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Administrative Prejudice in Criminal Law

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Abstract

Introduction: the article deals with one of the most controversial phenomena in criminal law – administrative prejudice. The author conducts a deep systematic and comparative legal analysis of this concept, gives its legal characteristic, explores its theoretical foundations, historical origins and evolution, including the pre-revolutionary, Soviet and post-Soviet periods. *Purpose:* based on the study of the legal nature, social conditionality of administrative prejudice, to identify problems of compliance of its application with the goals and objectives of modern criminal policy in Russia. *Methods:* the research is based on a dialectical approach to the study of social processes and phenomena. It uses methods traditional for the sciences of criminal law and criminology, such as analysis and synthesis; comparative legal; retrospective; formal legal; logical; comparative. The following private scientific methods are also used: a legal-dogmatic method and interpretation of legal norms. *Results:* the article reveals doctrinal origins of the administrative prejudice concept, better called as the theory of punitive progression, based on the repetition of homogeneous actions with an increasing level of illegality and progressive repression. In this regard, the works of C. Lombroso, E. Ferry, and R. Garofalo are studied. The article examines in detail the modern scientific controversy on the constitutional and doctrinal validity of the inclusion of norms with administrative prejudice in the criminal law. By conducting a comparative legal analysis of the meaning of the term “administrative prejudice” in other branches of law, in particular civil and criminal proceedings, the author establishes that the original (genuine) essence of this concept is expressed in the legal force (prejudice) of a court decision or other jurisdictional body, eliminating the need for its revision in the future. It has nothing to do with the concept of the so-called administrative prejudice in criminal law. It is noted that the criminal law terminology, reflecting the concepts used in other branches of law, is often filled with its own, narrowly sectoral meaning, different from the original one. The author considers intersectoral divergence and doctrinal inconsistency of this legal phenomenon and presents his point of view on possible negative consequences of the existence of norms with administrative prejudice in criminal law. He studies connection with and distinction between administrative prejudice and blank and predicate crimes, as well as recidivism of crimes, criminal and executive prejudice. In this regard, a new term “sectoral prejudice” is proposed. *Conclusion:* a number of conclusions are formulated about the meaning and prospects for the application of administrative prejudice in criminal law, theoretical and practical arguments for its exclusion from the criminal law.

Keywords: administrative prejudice; complex (sectoral) prejudice; theory of punitive progression; repetition of homogeneous actions with an increasing

level of illegality and progressive repression; recidivism of crimes; intersectoral recidivism; blank and predicate crimes.

5.1.4. Criminal law sciences.

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Introduction

According to the criminal law principle of legality, criminality and punishability of an act are determined only by criminal law (Article 3 of the Criminal Code of the Russian Federation, hereinafter – CC RF). At the same time, criminal legislation is based on the Constitution of the Russian Federation and generally recognized principles and norms of international law (Part 2 of Article 1 of the CC RF). In case of a conflict of constitutional and criminal law norms, the former is a priority. In all other cases, the rule of exclusivity of criminal law regulation applies, according to which the Criminal Code of the Russian Federation is the only source of criminal law norms. For example, the same act cannot simultaneously have elements of a crime and an administrative offense.

The exception is the cases of the so-called prejudice (from Latin *praejudicium* – relating to the previous court decision). It is the obligation for all courts considering the case to accept, without checking the evidence, the facts previously established by the court decision that entered into force in another case in which the same persons participated [1, p. 278].

In domestic criminal law, the institution of the so-called administrative prejudice has become widespread. Examples of compositions with administrative prejudice in the Criminal Code of the Russian Federation are, for example, Article 116.1 of the CC RF (beatings by a person subjected to criminal punishment), Article 151.1 (retail sale of alcoholic beverages to minors if these acts are committed repeatedly), Article 157 of the CC RF (non-payment of funds for the maintenance of children or disabled parents, if these acts committed repeatedly), Article 158.1 of the CC RF (petty theft committed by a person subjected to administrative punishment), Article 264.1 of the CC RF (driving a vehicle in a state of intoxication by a person subjected to administrative punishment or having a criminal record), Part 1 of Article 315 of the CC RF (ma-

licious non-execution of a court verdict, court decision or other judicial act that has entered into force, as well as obstruction of their execution by a person subjected to administrative punishment for an act provided for in Part 4 Article 17.15 of the Code of Administrative Offences of the Russian Federation committed in relation to the same judicial act), etc. However, recently their number has been increasing noticeably.

