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Revista de Antropología, Ciencias de la Comunicación y de la Información, Filosofía, Lingüística y Semiótica, Problemas del Desarrollo, la Ciencia y la Tecnología

Año 34, 2018, Especial N° 14

Revista de Ciencias Humanas y Sociales

ISSN 1012-1587/ ISSNe: 2477-9385

Depósito Legal pp 198402ZU45

Universidad del Zulia

Facultad Experimental de Ciencias

Departamento de Ciencias Humanas

Maracaibo - Venezuela

Opción, Año 34, Especial No.14 (2018):1266-1284
ISSN 1012-1587/ISSNe: 2477-9385

Police misconduct in Russia: history and contemporaneity

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Abstract

The present paper focuses on the analysis of issues that arise in terms of theory and law enforcement practice. The key approach to the study of this problem is based on the distinctive difference between administrative and criminal offenses. The paper deals with the issues connected with the preventative activity of law-enforcement authorities of the Russian Federation. It reviews the doctrinal approach to the topic under consideration. The paper appeals to executors of law, students, and candidates for a master's degree and postgraduates in the field of study "Jurisprudence".

Keywords: misconduct administrative, penalty, disqualification, fine.

Recibido: 08-12-2017 •Aceptado: 24-04-2018

Mala conducta policial en Rusia: historia y contemporaneidad

Resumen

El presente documento se centra en el análisis de cuestiones que surgen en términos de teoría y práctica de aplicación de la ley. El enfoque clave para el estudio de este problema se basa en la diferencia distintiva entre los delitos administrativos y penales. El documento trata los problemas relacionados con la actividad preventiva de las autoridades encargadas de hacer cumplir la ley de la Federación Rusa. Revisa el enfoque doctrinal del tema en consideración. El artículo apela a los ejecutores de las leyes, estudiantes y candidatos para una maestría y postgrado en el campo de estudio "Jurisprudencia".

Palabras clave: mala conducta administrativa, penalización, descalificación, multa.

1. INTRODUCTION

It is common knowledge that legal sanctions play a great role in keeping order in a state. In the Russian theory of state and law legal sanctions are divided into punitive and restorative. Punitive sanctions are applied to punish an offender by using severe measures (deprivation of freedom, of property, of special rights, etc.); while restorative sanctions are used to restore or remedy violated rights or to compensate for property damage or soft benefits. Hence, punitive sanctions are used when offenses pose a danger to society, for this reason, many socially advanced countries put it into practice to

distinguish crimes and misconducts, meaning that the latter will not be punished for severely.

The present paper deals with the so-called "police misconduct", or an action which is not of big danger to society and can be punished for not only by the court but by any other governmental body. Even before the Revolution of 1917 the Russian legislators were aware of the subdivision of offenses into crimes and misconducts, but this subdivision was not stipulated legally. The term "administrative offense" (which equals the term "police misconduct" in a number of jurisdictions in Europe) was legally introduced by the Decree of the All-Russian Central Executive Committee and the Council of People's Commissars of the Russian Soviet Federative Socialist Republic of April 6, 1925 on the introduction of resolutions by the district executive committees and on the imposition of administrative penalties.

This regulatory document depicts one of the core ideas of Bolshevism – absolute power of the Soviet regime. This power was implemented via executive committees which were vested with authority, including the authority to apply punitive measures. The second aim of the Decree was of a more practical nature. Russia with its huge territory and at that time a poor communicative system needed decentralization of powers from central authorities to lower links. Therefore, district executive committees had the right to introduce a number of compulsory regulations (on sanitation, fire-prevention measures, fight against natural disasters, etc.). To make these

regulations work executive committees were entitled to apply administratively (without taking legal actions) two types of sanctions – compulsory labor and fines(Nagornov, 2010).

