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Administrative Restraint Measures Applied by Employees of the Penal System of the Russian Federation in Connection with the Commission of an Administrative Offense

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Abstract
Introduction: the article considers the theory and practice of applying administrative restraint measures implemented by employees of the penal system of the Russian Federation in case of the commission of an administrative offense. We substantiate an idea concerning the impact of the effectiveness of the use of administrative coercion measures by employees of the penal system not only on the overall level of penitentiary security, but also on state security in general. *Aim:* to reveal the specifics of application of administrative restraint measures in the penal system, taking into account the specifics of the law enforcement sphere. *Methods:* our research is based on the dialectical method of scientific cognition. The article uses general scientific (analysis, synthesis, induction, etc.), specific scientific and special methods of cognition (comparative legal, formal legal, statistical). *Results:* we reveal the essence of application of administrative restraint measures in the penal system; we study the practice of implementing the norms concerning the use of administrative restraint measures by employees of the penal system; we reveal the features of their application, taking into account the specifics of the sphere of law enforcement sphere, such as focusing on ensuring penitentiary security, preventing administrative offenses and crimes, application on the territory of penitentiary institutions in most cases, etc. We find out that the legal basis for the application of administrative restraint measures in the penal system of the Russian Federation needs to be improved. *Conclusions:* in order to increase the effectiveness of the practice of implementing administrative enforcement measures in the penal system, we formulate proposals to improve the norms of the current legislation: namely, Section V of the Law of the Russian Federation of July 21, 993 no. 5473-1 should contain definitions of the terms “use of physical force”, “use of special means”; the terms such as application and use of firearms should be distinguished; the wording “provision of medical first aid” should be replaced with “immediate provision of premedical aid to victims”. We also present arguments in favor of the expediency of supplementing Federal Law 197-FZ of July 19, 2018 “About the service in the Penal System of the Russian Federation...” with a provision that assigns to the employees of the penal system the duty to comply with the norms of criminal legislation (on necessary defense, extreme necessity and other circumstances excluding the criminality of the act) in cases of the implementation of administrative restraint measures.

Keywords: penal system; administrative coercion; Federal Penitentiary Service of Russia; employee of the penal system; administrative offense; administrative restraint measures; penitentiary security.

12.00.14 – Administrative law; administrative process.

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Introduction

In modern conditions, the issues related to ensuring national security are of particular importance to the Russian Federation, and a major role in ensuring national security belongs to law enforcement agencies. The Federal Penitentiary Service occupies an important place in the system of state bodies entrusted with the function of ensuring public order and public security, among other places, in high-security facilities and territories of the penal system of the Russian Federation, through the use of administrative coercion measures.

In the system of administrative coercion measures, administrative restraint measures (administrative protection measures [5, p. 7]) possess a significant law enforcement potential, since they are aimed at "stopping (suppressing) an illegal act or an illegal state" [14, p. 71]. At the same time, the prevention of offenses committed in the field of execution of criminal penalties is an important area of activity of the Federal Penitentiary Service of Russia, since such offences pose an immediate threat not only to the established order of functioning of institutions executing sentences and pre-trial detention centers, but also to state security from prison-related crime in general [30].

According to the results of our research, offenses related to the smuggling (attempted smuggling) of prohibited items to persons held in penal institutions are of an increased public danger [16]. This is due to the fact that the smuggled prohibited items can act as a tool for committing new offenses (crimes) not only on the territory of penal institutions, but also outside it. In particular, according to the official statistics of the Federal Penitentiary Service of Russia, in the period from 2015 to 2020, there has been a definite trend toward an increase (by about 20%) in prison offences, in remote form as well, while the number of inmates in the same period decreased by 21.83% (from 617.70 thousand to 482.83 thousand people [13]). At the same time, the number of citizens brought to administrative liability for smuggling or attempted smuggling of prohibited items to persons held in penal institutions decreased by more than 60% (from 5,009 in 2015 [20] to 1,818 in 2020 [21]).