Thus, according to the Note to Article 314.1 of the CC RF, repeated non-compliance of administrative restrictions or restrictions imposed on a person under administrative supervision by a court in accordance with the federal law is non-compliance of administrative restrictions or restrictions imposed by a court on a person under administrative supervision in accordance with the federal law, provided that this person has previously been brought to administrative liability for a similar act twice within one year.

Moreover, as it often happens when borrowing terms from other branches of law or scientific knowledge, this concept has acquired a special criminal legal content that differs from the original meaning and is considered as a special connection between several similar acts committed during a certain time (usually a year), the first of which has the status of an administrative offense, and that committed two or more times is recognized as a crime. In this case, it is repeated commission of a similar act within a certain period of time that is important.

However, there are still discussions about the constitutional and doctrinal validity of administrative prejudice in criminal law science. Before analyzing their content, let us turn to the background of the issue.

Results

Administrative prejudice as a legal institution and a method of constructing elements of a crime has a rich background. Moreover, there are different versions about the time of its appearance in domestic criminal law. So, V.I. Ko-

Iosova believes that it appears for the first time in Soviet criminal legislation, in particular, in the Decree of the All-Russian Central Executive Committee and the Council of People's Commissars of December 15, 1924 on the amendment of Article 139-a of the Criminal Code of the RSFSR "On excise violations". Articles with administrative prejudice were also contained in the Soviet criminal codes of 1922, 1926 and 1960 [2, p. 248]. I.M. Goshaev, in turn, points out that some researchers attribute legal provisions of the Russian Empire of the 18th century to its prototype. For example, the Code of Criminal and Correctional Punishments of 1845 (as amended in 1885) included normative material of various branches of law and was based on the idea of strengthening legal liability for the repetition of identical crimes [3, p. 130]. A.G. Bezverkhov shares this approach [4 p. 46].

This stance on prejudice and prejudicialness was also shared by prominent scientists of pre-revolutionary Russia, such as I.G. Shcheglovitov [5], I.Ya. Foinitskii [6, p. 187], E.V. Vas'kovskii [7, p. 167], P.V. Makalinskii [8], L. Fon-Rezon [9;10], E. Nemirovskii [11], and others. Thus, in pre-revolutionary legal science, a well-defined understanding of prejudice prevailed, dating back to Roman law and related to giving legal force to a court decision (jurisdictional body) in relation to the previously established circumstances of the case [12, p. 4].

It had nothing to do with the concept of the so-called administrative prejudice in criminal law. In modern legal branches, such as civil and criminal proceedings, administrative prejudice, as a rule, is considered in the above described sense. For instance, E.B. Tarbagaeva uses the concept "prejudice" in relation to the legal force of court decisions [13, p. 52], which is consistent with the opinion of R. Iskanderov, who considers it as one of the legal characteristics of a sentence [14]. O.E. Pletneva also mentions prejudice of a court decision, linking this property with facts, legal relations and conclusions of the court that cannot be litigated or re-proved [12, p. 6]. This approach is also backed by N.M. Korshunov and Yu.L. Mareev, arguing that prejudice presupposes the binding nature of conclusions about facts established by a court decision that has entered into force for other judicial bodies and organizations [15, p. 175].

And only in criminal law, traditional legal terminology is filled with its own, narrowly sectoral meaning. This conclusion concerns not only administrative prejudice. Earlier we analyzed the phenomenon of a special criminal law interpretation of terms adopted from other branches [16, pp. 11–12].

Nowadays there are no unified position regarding administrative prejudice. Some consider it right to return to the practice of applying administrative prejudice. Thus, according to E.V. Yamasheva, the restoration of administrative prejudice in the Criminal Code of the Russian Federation contributes to the effective differentiation of crimes and administrative offenses, provides savings in measures of criminal repression, is expedient, as it will ensure realization of the preventive function of criminal legislation [17]. This idea is shared by N.I. Pikurov, E.V. Ovechkin, I.G. Bavsun, M.V. Bavsun, I.A. Tikhon and others, who also believe that administrative prejudice is not only an effective way to counter crime, but it also strengthens the preventive role of criminal law [18; 19; 20, p. 6–9].

According to N.G. Ivanov, "in relation to the concept of crime, it should not be about criminal law prohibition, but about prohibition in a broad sense" [21, p. 25].

A similar viewpoint is expressed by G.A. Esakov who singles out general illegality along with the criminal law [22, p. 168].