The present paper is not aimed at a detailed historical survey of administrative offenses in the Russian legal system, suffice it to say that a long process of putting these relations into order ended with the adoption of "Fundamental principles of legislation of the Union of the Soviet Socialist Republic and the constituent republics in the area of administrative offenses". This act was foundational for the whole current system of legal regulation of administrative offenses and sanctions imposed for committing such offenses.Here we should elucidate one issue. The legislative machine in the USSR had its peculiarities: constituent republics seeking to emphasize their statehood adopted the majority of laws through their parliaments.However, to guarantee due unification of legislation such laws (criminal codes, civil codes and other important statutes) followed the same template which was legally adopted and referred to as Fundamental principles, but unlike model laws, they had their own statutory value and in a number of cases were applied for a straightforward regulation of relations.The statute mentioned above laid the foundation for the current use of the term administrative offense: "administrative offense is a wrongful, guilty (intentional or unintentional) action (omission) against the state or social order, socialist property, citizens' rights or freedom, government procedures which is administratively punishable". Taking into account the fact that this definition plays an important role in the further development of the

theory of administrative offense, we will consider it in depth. Such features of an administrative offense as guiltiness and wrongfulness make it similar to a crime, thus, it would be logical to distinguish a crime and misconduct in the definition. The distinctive feature of a crime – a danger to society - was removed from the definition making it similar to other offenses. The situation was aggravated by the Criminal Code of the Russian Soviet Federative Socialist Republic which was in force at the time of adopting Fundamental principles. According to the Criminal Code "an action or omission that formally resembles the action stipulated by the Special part of the Code, but which is of little danger to society" was not regarded as an offense and disavowed the possibility to acknowledge an administrative offense as a socially dangerous action.This brings up the question: why should a state punish for the offense which is not of any danger to society? Unfortunately, the method described above does not give an answer to this question(Naryshkin and Khabrieva, 2005).

The definition of an administrative offense contained the areas of its application: the state or social order, socialist property, citizens' rights and freedom, government procedures. The Fundamental Principles gave an exhaustive list of such areas which set limits to this phenomenon but which, however, duplicated the main areas enumerated in the definition of a crime outlined in the Criminal Code of the Russian Soviet Federative Socialist Republic. Now it can be seen that when an administrative offense originated formally, its legal nature was of little difference to that of a crime, which made them interchangeable in a number of cases.

2. METHODS

The present research is an analysis of the Russian administrative law at different periods of time as well as of its practical application. The research was conducted with the use of the comparative legal, sociological and statistical methods of analysis. The data gathered during the research made it possible to formulate the key conclusions on the efficiency and some peculiarities of current administrative penalties.

The scientific works of the Soviet period gave a lot of definitions of an administrative offense and speculations on its legal nature. We will mention just some of these works (Evstratova, 2008). The "Fundamental principles of legislation of the Union of the Soviet Socialist Republic and the constituent republics in the area of administrative offenses" laid the basis for the adoption of the Code of Administrative Offenses of the RSFSR (hereinafter – CoAO RSFSR) on June 20, 1984, that in its turn underlay the current Code of Administrative Offenses of the Russian Federation (hereinafter – CoAO RF) adopted on December 30, 2001. Let us take a closer look at the structure and the subject-matter of the Code. To begin with, it should be mentioned that CoAO RSFSR contained five sections:

1. General provisions;

2. Administrativeoffense and administrative responsibility;

3. Governmental bodies empowered to try cases on administrative offenses;

4. Proceedings on the cases connected with administrative offenses;

5. Enforcement of administrative penalties.

These sections vividly illustrate that the Code had a pecuniary, procedural and executive sections which indicate a complete system of legal regulation. The Code described the offenses which were considered to be administrative ones; gave a list of governmental bodies (including courts) that made decisions on the commission of an offense, brought offenders to administrative responsibility and imposed administrative penalties ; established the procedure of the execution of the administrative penalty decisions. This legal principle with slight alterations formed the basis for the current CoAO RF.

It is important to note that the original version of the CoAO RSFSR did not make legal entities liable for administrative offenses and did not impose administrative penalties on them, which made it difficult to apply the Code during the economic reforms of the 90s of the XX century. Moreover, the provisions of the Code stipulated exemption from administrative liability by reason of emergency, justifiable defence or nonimputability, which confirms the fact that CoAO RSFSR corresponded to the Criminal Code for misdemeanour, though, essentially different in terms of bringing administrative action against individuals.