The presented statistical data indicate an increase in the latency of administrative offenses committed for the smuggling of prohibited items into penitentiary institutions. Under the current circumstances, the ineffective application of administrative restraint measures in the activities of authorized subjects of the penal system may lead to the untimely detection and suppression of administrative offenses that infringe on the established management procedure in the sphere of functioning of penal institutions, and, as a result, to the commission of new offenses (crimes) in the future. These circumstances determine the relevance of the research topic.

Research methods

Our research is based on the dialectical method of scientific cognition. While preparing the article, we used general scientific methods of cognition, private methods of social sciences and special methods of legal science.

Among the general scientific methods used in the work, we can distinguish induction and deduction, system analysis, synthesis and generalization, comparison and analogy. In addition, we used sociological and statistical general scientific methods of cognition, as well as specific scientific methods in the field of jurisprudence: normative-logical, formal-legal and comparative-legal. Individual problems were considered as intersectoral, which was due to the tasks of a comprehensive analysis of relations within the framework of the topic under consideration. In addition, we used the methods of formal logic and lexical and grammatical analysis, with the help of which we interpreted legal concepts and terms.

Scientific analysis of statistical data of the Federal Penitentiary Service of Russia, the Judicial Department under the Supreme Court of the Russian Federation, and our own research findings was an integral part of the present work.

Discussion

The application of administrative restraint measures is focused, first of all, on the immediate termination of illegal actions at the moment when "the violation of law and order still lasts or there is a real threat to public relations protected by law" [14, p.74]. Administrative restraint measures are resorted to if "all other means of stopping illegal actions have been exhausted and there are no others that are able to ensure the protection of law and order and the safety of citizens at the proper level" [23, p.74], which explains their special nature.

For the most part, the application of administrative restraint measures is preceded by the refusal of a person to fulfill the administrative and legal duties and prohibitions imposed on him/her by the norms of the current legislation (for example, a ban on the presence of unau-

thorized persons at the high-security facilities of the penal system). In this regard, administrative restraint measures serve as a kind of law enforcement response on the part of the state to the illegal, including criminally punishable, behavior of an individual who refuses to comply with certain legal regulations [2].

Practical implementation of administrative restraint measures allows the state, represented by authorized bodies and their officials, to respond promptly to the occurrence of various kinds of legal anomalies with legal content and thereby maintain public order and public security in various spheres of public administration.

Thus, administrative restraint measures represent a certain set of basic administrative and legal techniques, methods and means of influencing the coerced subject, through the use of which it is possible to ensure the termination of administrative and other illegal acts immediately at the time of their commission, as well as to eliminate real threats to personal or public safety.

Most researchers name the following goals pursued by applying administrative preventive measures: termination (suppression) of illegal actions; elimination of illegal conditions; prevention of harmful consequences resulting from the occurrence of emergency social, natural or man-made situations; creation of optimal conditions for bringing offenders to justice [11; 18].

At the same time, the main purpose of applying these measures of administrative coercion in the penal system directly follows from the specifics of the department's activities – to ensure penitentiary security. Within the framework of our research, we define penitentiary security as the activities of institutions and bodies of the penal system, penal staff and other persons aimed at ensuring the vital interests of an individual, society and the state in the field of execution of criminal penalties and protection from potential and real threats of external and internal orientation.

Indeed, the level of penitentiary security largely depends on the effectiveness of the measures of administrative restraint implemented by the authorized subjects of the penal system. Competent application of the latter helps to prevent the smuggle of prohibited items and things into the territory of penal institutions, stop the commission of illegal actions by persons who violate the established management procedure in the field of execution of criminal penalties, eliminate other objectively existing threats to the personal safety of penal officers and other citizens, as well as security facilities of the penal system.

We should note that the theory of administrative law has developed many classifications of administrative restraint measures, but most authors adhere to the point of view about the division of administrative restraint measures into general (ordinary) and special [1, pp. 32–44; 7, p. 7; 15, p. 56]. We will take this approach as a basis for describing restraint measures in the penal system.