Leaving aside the speculative construction of general illegality, it should be noted that it, in fact, duplicates the established scientific approach to the mechanism of criminal law regulation, according to which criminal law is an auxiliary mechanism that comes into effect only when positive legal regulation cannot ensure normal development of such relations. According to N.I. Pikurov, "combining into dynamic systems with the norms of almost all branches of law, it (criminal law), on the one hand, implants their prescriptions into its fabric to detail elements of socially dangerous acts, defining the boundaries between criminal and uncriminal, and on the other hand, it itself transfers of its legal force to them part, being a potential threat of criminal punishment" [23].

In this regard, theoretical constructions of general illegality do not create a fundamentally new explanation for already existing legal

phenomena. Therefore, in this case it is appropriate to apply the principle of methodological reductionism, also known as Occam's razor: "one should not multiply the agents in a theory beyond what is necessary".

In our opinion, the position of the opponents of the theory of administrative prejudice in criminal law is more reasoned and logically justified.

So, according to N.F. Kuznetsova, no administrative offense has a specific criminal property of the act – a public danger. Therefore, a number of offenses is not able to transfer mechanically into a crime. The prohibition of a socially dangerous and culpable act is established exclusively by the criminal code, and not by any other, even federal law. Thus, administrative prejudice contradicts Part 1 of Article 1 and Part 1 of Article 14 of the Criminal Code of the Russian Federation [24, p. 88].

This stance is shared by S.G. Kelina [25], D.N. Bakhrakh [26, pp. 88–91], V.L. Zuev [27, pp. 54–55], A.N. Tarbagaev [28] and a number of other scientists who criticize the application of administrative prejudice. So, S.G. Kelina believes that the repetition of an act cannot change its legal nature. D.N. Bakhrakh, a well-known expert in the field of administrative law, also differentiates an offense from a crime by the absence of a public danger element in it.

The definition of criminal illegality goes back to the principle of Roman law: "nullum crimen sine lege".

In our opinion, terms were substituted at the first development stages of the Soviet criminal legislation. Administrative prejudice was considered as a repetition of homogeneous actions with an increasing level of illegality and progressive repressiveness, or, as it can be called, a theory of punitive progression. It is based on a principled doctrinal position on the transition of quantitative indicators of the public danger of illegal actions to a qualitatively different level. This, in turn, replaces the basis of criminal liability: the emphasis shifts from the act to the individual and, in fact, to his social danger. After all, if we consider homogeneous acts committed in a certain period of time, then it is hardly possible to say that the subsequent is more dangerous than the previous one. On what basis? What has changed in the subsequent act? Undoubtedly, nothing. Then what is its legal assessment with increasing repressiveness

based on? Obviously, it is on the postulate of the preventive function of punishment (in a broad sense) as a measure of coercive influence, as well as the dogma of social danger (social destructiveness, criminal infection) of the individual, which is amenable to correction by such influence. Surely, this cannot be denied. But if we raise this dogma to the absolute, then the absence of the effect of a lesser impact naturally leads to the conclusion about the strengthening of such, including from administrative to criminal law.

In this regard, it is necessary to refute the thesis arising from this dogma about the connection between the "danger of an individual" and subjective elements of the act (guilt, motive, purpose, signs of the subject). We believe that the presence of these elements in the construction of the corpus delicti does not mean the danger of the individual as such, but characterizes only the act. In other words, a criminal is not an immanent socio-psychological status of a person, and can only be considered at the time (period) of the crime commission. In this regard, we consider the term "a criminal" to be inconsistent with the prevailing modern scientific and legal approaches to the person who has committed the crime. In particular, its immanence levels the existing goals of punishment (Part 2 of Article 43 of the Criminal Code of the Russian Federation). Eventually, he/she is punished not for personality traits, but for the committed act, which has reflected a combination of subjective features of the person characteristic of the moment of the crime commission. Otherwise, it is necessary to recognize that punishment can be applied not only for an act, but also for a dangerous state of the individual, which contradicts fundamental foundations of domestic criminal law (the concept of crime, the basis of criminal liability), as well as results of its evolution.

This stance has its own theoretical foundations. Doctrines of C. Lombroso, E. Ferry, and R. Garofalo, representatives of anthropological, sociological (positivist) trends in criminology and criminal law, are one of the most significant sources predetermining an instrumental (in some cases, utilitarian) approach to criminal law in general and punishment in particular.

The essence of these approaches in general can be formulated as social protection from

criminals and potentially dangerous persons with the help of criminal legal means.

Thus, C. Lombroso considered criminals as sick (morally insane) people: “We tell born criminals: you are not to blame for committing your crime, but we are not to blame either, if the innate properties of our body make us deprive you of your freedom for our own protection” [29, p. 177; 30; 31, p. 11].

