilty committed. Guilt is expressed in mental attitude of a person to the offense committed and its consequences in the form of intent or negligence. Wrongfulness of a deed lies in the fact that a person violates administrative-legal prohibitions. Punishability is due to the inevitability of administrative responsibility. At that, the only ground for administrative responsibility is an administrative offence. Thus, we can draw a preliminary conclusion that the composition of signs of an administrative offense and disciplinary offense is similar. This conclusion is confirmed by the works of separate scientists.

Theorists of administrative law D. N. Bakhrakh, B. V. Rossinskii, Yu. N. Starilov argue that the definition of administrative offense is formal, because it contains in itself not all juridical signs of a deed and does not include such substantive sign as public danger. "The deeds enumerated in the Special Part of the Code on Administrative Offences of the RF are prohibited by law because they are socially harmful. This is indirectly mentioned in article 2.2 of the Code on Administrative Offences of the RF, which links deed with harmful consequences" [5]. The authors argue that the wrongfulness itself is legal recognition of antisocial, harmful to citizens, society and the state conduct. However, then the authors contradict themselves and say that the degree of harmfulness of most administrative offences is low, therefore, they are not socially dangerous. But at the same time, the specified authors recognize public harm as the first sign of administrative offence. D. N. Bakhrakh, B. V. Rossinskii and Yu. N. Starilov also pay attention to the differences of administrative offence from disciplinary offence and from crime, through selecting of three kinds of punitive sanctions: disciplinary, criminal and administrative ones. The scientists note a circumstance, that a number of properties differentiates crime from misconducts (administrative, disciplinary). "The primary differences are public danger and type of wrongfulness. Of course, first of all, the substantive

criterion – the level of harm caused to society is taken into account. And on the basis of that evaluation decide questions of type of wrongfulness: administrative or disciplinary. Secondary criteria apply when the issue of wrongfulness has been resolved. We are talking about different procedural norms, distinction between administrative and disciplinary sanctions, the state of administrative or disciplinary punishability and other secondary signs" [5].

It seems that the above-mentioned group of authors equates the concepts of an administrative offense and disciplinary offense. However, the authors still cannot reach a consensus, whether an administrative offense and disciplinary offense are socially dangerous or not. Resolution of the issue the authors see in a distinct distinguishing by scientists of a criterion public danger of a deed, that is, the criterion of public danger. The authors suggested that as such criteria could serve a clarification of the circumstances: whether such deeds in their totality in a specific historical setting violate the conditions of existence of the society.

Administrative offenses include violations of administrative law that protects the rule of law established in society, management system, environmental objects, monuments of history and culture, sanitary and hygienic requirements, fire safety, transport operation, etc., which entail – warning, fine, administrative arrest, deprivation of a right granted to an individual and others [5].

Industry codes (Tax, Budget, Land, Air, etc.) do not contain legislative definition of an offense or misconduct. They contain only referential dispositions to CAO RF and references to bringing to administrative responsibility.

If we consider composition of an administrative offense and disciplinary offense, then the disciplinary offense and the administrative offense are similar in all four elements of composition: object, objective aspect, subject, subjective aspect. And here also lies the essence of the similarity of the legal content of these two concepts

It should be noted that the object of misconduct is relations that violate civil-law, administrative-legal or disciplinary prohibitions. The object of disciplinary offence is relations, which in one way or another related to the labor (service) activity of a natural person – an employee (public servant). The object of administrative offences is relations that are regulated by different branches of law, and are protected by administrative coercive measures. The object of administrative offences is public relations, encroachment on which entails administrative responsibility. All the diversity of the objects of administrative offence may be divided into a general object, generic object and direct object. As the general object of administrative offense serves all the totality of social relations, violation of which entails administrative

responsibility, i.e., all the objects of offenses provided for by CAO RF and the legislative acts of the subjects of the Russian Federation. As the generic object serve social relations, united by CAO RF into chapters on the grounds of an unlawful encroachment (for example, administrative offenses against the rights of citizens). The direct object of administrative offence is public relations for violations of specific administrative prohibition. Direct objects are specified in relation to specific articles of CAO RF (for example, violation of the right of a citizen to acquaint with the list of voters, participants of a referendum). In this regard, the object of disciplinary offence is very "poor" in its content and on the merits.

The objective aspect of administrative offense characterizes it as a wrongful act of the offender's conduct, expressed in action or inaction in various spheres of public life (financial, customs regulations and customs affairs, property sphere, public morality, field of communication and information, and others). The objective aspect of administrative offence characterizes a specific deed (action or inaction), its consequences and the causal relationship between them. Characteristic of the objective aspect includes such elements as the method, means, time, place of committing an administrative offense and other circumstances that are important for the qualification of the offense. The objective aspect of disciplinary offence is also quite narrow and limited to the framework of wrongful conduct of a physical person-employee (public servant), and is expressed through an action or inaction related to labor (service) activity of the person.

There are significant differences regarding the subjects of an administrative offense and disciplinary offense. So, the subject of a disciplinary offense can only be a citizen – an employee of organization or public servant of public authority. The subjects of administrative offence (administrative responsibility) are both natural and legal persons. Among natural persons the legislator selects a special subject – an official. It should also be separately noted that foreign citizens, stateless persons, refugees, and migrants – i.e. persons having special status under Russian legislation may also be brought to responsibility for violation of administrative legislation. But to disciplinary responsibility may be brought only a citizen of the Russian Federation – a worker (employee), in exceptional cases – a foreign citizen while working in the organization according to the received quota, residence permit and other cases specified by law.

Offender's guilt is the main element of the subjective aspect of both an administrative offense and disciplinary offense. Guilt is expressed in the form of intent or negligence. And this is the similarity between the two studied concepts. However, the subjective aspect of an administrative offense involves the guilt of an offender

– a natural person or legal entity, the motives of the offense and its purpose, but the subjective aspect of a disciplinary offense can be expressed only in the form of intent or negligence of a worker (employee), and in this there is their difference.

Thus, we should draw the general conclusion that the essence and content of such concepts as administrative offense and disciplinary offense have common juridical signs: wrongfulness, guiltiness and punishability, and are committed in the form of action (inaction). Comparison of administrative offence and disciplinary offence in respect of their compositions also revealed the identity of the two concepts. Also all four elements of administrative offence and disciplinary offence are similar: object, objective aspect, subject, subjective aspect.

At that, the conducted study has showed that here the similarity of these concepts ends. The basis of administrative responsibility is a violation of administrative-legal prohibitions in various spheres of public life. The basis of disciplinary responsibility is a violation of the terms specified in a concluded with an employee contract of employment, employment agreement, and official regulations.

There are significant differences in content of the composition of administrative offense and disciplinary offense, since every considered concept has its own content of the object, objective aspect, subject and subjective aspect. The essence and content of the constituent elements of disciplinary offense have specific signs that, in general, are not peculiar to administrative offense. Thus, we can conclude that such concepts as administrative offense and disciplinary offense are very independent in theoretical and legal meaning.

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