General measures in the penal system are mostly regulated by the Law of the Russian Federation no. 5473-1 of July 21, 1993 "On institutions and bodies executing criminal penalties in the form of imprisonment" (hereinafter – RF Law 5473-1) and the Code of Administrative Offenses of the Russian Federation. Thus, our analysis of the legislation and scientific literature on the issues under consideration allows us to identify the following general measures of administrative restraint in the activities of the penal system: the requirement to stop committing illegal actions (offenses and crimes), including actions that hinder the exercise of the legal powers of penal officers, stopping a vehicle, etc. Without dwelling in detail on this subgroup of administrative restraint measures, we should point out that, in fact, they represent the usual response of penal officers established by law; this response helps to stop illegal actions at the initial stage of their commission or until there are any adverse consequences for public relations developing in the field of execution of criminal penalties.

In our opinion, the most interesting is the subgroup of special measures of administrative restraint, which traditionally includes the use of physical force, special means and firearms. V.N. Oparin calls these measures direct coercion measures [19].

The legal basis for the implementation of special measures of administrative restraint in the penal system is provided by the norms of both international and Russian legislation, in particular: the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms, the European Prison Rules, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Federal Law 150-FZ of December 13, 1996 "On weapons", Federal Law 103-FZ of July 15, 1995 "On the detention of suspects and those accused of committing crimes", Law of the Russian Fed-

eration 5473-1 of July 21, 1993 “On Institutions and bodies executing criminal penalties in the form of imprisonment”, order of the Ministry of Justice of the Russian Federation 215 of October 30, 2017 “On approving the procedure for carrying and using firearms by employees of the penal system”, etc.

We agree with A.V. Minges who points out that an essential feature of special restraint measures is the possibility of their implementation in the form of physical influence on the offender, which makes it possible to exert the most obvious influence on their personal inviolability [17, p. 11]. As a result, while invading the sphere of rights and freedoms of a particular person, these measures are more endowed with the necessary potential to compel obligated persons to comply with the established prohibitions and restrictions, to perform their duties regardless of their will and desire [29]. In fact, all measures of administrative restraint have a common feature: they carry the risk of causing harm to the health of the person to whom they are applied.

The grounds, conditions and general procedure for the use of physical force, special means and firearms in the penal system are regulated by Chapter V of RF Law 5473-1. Having studied this law in detail, we come to the conclusion that it does not provide exhaustive definitions of the terms used, which are necessary when assessing the legality of the actions of penal officers. In particular, there is no definition of the term “physical force”, which provides for the possibility of finding evidence of coercive influence in the use of this method. So, for example, while implementing a special measure of coercion – physical force, penal officers have to engage into direct physical, that is, bodily, contact with the object of impact. In this connection, we believe that the use of physical force by penal officers should be understood as a forced physical (mechanical) influence, including combat fighting techniques, on the offender, based on the use of muscular strength and individual physical capabilities of each individual officer without the use of special means, weapons or other improvised means. We suggest this definition should be introduced in Article 29 “The use of physical force” of Law 5473-1.

In the context of measures of direct coercion, we agree with O.O. Lebedeva who notes that the nature of the restrictions and their impact on the offender should depend on the nature of the committed illegal acts (administrative offense or crime), as well as the strength of the offender’s resistance (counteracting) [14, p. 93].

If the application of physical force to the offender did not lead to the proper result, penal officers supplement it with special means of coercion. The penal system provides for the use of the following special means of coercion: special rubber truncheon, handcuffs and other means of restricting mobility, service dogs, special technical means for countering unmanned aircraft, etc. Also, if necessary, penal officers are authorized to use “any improvised means” in order to prevent the committed offenses (crimes) (Article 28 of Law 5473-1).

On the basis of the above, we believe that the use of special means of administrative coercion should mean the influence of penal officers on the offender implemented with the help of various special technical means and devices that are in service with the institutions and bodies of the penal system. We propose to introduce this definition in Article 30 “Application of special means” of Law 5473-1.

The use of firearms is the most dangerous way to implement administrative restraint measures, which to a greater extent carries risks to the life and health of the offender. In this regard, this measure is rarely used in the law enforcement activities of penal officers, which is confirmed by the results of our survey of more than 600 penal staff: only 13 employees (2.16% of the total number of respondents) had to use firearms against citizens (not convicted) in practice.