There were just a few social relations managed by the CoAO RSFSR. Initially they were:

1. Administrativeoffenses concerning citizens' labor and health protection.

2. Administrativeoffenses encroaching upon the socialist property.

3. Administrativeoffenses concerning environmental protection, historical and cultural landmarks.

4. Administrative offenses in industry, heat and electric energy.

5. Administrative offenses in agriculture. Offenses concerning veterinary and sanitary norms.

6. Administrative offenses on transport, road traffic and communications.

7. Administrative offenses in housing and utilities sector and provision of amenities.

8. Administrative offenses in respect of trade and finance.

9. Administrative offenses encroaching upon public order.

10. Administrative offenses against government procedures.

It should be said that the areas legally regulated by the CoAO RSFSR were significantly different from those regulated by the Criminal Code of the RSFSR. Moreover, it stipulated offenses which under certain circumstances could be treated as crimes. Among such offenses were: petty stealing of state or public property, petty speculation (buying and reselling of consumer goods and agricultural

products for commercial gain), disorderly conduct (using obscene language in public places, harassment etc.), drug abuse and some others. However, the list of such offenses was rather short.The radical economic transformation that followed the break-up of the Soviet Union demanded an essentially new approach to administrative liability, which in the long run led to the adoption of a new statute, namely the Code of Administrative Offenses of the Russian Federation. This Code is one of the most amended statutes in the Russian Federation. During the year 2017, it saw more than 25 amendments and additions, the total number of which amounts to several hundreds. The most corrected part of it is the Special part that deals with the types of administrative offenses and administrative sanctions. In comparison with the CoAO RSFSR the number of administrative sanctions has significantly increased.The original CoAO RSFSR stipulated seven types of administrative sanctions:

1. Warning (was issued in writing and regarded as a formal position of a governmental body or an official in relation to the offense committed by an individual and the impermissibility of such conduct in the future).

2.Fine (a monetary sanction set in the following amounts: for citizens from 1 to 10 roubles, for officials’ 50 roubles; if we take into consideration that the monthly income of citizens at that time was from 70-80 to 150 roubles, this penalty was an essential preventive measure).

3. Refundable withdrawal of the instrument or subject of an administrative offense (the compulsory withdrawal of a property item which was then sold, and the money gained during the transaction was returned to the former owner deducting the expenses on its sale).

4. Confiscation of the instrument or subject of an administrative offense (compulsory transfer of a property item to federal ownership).

5. Deprivation of a special right (when CoAO RSFSR was adopted, the citizens had only two special rights: the right to drive a transport vehicle and the right to hunt).

6. Correctionallabor (a citizen did extra work, usually at his primary place of employment transferring 20% of his gains to the state revenue; correctional labor could be imposed for a rather long period of time – up to several months) (Starilov, 2005).

7.Administrative arrest (a short-term deprivation of freedom isolating offenders from society for the term up to 15 days and engaging them in community service; this penalty could not be enforced in respect of pregnant women, women having tweens, underage people, disabled people).

The theory of the Soviet administrative law, as well as the criminal law, subdivided sanctions into principal and additional. For instance, refundable withdrawal or confiscation of the instrument or

subject of an administrative offense was imposed as an additional administrative penalty; deprivation of a special right could be imposed as a principal or additional penalty.

Consideration should be given to the bodies that could impose administrative sanctions. At the time of adoption of CoAO RSFSR the cases concerning administrative offenses were tried on a collegiate basis. Such cases could be tried by the executive committees of town and village councils of people's deputies, administrative commissions of executive committees of district, town or village councils of people's deputies and by district juvenile affairs commissions. There was a small number of cases tried by courts of general jurisdiction. Generally, administrative sanctions were imposed by internal affairs bodies (police) and other governmental bodies. These bodies (excluding courts) were involved in the implementation of a state punitive function through the theory of administrative law that claimed the possibility of a non-judicial administrative prosecution.

When we assess the competence of governmental bodies that had the right to try cases on administrative offenses and impose administrative penalties, we should keep in mind that basically all economy was stated then and the bodies that managed its different sectors were governmental bodies which had governmental powers (Serkov, 2012).