E. Ferry, without diminishing the impact of external factors (including meteorological, climatic, geographical, civilizational, demographic, etc.) on a criminal, nevertheless, put internal determination at the forefront, which conditioned the anthropocentric approach to the impact on crime. His teaching, like that of C. Lombroso, was based on the thesis of a “born criminal”, which, however, did not mean that the commission of a crime was predetermined, but, at the same time, implied the protective function of criminal legal means. “In any case, in the treatment of crime, as in the treatment of any general or mental illness, it is necessary to remove from society those persons who are least adapted to life” [32, p. 65].

R. Garofalo reasoned in a similar way, arguing that the term of imprisonment should not be appointed by a judge a priori. Authorities of the penitentiary institution should speak out about the need for temporary or life imprisonment, relying on the psychoanthropological study of a prisoner [32, p. 65]. E. Ferry, by the way, opposed R. Garofalo in this matter, believing that “for less important crimes like rape, wounds, theft, fraud, it should be established that only after 2, 3 or 4 times of recidivism, the guilty should be sentenced to imprisonment together with the incorrigible” [33, p. 519].

All these positions clearly demonstrate the evolution of the theory of social danger of an individual, which gave rise to the punitive progression theory; the so-called administrative prejudice falls within its framework.

This approach was based on the idea that it is impossible to prevent crime, one should just protect him/herself from it. However, paradoxically, this theory turned out to be very viable even with the modification of the fundamental doctrinal thesis through the synthesis of social protection and prevention. The first codified sources of criminal law of the Soviet state serve as a clear illustration of this. Thus, Article 7 of

the 1922 Criminal Code of the RSFSR postulated the danger of a person, “identified by the commission of actions harmful to society, or by activities indicating a serious threat to public order”. The same was fixed in the 1926 Criminal Code of the RSFSR, which was in force until 1960. However, there was a greater emphasis on social protection.

To begin with, Article 7 sounded a little different: “In relation to persons who have committed socially dangerous acts or who pose a danger due to their connection with the criminal environment or their past activities, social protection measures of a judicial-correctional, medical, or medical-pedagogical nature are applied”.

Besides, Article 9 contained a reservation that “social protection measures cannot be aimed at causing physical suffering or humiliating human dignity and do pursue the task of retribution and punishment”. At the same time, the very name of punishment disappeared from the text of criminal law, and the means of criminal legal impact were called nothing else than social protection measures, reminding us of the previously analyzed theories.

Thus, on the one hand, the ability of criminal liability measures to constructively influence not only perpetrators of the crime, but also all other subjects of criminal law relations, including their positive aspect, was postulated. On the other hand, the idea of social protection, including from persons who have not committed a crime, but who pose a danger according to the established criminal law criteria, still prevailed. The analysis of the content of both codes, especially in the aspects of the hierarchy of protected objects, sanctions and punitive practices of the 1930–1950s, clearly indicates that the postulated goals were rather a statement of good intent than vital guidelines.

So, the emergence and widespread use of the administrative prejudice institution is quite understandable. It, in fact, embodied the practical essence of social protection with elements of prevention. At first, punishment was more or less mild, then – more harsh. At the same time, no assessment of the act was conducted. It just did not change. It was the personality assessment that was subject to change. In the first case we are talking about a preventive function, in the second – a protective one. Consequently,

the basis of both functions was not the act itself, but the person who committed it, in particular, the degree of its danger, analyzed by how much the person was susceptible to the intimidating effect of the sanction. There was no question about whether social protection measures had a preventive effect and whether the causal complex had such external determinants that could not be influenced by these measures and could not depend on the guilty person him/herself.

In this regard, the influence of sociological and anthropological theories developed by non-Soviet scientists on the developers of the Criminal Code of the RSFSR in 1922 and 1926 is undeniable. At the same time, it is necessary to talk about the synthesis of these theories with the communist ideology in the field of criminal law, based on the political expediency of repression against class enemies, enemies of the people, their relatives and loved ones, and in fact – all persons objectionable to the authorities [34, p. 57].

Further development of the domestic criminal policy demonstrates a steady tendency to focus on the preventive and correctional function of punishment and a gradual rejection of the idea of social protection. Thus, according to Article 20 of the 1960 Criminal Code of the RSFSR, “punishment is not only retribution for the crime committed, but is also aimed at correcting and re-educating convicts in the spirit of an honest attitude to work, exact execution of laws, and respect for rules of the socialist dormitory, as well as preventing the commission of new crimes by both convicts and other persons. Punishment is not intended to cause physical suffering or humiliation of human dignity”. A curious difference of goals under the 1926 Criminal Code of the RSFSR from the concept is recognition of the punitive nature of punishment. The non-inclusion of punishment in the list of goals, in our opinion, was solely due to the political expediency (the desire to distance from the sad experience of Stalinist repression, given that the 1960 Criminal Code of the RSFSR was developed just during destalinization and everything connected with it). At the same time, along with prevention, there appears the goal of correcting and re-educating convicts in the spirit of an honest attitude to work, exact execution of laws, respect for the rules of the socialist community.