A.M. Silnikov points out that the process of using firearms consists in the direct use of its “power”, that is, the firearm properties of the weapon itself and the damaging properties of the bullet (projectile) [25, pp. 37–38]. That is why firearms are used in most cases when there is an objective need to stop crimes being committed, rather than offenses.

Thus, the list of administrative restraint measures implemented in the practical work of penal officers is very diverse, which allows thee measures to be combined with each other, based on the need to achieve the goal. In other words, practical implementation of these measures can vary from the requirement of the penal officer to stop illegal behavior to the use of firearms.

Administrative restraint measures in the penal system are one of the most effective ways to combat offenses (crimes) in the relevant sphere of public relations. They are universal, since their application makes it possible to pre-

vent the commission of not only administrative offenses, but also criminal offenses.

It is important to note that the scientific community also has other views on the nature of the special preventive measures being implemented. For example, S.Yu. Uchitel' takes a rather cardinal position regarding the nature of the use of physical force, special means and firearms. In particular, he suggests that priority in the legal regulation of special preventive measures implemented in the law enforcement activities of law enforcement agencies should be given exclusively to the norms of criminal law [27, p. 26].

A more compromise approach to the issues of legal regulation and the application of special preventive measures is presented in the works of V.A. Ponikarov and S.V. Ponikarov. The researchers believe that the use of firearms by penal officers is possible only against those persons who have committed a criminally punishable act, and attribute it mainly to measures of a criminal-legal nature implemented in the event of criminal-legal rather than administrative-legal relations. At the same time, they allow for the possibility of using physical force and special means to prevent both administrative offenses and criminal offenses [22, p. 119]. Earlier, such views were reflected in the works of V.E. Severyugin [24].

In our opinion, classifying firearms exclusively as measures of criminal coercion is not entirely justified and logical, despite the fact that this measure of restraint is most often applied to persons who commit criminally punishable acts. It seems that, based on the specifics of legal regulation, implementation and subject composition, the legal relations arising in connection with the use of firearms should be considered exclusively as administrative.

V.A. Mel'nikov takes as a basis the administrative law regulations concerning the restraint measure under discussion and also supports the fact that firearms are considered as an administrative coercive measure [15, p. 55]. At the same time, it is necessary to point out the universal nature of the implemented coercive measures, which implies that public relations regulated by the norms of other branches of law can be regulated by administrative coercion measures, even if there is a discrepancy between the subject of regulation and the object of protection if they do not have their own protective norms.

At the same time, our detailed analysis of the provisions of RF Law 5473-1 allows us to conclude that it distinguishes between two main types of actions with firearms: application and use. For example, Paragraph 12 of Article 14 establishes the right of institutions executing criminal penalties to apply and use firearms and other special preventive measures in cases and procedures established by law. These terms are used as synonyms in the text of the law and in Russian legislation as a whole; in our opinion, this is not entirely correct. B.P. Kondrashov, Yu.P. Solovei and V.B. Chernikov also drew attention to this terminological feature [12, p. 14].

We agree with A.I. Kaplunov [9, p. 14] and E.A. Altukhova [3, p. 43] who note that actions such as application and use of firearms should be distinguished depending on the object toward which the coercive influence is directed. Thus, the term "the application of firearms" implies "apply to kill, toward living objects", the term "the use of firearms" does not imply intentional harm to the life or health of a person directly, even if there is such a possibility.

In RF Law 5473-1, only Article 12 mentions the possibility of using and applying firearms in the practical activities of penal officers, further on it is said about the possibility of only its application. We believe that in order to bring the provisions of the law under consideration into line with the practice of implementing measures of direct coercion by authorized subjects of the criminal code, Article 31.2 needs to be amended.

First, the title of the article "The application of firearms" should be replaced by "The application and use of firearms".

Second, it is necessary to supplement the analyzed article with the statement concerning the possibility of using firearms by penal officers. To do this, in the wording "An employee of the penal system also has the right to apply firearms" the word "apply" should be replaced with "use".