During the period under review there were just a few governmental bodies (a bit more than twenty) vested with administrative and jurisdictional authority (besides police) and most of

them were empowered to oversee certain areas (fire safety, occupational safety, sanitary inspection, conservation of natural resources). It should be pointed out that the system of relations of that time and the role of courts in law enforcement of the Soviet state justified this approach. Nowadays the situation has changed significantly.Nowadays the list of administrative penalties has changed a bit. Such administrative penalty as refundable withdrawal of the instrument or subject of an administrative offense has not been applied since 2010 but some new sanctions were added, like: administrative deportation from the Russian Federation of a foreign citizen or a stateless person, disqualification, administrative ban to attend the venues of official sports competitions, an administrative suspension of the activity.

Some of these sanctions are of academic and practical interest. Let us start with disqualification. It is a principal penalty that can be set for a term from six months to three years. Disqualification is the deprivation of individuals of their right to occupy positions:

- In the federal state civil service;

- In the state civil service of a subject of the Russian Federation;

- In a municipal service;

- In the executive managerial body of a legal entity;

Or to pursue activities:

- In the area of state or municipal services;

- In the area of training sportsmen (including medical support for them);

- In the area of organizing and conducting sport events;

- In the area of carrying out an expert examination of industrial security;

- In the area of independent assessment of fire risk (audit of fire security);

- In the area of medical care;

- In the area of pharmaceutical business.

Disqualification as an administrative penalty, damages the social and property status of an individual, therefore, this sanction turns out to be rather efficient. It is widely used and imposed in more than 200 administrative cases. A typical offense which can entail this penalty is stipulated in Article 7.19 of the CoAO RF which bans unauthorized connection to electric power circuits, or to oil pipelines, or to oil products pipelines, or to gas pipelines, as well as unauthorized (unregistered) use of electric or heat power, or of oil, gas and of oil products. This Article correlates CoAO RF with the Criminal Code of the Russian Federation, as it is applied only in those cases in which the activities enumerated above are not elements of a crime. However, the Criminal Code does not contain the elements of a crime that directly correlate with those stipulated in the CoAO RF. The closest offense is theft.The next relatively new type of an administrative sanction is an administrative suspension of the activity. Previously this measure was

used only during the proceedings on administrative cases. Since 2005 this sanction was referred to as a temporary ban on the activity. An administrative suspension of the activity is imposed for a term of up to ninety days, is appointed in cases stipulated in the Articles of the Special Part of the CoAO RF, and can be applied in a big number of cases including such areas as town-planning activity, property security, transport safety and others. This sanction usually leads to the bankruptcy of legal entities involved in entrepreneurship activities, therefore, the Code stipulates that an administrative suspension of the activity is appointed only if a less rigorous kind of an administrative punishment cannot ensure the achievement of the goal set in the administrative punishment. This sanction is highly preventive and is a matter of anxiety for the majority of entrepreneurs. However, a wide scale of its application increases the possibilities for the abuse of power by unscrupulous executors of law.A specific sanction for the Russian administrative and delictual law is administrative arrest, which is also appointed more often nowadays. This penalty means keeping of an offender isolated from society for the term of up to fifteen days, and up to thirty days for violating the laws on meetings, rallies, demonstrations, processions and picketing, or for violating the demands of a state of emergency or of the legal regime of an anti-terrorist operation, or for administrative offenses concerning drug and psychotropic substances and their precursors.

Formally an administrative arrest is deprivation of freedom, however, it is devoid of negative consequences that arise when deprivation of freedom is applied as a criminal sanction. This includes

detention conditions, legal regulation of such relations, and citizen's rights after the imprisonment etc. To regulate the relations connected with an administrative arrest, legislators adopted a specific statute – the Federal law No.67-FZ "On the order of serving an administrative arrest" of April 26, 2013. The penalty is traditionally carried out by the police, or rather by special bodies of regional internal affairs authorities. People arrested for administrative offenses and imprisoned for crimes must not serve their sentences together.