It is worth mentioning that the new goals were of the same declarative nature as in the previous codes. This is confirmed by a persistent high level of recidivism and the constant search for alternative forms of counter-recidivism prevention based on alternative mechanisms of re-socialization to punishment. As an example, we can cite the measures introduced in the period of the 1960–1970s: conditional release of convicts from prison to work on chemical industry construction sites. According to this decree, conditional release was applied to able-bodied persons who showed a desire to redeem their guilt by honest work from among those convicted for the first time for a term of up to three years inclusive – who served at least one year of imprisonment; from those convicted for a term of up to ten years inclusive – who served at least two years; for a term of more than ten years – who served at least five years of imprisonment [35, p. 250].

In 1968, certain categories of convicts were conditionally released from corrective labor institutions and transferred to the enterprises subordinate to the Council of National Economy. The Decree of the Presidium of the Supreme Soviet of the USSR of June 12, 1970 introduced a suspended sentence with compulsory labor.

This experience (including creation of special commissariats to implement these measures organized not according to the territorial, but zonal-economic principle) showed a double positive effect. From a criminological point of view, the criminal activity of convicted persons was minimized due to the fact that they were withdrawn from their usual environment, in which their criminal tendencies had been formed, and were transferred to other regions of the country. In addition, they got the opportunity to work and, in fact, started a new life. From an economic point of view, punishments and criminal legal measures not related to imprisonment were of great economic importance for the country, since they ensured the organization of production and construction in those areas and geographical conditions where attracting free labor could be very problematic.

It is worth mentioning that the preventive goal was achieved not in the process of punishment, but just the opposite, through various forms of liberation from it.

However, returning to administrative prejudice, it should be noted that it also existed in the 1960 Criminal Code of the RSFSR, though embodying a completely different dogma about the preventive and corrective effect of punishment. In fact, it can be argued that we are dealing with two parallel courses of Soviet (and later Russian) criminal policy: 1) dogmatic, based on belief in preventive and correctional possibilities of punishment that is not supported by practice and objective statistics of recidivism [36]; 2) practical, based on real and proven forms of post-penitentiary resocialization of convicts. To date, this duality of courses persists, because with the immutability (except for minor editorial changes) of punishment goals, there is an active search and introduction of new forms of crime reduction, focused more on crime causes, rather than their consequences. These include a suspended sentence, commutation, exemption from criminal liability in connection with active repentance and reconciliation with the victim, and a new institution of probation [27].

Undoubtedly, administrative prejudice can be important as a scientific theory. But its implementation into the criminal law is fraught with a number of negative consequences.

First, it undermines foundations of criminal law, in particular, the basis of criminal liability (Article 8 of the Criminal Code of the Russian Federation) and qualitative characteristics of the crime (Article 14 of the Criminal Code of the Russian Federation). Thus, the basis for criminal liability is the commission of an act containing all elements of the corpus delicti provided for by criminal law. That is, each act must initially contain all elements of a crime, regardless of what was committed earlier. There can and should be no cumulative effect in this case. Repetition in itself does not make the act fundamentally more dangerous than the first one. A material element of public danger must be present in every act and correspond to its criminal status.

Second, administrative prejudice is a universal punitive tool that, if desired, can be applied to any act of a different legal nature. There is no need to invent a new corpus delicti. It is enough to add an element of repetition and there appears a crime. It can be done in case one has the will and expediency. In this sense, the leg-

islator can go even further in punitive progression, considering the third and subsequent times of committing the same thing as qualifying elements. At least it would fit into the same logic.

In this regard, it is necessary to analyze the institutions related to administrative prejudice in order to both identify their similarities and differences.

According to the method of construction, compositions with administrative prejudice are similar to blank and predicate crimes.

Regarding the first, it should be noted that this is primarily due to the following feature of the subject and method of criminal law, which ensures those social relations that are positively regulated by other branches of law, due to the need for prohibition and punitive response to the most dangerous obstacles that hinder their implementation. In the case of blank norms, the corpus delicti fully or partially borrows the violation description from the norm of another branch of law and adds one or more criminalizing elements of the act (for example, grave consequences).