The approach we have formulated regarding the introduction of the norms establishing the procedure for the application and use of firearms, could be found in the previously valid version of Article 31 of RF Law 5473-1. The consolidation of the term "use" in this norm seems necessary in cases when a penal officer, while suppressing illegal actions, directs a firearm not at living objects (people), but at objects of the material world (for example, vehicles) or tries to influence the psyche of the offender by firing a warning shot.

The above allows us to come to the conclusion that the administrative legislation regulates

the procedure for the application of firearms, while not only an administrative offense, but also a criminally punishable act can serve as the basis for its application. At the same time, as practice shows, in most cases, penal officers use firearms to prevent administrative offenses, and apply firearms to prevent the commission of criminal offenses, for example, to protect themselves and (or) other persons from encroachment, if this encroachment is associated with violence that is dangerous to life or health (as an option, in the case of committing a crime against life and health, provided for in Chapter 16 of the Criminal Code of the Russian Federation).

The connection of special measures of administrative restraint with criminal law norms is most clearly reflected in the works of A.I. Kaplunov [8, p.254] and A.V. Minges [17, p. 19]. The researchers believe that the termination of infliction of harm on law enforcement interests may be preceded by the need to apply special preventive measures regulated by the norms of administrative and administrative-procedural law. At the same time, these measures can be specified, in particular, by the norms of criminal law, if in any particular case criminal legal institutions are involved in their application: necessary defense; causing harm when detaining a person who has committed a crime; extreme necessity; physical or mental coercion; reasonable risk; execution of an order or a resolution. The interrelation of the norms of administrative and criminal law in the regulation of relations on the application of physical force, special means and firearms by penal officers is reflected in Article 28 of RF Law 5473-1.

The application of administrative restraint measures by penal officers is possible only taking into account the established limit and the correct choice of the means. The legal regulation of this limit by the state is an important condition (element) of the current system of administrative and legal guarantees for the use of coercive measures [4]. That is why we consider it necessary to assign to the employees of the penal system the obligation to comply with the norms of criminal legislation in the process of implementing administrative and jurisdictional powers to apply administrative coercion measures. In this regard, we propose that Article 3 of the Federal Law "On the service in the penal system of the Russian Federation" should be supplemented with Part 1.1 of the following content: "The activity of an employee of the penal system of the Russian Federation is subject to the norms of the criminal legislation of the Russian Federation on necessary defense, extreme necessity and other circumstances that exclude the criminality of the act".

In order to comply with the law in the process of implementing special measures of administrative restraint, penal officers are obliged to observe a certain order (sequence) of actions provided for in Article 28.1 of RF Law 5473-1 and including three main stages.

The first stage provides for the obligation of the penal officer to warn the offender about the intention to apply a special measure of coercion and provide sufficient time to fulfill their requirements. The form of this warning is not legally established. We believe that a verbal (oral) warning (a warning about the inadmissibility of illegal conduct) or a warning shot can act as such.

The second stage implies that the penal officer uses specific preventive measures – physical force, special means or firearms. The content of these actions should be determined by the "chosen method of coercive influence", taking into account the current situation [14, pp. 139–140]. At that, they can be either performed independently and in isolation from each other, or combined.

The penal officer chooses a preventive measure taking into account the current situation, the nature and degree of danger of illegal actions of persons, as well as the strength of their resistance [28]. The key condition for the implementation of the coercive measures under consideration is the assignment of the duty for the officer to ensure the least harm to the offender and to provide him with medical assistance if necessary. The least harm is inflicted on the offender due to the existence of restrictions and prohibitions related to the application of special means (Article 31.1) and firearms (Article 31.2).

At the same time, we should note that in practice, the penal officer who has caused harm to the offender's health can only provide them with first pre-medical, and not medical assistance. This is due to the fact that penal staff, as a rule, do not have a special medical education, and at the initial training courses they are trained only in the provision of first aid to victims. This circumstance indicates the need to adjust Article 28.1 of RF Law 5473-1, namely to replace the wording "urgent provision of medical assistance to victims" by "urgent provision of first aid to victims". In this case, the first pre-medical assistance to the victims may include stopping the bleeding, applying a bandage, performing artificial respiration, etc.