It is worth mentioning that the prevailing kind of administrative sanction is still an administrative fine which is defined as a monetary sanction expressed in roubles. At the time the present research was conducted the fine was set in the following amounts: for citizens from one hundred to five hundred thousand roubles; for officials one million roubles; for legal entities sixty million roubles, or it might be expressed as a value divisible by:

- The value of the object of the administrative offense as of the time of termination or stopping of the administrative offense;

-The sum of the proceeds of an offender from the sale of goods (work, service) in the market of which the administrative offense has been committed, for the calendar year;

- The sum of the proceeds of an offender from the sale of goods (work, service) in the market of which the administrative offense has been committed, for the calendar year preceding the year in which the administrative offense was detected;

-The unaccounted sum of cash resources and (or) the cost of monetary instruments, and a number of other equivalents in property, that makes an administrative fine a potent measure of legal punishment.

Russian scientific works dwell a lot on administrative sanctions, their completeness and efficiency (Maksimov, 2009).

The research on the police misconduct would not be complete without studying the procedural issue of the application of this kind of legal sanctions. These relations are regulated by Sections III and IV of the CoAO RF. Although the administrative law applies a lot of terms similar to those of criminal law (an aggrieved party, defense counsel, witness, attesting witness, specialist, etc.), it is a mistake to think that administrative law is a “lighter” version of criminal law.

The administrative process in that part that regulates bringing offenders to responsibility is quite self-inclusive. The key point here is to hold offenders liable with formal detection of an offense avoiding court procedures. That is what makes the administrative process unique. Nowadays courts in the majority of cases have to resort to administrative law when they try cases on administrative offenses (except for arbitration courts, which bring offenders to administrative responsibility in compliance with arbitration law). The procedures are as follows: an authorized official while performing a supervisory or law-enforcement activity, discovers “adequate data indicating an administrative offense” which are stated in a record of an administrative offense, that in most cases turns up to be the only

evidence of committing an offense. This or another authorized official that has the right to try cases on administrative offenses duly reviews the record on the administrative offense and gives a ruling on holding an offender liable indicating which provisions of the CoAO RF were violated and imposing a certain kind of administrative penalty.A wide range of relations falling under administrative and delictual law, formal elements of crimes and rather light sanctions make the procedure rather viable, as it helps to relieve courts to try more grievous cases and to bring offenders to administrative responsibility in a short time. However, nowadays a lot of sanctions have become more severe, the degree of punishment may exceed the one of a criminal sanction (for instance, fines can be higher than the maximum fine imposed as a criminal penalty); the offenses that entail administrative liability are becoming more complicated, whereby a mere recording of an administrative offense and a simplified procedure of trying administrative cases by officials not having the status of judges or appropriate legal training make the matter more problematic. Thereby, judicial jurisdiction within the framework of an administrative process is expanding; judges are vested with authority to try more cases on administrative offenses. It is now typical of a body or an official empowered to try cases on some administrative offenses to submit the case to court.However, there are more than sixty governmental bodies whose officials are vested with authority to bring citizens, officials and legal entities to administrative liability. This number will increase if we add governmental bodies of the subjects of the Russian Federation empowered to bring citizens, officials and legal entities to

administrative liability on the ground of the statutes on administrative offenses adopted in these subjects. Therefore, there is a great number of bodies and officials entitled to apply administrative sanctions average citizens are not aware of. Likewise, ordinary citizens can hardly keep track of an increasingly changing number of offenses liable with administrative penalty.

This indicates the necessity to update the Russian administrative and delictual law that can be done in different ways. The first possible way is to ultimately formalize the description of administrative offenses. The current CoAO RF contains the description of administrative offenses that can take several pages; what is more, many articles are divided into subarticles. Hence, it makes it difficult to interpret some administrative and delictual provisions.The second possible way is to introduce a so-called “criminal misconduct” that would refer to the most dangerous for society administrative offenses and the least grievous crimes. A criminal misconduct would be closer to a criminal action, while the other administrative offenses would be tried by entitled officials of governmental bodies as administrative actions.For the moment it is difficult to say which way legislators will choose. That can be some other way different from what has been proposed. But the necessity to reform the Russian administrative and delictual law is urgent.

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Revista de Ciencias Humanas y Sociales

Año 34, Especial N° 14, 2018

Esta revista fue editada en formato digital por el personal de la Oficina de Publicaciones Científicas de la Facultad Experimental de Ciencias, Universidad del Zulia.
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