The specifics of predicate crimes is that one act is a way of committing another (for example, violence in robbery).

In both cases, unlike compositions with administrative prejudice, it is the same – there is a logical connection between acts when one is the cause and the other is the effect. There is no such thing with administrative prejudice. Connection between the acts is temporary, not causal.

Connection between administrative prejudice and recidivism is conceptual. In fact, the legal structure of recidivism is based on the same principle as administrative prejudice, in particular, repeated commission of the act if a person has been punished for the previous one. In this regard, administrative prejudice is called “intersectoral recidivism” in the literature [3, p. 130]. In our opinion, the use of this term is rather unreasonable, since it can be differently interpreted and competes with the recidivism concept established in criminal law.

In fact, these two institutions have the same mechanism for considering the repetition of homogeneous actions with an increasing level of illegality and a progressive level of repression. The only difference is that in case of re-

cidivism the initial act already has a criminal-legal character. As for the socially dangerous act as the basis of criminal liability, it also stands in the background. The personality comes to the fore and it is the assessment of its danger caused by recidivism as a consequence of ineffective punitive impact (even in the name of recidivism types – dangerous, especially dangerous).

Penal prejudice is a kind of administrative prejudice. We are talking about the norm provided for by Article 314.1 of the Criminal Code of the Russian Federation “Evasion of administrative supervision or multiple non-compliance with restrictions or restrictions established by the court in accordance with the federal law”, which stipulates administrative prejudice, among other things, for repeated non-compliance by a person, in respect of whom administrative supervision is established, of administrative restrictions or restrictions imposed on him/her by the court in accordance with the federal law, accompanied with the commission of an administrative offense against the management procedure (except for the administrative offense, provided for in Article 19.24 of the Administrative Code of the Russian Federation).

The establishment of administrative supervision in relation to a person released from places of deprivation of liberty is regulated by penal legislation, in particular Article 173.1 of the Penal Code of the Russian Federation. In this regard, we can talk about the dual (administrative and penal) legal nature of administrative supervision over persons released from places of deprivation of liberty.

By the way, the Decree of the President of the Russian Federation No. 119 of March 2, 2021 fixes the Federal Penitentiary Service of Russia as the authorized state body exercising control over the behavior of persons released on parole. Since March 2021, the execution of this function has been entrusted to criminal executive inspections, whereas previously it was under the jurisdiction of the police. This measure, although not an administrative supervision, has a very similar character to the latter. It has the same legal and technical features and implementation mechanism. At the same time, it should be noted that evasion of this kind of

control is not covered by Article 314.1 of the Criminal Code of the Russian Federation.

Taking into account the presence of another kind of the phenomenon under consideration in the criminal law (combined or complex prejudice), the term “administrative prejudice” should be recognized as insufficiently voluminous and replaced with the concept of “sectoral prejudice”.

Conclusion

As a result of the study of the so-called administrative prejudice in criminal law, it is necessary to formulate a number of conclusions about the meaning and prospects of its application.

First, the legal phenomenon in question has nothing to do with the traditional institution of administrative prejudice, understood as a presumption of the legal force of a court decision or another jurisdictional body, eliminating the need to establish and prove the issues already considered. The essence of the institution studied in the framework of this article is punitive progression, which is based on the repetition of homogeneous actions with an increasing level of illegality (from administrative or penal to criminal law) and progressive repression.

Second, administrative prejudice shifts the emphasis of the criminal-legal assessment from the act to the person, thereby replacing the current basis of criminal liability with the danger of the person.

Third, the evolution of domestic criminal legislation, at least during the 20th century, led to the gradual abandonment of administrative prejudice as an institution based on archaic criminal law theories. The progression observed today of the increase in the composition with administrative prejudice, in fact, indicates a reduction of the criminal law.

In this regard, we believe that in domestic criminal law it is necessary to abandon the administrative prejudice as contrary to its evolutionary development and undermining its conceptual foundations, and the currently existing compositions with administrative prejudice should either be excluded from the criminal law, or constructed with regard to criminalizing features of the first act. Recidivism should be assessed exclusively within the framework of the relevant institutions of criminal law.