In addition to the problems associated with the legal regulation of the institution of administrative coercion in the penal system of the Russian Federation, authorized subjects of the penal system often face organizational difficulties in the process of its implementation. For example, in practice, penal officers may experience difficulties associated with calling medical workers to record injuries caused to citizens. This is due to the fact that medical staff of penal institutions is at the workplace, as a rule, until lunch (14.00), and the institution itself may be located in a remote area.

The last mandatory (third) stage consists in the mandatory communication of information (written report) by the penal officer to their immediate supervisor about each fact of the use of special administrative coercion measures within 24 hours. As we can see, the decision on the use of special coercive measures does not provide for the initiation of an individual specific case, the law only establishes a mandatory requirement for the procedure for recording each fact of their application with subsequent notification of the superior.

Thus, in the process of implementing administrative restraint measures, employees of the penal service are obliged to perform a certain sequence (algorithm) of actions, which allows them not to go beyond the legal field, that is, to observe the legality, and thereby not violate the rights of the forced persons.

Results

Measures of administrative restraint in the work of the penal system are carried out taking into account the specifics of the sphere of legal realization. We consider it necessary to highlight the following key features of their application:

– administrative and preventive measures in the penal system are applied in order to ensure penitentiary security, while the external form of coercive influence on an individual can be expressed both in mental (official requirement to stop illegal actions) and in direct influence on the offender (application of physical force, special means and firearms);

– legal grounds for the application of administrative preventive measures in the penal system can be as follows: illegal conduct of a person, including an objectively illegal innocent act; the occurrence of special conditions or events that pose an immediate threat to public order and public safety, as well as the safety of penal system premises and the persons who are on them. It is not necessary to establish the guilt of a person in order for the penal officer to make a decision on the actual application of administrative preventive measures. It is sufficient to have a material basis indicating the event of an administrative offense, crime or other real threat (flood, fire, etc.) for public relations that are developing in the field of execution of criminal penalties. V.I. Koshevatskii [12, p. 103], D.S. Dubrovskii [6, p. 24] and O.O. Lebedeva [14, p. 75] drew attention to this circumstance;

– application of administrative restraint measures does not establish the obligations of authorized subjects to determine the components of an offense (crime) in the process of their implementation. In addition, a number of researchers put forward a proposal on the need to establish a specific list of administrative offenses, the commission of which will act as a basis for the application of administrative restraint measures. For example, V.A. Tyurin adheres to this position [26, p. 27]. Meanwhile, we agree with the approach of A.P. Korenev and A.I. Korenev, who point out not only administrative, but also criminal liability in the definition of administrative restraint [8, p. 237]. The implementation of administrative coercion measures may precede the use of more stringent state enforcement measures;

– application of administrative restraint measures in the penal system is possible only in relation to “the present or actual illegal act” [25, p. 27], that is, they have a specific spatial and temporal characteristic and are applied directly during the commission of the offense;

- employees of the penal system, as a rule, apply administrative and preventive measures on the territory of penal institutions (correctional institutions and pre-trial detention centers), as well as on the territories adjacent to them, which are subject to regime requirements. In this case, we are talking about the need to comply with the principle of territoriality in the process of implementing administrative coercion measures by authorized subjects of the penal system. At the same time, current legislation allows for the implementation of administrative and preventive measures outside the territories of penal institutions, the list of these territories is contained in Article 28 of RF Law 5473-1;

– when applying preventive measures, employees of the penal system are obliged to be guided by the normative provisions of administrative legislation in terms of establishing general conditions, grounds and procedure for their application, as well as the norms of crimi-

nal legislation on circumstances that exclude the criminality of the act.

Thus, administrative restraint measures implemented in the administrative and jurisdictional activities of the authorized subjects of the penal system differ in a certain internal content, which provides for a specific purpose, grounds and procedure for their application, taking into account specifics of the functioning of the penal system of the Russian Federation.

The proposals we have formulated on amendments to the norms of the current legislation will contribute to improving the effectiveness of the implementation of administrative restraint measures in the penal system of the Russian Federation.

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