REFERENCES

1. Yunusov A.A., Serkova T.V. Administrative prejudice in Russian criminal law. *Aktual'nye problemy ekonomiki i prava = Russian Journal of Economics and Law*, 2015, no. 1, pp. 278–282. (In Russ.).
2. Kolosova V.I. Administrative prejudice as a means of preventing crimes. *Vestnik Nizhegorodskogo universiteta im. N.I. Lobachevskogo = Vestnik of Lobachevsky University of Nizhni Novgorod*, 2011, no. 5 (1), pp. 246–253. (In Russ.).
3. Goshayev I.M. Regulation of administrative prejudice in the criminal legislation of Russia: historical and legal analysis. *Yurist-Pravoved = Lawyer-Legal Expert*, 2017, no. 3 (82), pp. 130–135. (In Russ.).
4. Bezverkhov A.G. Administrative prejudice in the criminal legislation of Russia: origins, realities, prospects. *Vestnik Samarskoi gumanitarnoi akademii. Seriya: Pravo = Bulletin of the Samara Academy of Humanities. Series: Law*, 2010, no. 2 (10), pp. 39–43. (In Russ.).
5. Shcheglovitov I.G. Civil jurisdiction in criminal cases. In: *Zhurnal grazhdanskogo i ugovnogo prava. Kn. V* [Journal of Civil and Criminal Law. Book 5]. 1892. Pp. 65–117. (In Russ.).
6. Foinitskii I.Ya. *Kurs ugovnogo sudoproizvodstva: v 2 t. T. 2* [Course of criminal proceedings. In 2 volumes]. Saint Petersburg, 1996. 607 p.
7. Vas'kovskii E.V. *Uchebnik grazhdanskogo protsessa* [Textbook of civil procedure]. Ed. by Tomsinov V.A. Moscow, 2003. 441 p.
8. *Prakticheskoe rukovodstvo dlya sudebnykh sledovatelei, sostoyashchikh pri okruzhnykh sudakh: in 2 ch. Ch. 1* [Practical guide for judicial investigators – district court members: in 2 parts. Part 1]. Comp. by Makalinskii P.V. Petrograd, 1915. 456 p.
9. Raison A.K. On the 27th article of the Statute of Criminal Proceedings. In: *Zhurnal grazhdanskogo i ugovnogo prava. Kn. V* [Journal of Civil and Criminal Law. Book 5]. 1890. Pp. 1–72 (In Russ.).
10. Raison A.K. On the 29th article of the Statute of Criminal Proceedings. In: *Zhurnal grazhdanskogo i ugovnogo prava. Kn. IV* [Journal of Civil and Criminal Law. Book 4]. 1892. Pp. 1–72 (In Russ.).
11. Nemirovskii E. Prejudicial issues in criminal proceedings under Russian law. In: *Zhurnal yuridicheskogo obshchestva. Kn. 3* [Journal of the Law Society. Book 3]. 1897. Pp. 1–72. (In Russ.).
12. Pletneva O.E. *Vzaimnaya obyazannost' sudebnykh reshenii i aktov organov gosudarstvennogo upravleniya: avtoref. dis. ... kand. yurid. nauk* [Mutual obligation of judicial decisions and acts of public administration bodies: Candidate of Sciences (Law) dissertation abstract]. Sverdlovsk, 1989. 13 p.
13. Tarbagaeva E.B. Truthfulness, prejudice and legal force of a court decision. In: *Problemy dokazyvaniya po ugovnym delam: mezhvuz. sb. nauchn. tr.* [Problems of proof in criminal cases: collection of scientific works]. Krasnoyarsk, 1988. Pp. 52–60. (In Russ.).
14. Iskanderov R. On the prejudicial meaning of the sentence. *Sovetskaya yustitsiya = Soviet Justice*, 1990, no. 22, pp. 22–23. (In Russ.).
15. Korshunov N. M., Mareev Yu. L. *Grazhdanskii protsess* [Civil process]. Moscow, 2010. 928 p.
16. Dvoryanskov I.V. *Ugovno-pravovaya okhrana interesov sudebnoi vlasti: monogr.* [Criminal and legal protection of the interests of the judiciary: monograph]. Moscow, 2013. 377 p.
17. Yamasheva E.V. On the restoration of the institution of administrative prejudice in the criminal law of Russia. *Rossiiskoe pravo = Russian Law*, 2009, no. 10, pp. 69–79. (In Russ.).
18. Pikurov N.I. Administrative prejudice in criminal law: possible is it rehabilitation? In: *Ugovnoe pravo: strategiya razvitiya v 21 veke: mater. 4-i Mezhdunar. nauch.-prakt. konf.* [Criminal law: development strategy in the 21st century: proceedings of 4th International scientific and practical conference]. Moscow, 2002. Pp. 88–93. (In Russ.).
19. Ovechkina E.V. Return to administrative prejudice: “for” and “against”. *Zakon i pravo = Law and Legislation*, 2008, no. 2, pp. 52–53. (In Russ.).
20. Bavsun M.I., Bavsun I.G., Tikhon I.A. Administrative prejudice and prospects of its application at the present stage. *Administrativnoe pravo i protsess = Administrative Law and Process*, 2008, no. 6, pp. 6–9. (In Russ.).
21. Ivanov N. Bible and criminal law. *Sovetskaya yustitsiya = Soviet Justice*, 1992, no. 7-8, pp. 23–26. (In Russ.).

22. Esakov G.A. On the issue of general and criminal wrongfulness. In: Rarog A.I. (Ed.). *Ugolovnoe pravo: strategiya razvitiya v 21 veke: materialy 6-i Mezhdunar.i nauch.-prakt. konf., 29-30 yanvarya 2009 g.* [Criminal law: development strategy in the 21st century: materials of the 6th International scientific and practical conference on January 29–30, 2009]. Moscow, 2009. Pp. 168–172. (In Russ.).
23. Pikurov N.I. System properties of the subject of criminal law. In: Razgil'diev B.T. (Ed.). *Predmet ugolovnogo prava i ego rol' v formirovanii ugolovnogo zakonodatel'stva Rossiiskoi Federatsii: nauch.-prakt. konf. posvyashchennaya pamyati A.N. Krasikova (25 26 aprelya 2002 g.)* [The subject of criminal law and its role in the formation of criminal legislation of the Russian Federation: scientific and practical conference dedicated to the memory of A.N. Krasikov (April 25–26, 2002)]. Saratov, 2002. Pp. 20–22. (In Russ.).
24. *Kurs ugolovnogo prava: v 5 t. T. 1. Obshchaya chast'. Uchenie o prestuplenii* [The course of criminal law: in 5 volumes. Volume 1. General part. Doctrine of crime]. Ed. by Kuznetsova N.F., Tyazhkova I.M. Moscow, 2002. 611 p.
25. Kelina S.G. Modern trend in the development of criminal legislation and criminal law theory. *Gosudarstvo i pravo = State and Law*, 1994, no. 6, pp. 42–43. (In Russ.).
26. Bakhrakh D.N. *Administrativnaya otvetstvennost' grazhdan v SSSR: ucheb. posobie* [Administrative liability of citizens in the USSR: textbook]. Sverdlovsk, 1989. 201 p.
27. Zuev V.L. *Dokazyvanie po delam o prestupleniyakh s administrativnoi prejuditsiei: dis. ... kand. yurid. nauk* [Proving in cases of crimes with administrative prejudice: Candidate of Sciences (Law) dissertation]. Moscow, 1991. 190 p.
28. Tarbagaev A.N. Administrative liability in criminal law *Pravovedenie = Law Science*, 1992, no. 2, pp. 62–68. (In Russ.).
29. Lombroso C. *Grafologia*. Milano, 1895. 245 p.
30. Lombroso C. *Pazzi ed annomali. Citt di Castello*, 1890. 366 p.
31. Lombroso C. *Moe poseshchenie Tolstogo* [My visit to Tolstoy]. Zheneva, 1902. 13 p.
32. Inshakov S.M. *Zarubezhnaya kriminologiya: ucheb. posobie dlya vuzov* [Foreign criminology: textbook for universities]. Moscow, 2003. 383 p.
33. Ferri E. *Ugolovnaya sotsiologiya* [Criminal sociology]. Ed. by Poznyshev S.V. Moscow, 1908. 591 p.
34. Dvoryanskov I.V. *Ispolnenie nakazanii i inykh ugolovno-pravovykh mer bez izolyatsii osuzhdennykh ot obshchestva v istorii Rossii* [Execution of punishments and other criminal legal measures without isolation of convicts from society in the history of Russia]. Saint Petersburg, 2017. 111 p.
35. *Ugolovno-ispolnitel'noe pravo Rossii: uchebnyk dlya yuridicheskikh vuzov i fakul'tetov* [Penal law of Russia: textbook for law schools and faculties]. Ed. by Zubkov A.I. Moscow, 1997. 614 p.
36. Dvoryanskov I.V. Conceptual issues of the goals of punishment. *Penitentsiarnaya nauka = Penitentiary Science*, 2021, vol. 15, no. 2 (54), pp. 247–259. (In Russ.).
37. Dvoryanskov I.V. *Pravovye osnovy ispolneniya nakazanii, inykh ugolovno-pravovykh i ugolovno-protsessual'nykh mer, ne svyazannykh s izolyatsiei ot obshchestva: monogr.* [Legal bases of execution of punishments, other criminal-legal and criminal-procedural measures not related to isolation from society: monograph]. Moscow, 2023. 136 p.

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