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Prejudice as a Technical Legal Means of Intersectoral Cooperation

VIKTORIYA V. KARPUNINA
Voronezh Institute of the Federal Penitentiary Service of Russia, Voronezh, Russia,
vikavi5@rambler.ru, https://orcid.org/0000-0002-5201-7395

Abstract

Introduction: at the present stage of criminal legislation development, certain technical and legal means that were used during the Soviet period are gaining popularity again. In particular, we are talking about an administrative prejudice. The return of this tool to the practice of the rule-making activities of the Russian state is natural, since it combines important qualities of flexibility and rationality of legal regulation. Despite the active use of administrative prejudice in current criminal legislation, scientists' opinions on the need for this technical and legal instrument are diverse – from approval to complete rejection. The reason for the contradictory attitude is a lack of knowledge of the legal nature of prejudice, which actualizes the conduct of a general theoretical analysis. *Methods*: general scientific methods of analysis and synthesis, induction and deduction combined with formal legal analysis of norms based on dialectical and materialistic principles of scientific knowledge. *Purpose*: to analyze the content of prejudice, forms of its legislative consolidation in order to determine the essence and legal nature as a technical and legal instrument of intersectoral cooperation. *Conclusions*: prejudice in Russian legal science and legislation is perceived differently and has a multidirectional character. In one case, this concept covers specific facts established, for example, in a court decision, in the other, it is about the interaction of norms belonging to different branches of law, but used in a complex to ensure flexible regulation of liability for unlawful acts. It is proposed to distinguish between the prejudice of fact and the prejudice of norms (administrative prejudice). Their positive and negative sides are analyzed. The assumption of the legal nature of administrative prejudice as a technical legal means of intersectoral interaction of norms is argued, and the need to use prejudice in the branches of Russian law is substantiated. Specific proposals to supplement Russian legislation with penal prejudice are formulated, and amendments to criminal and penal legislation, as well as the Administrative Code of the Russian Federation, are proposed.

Keywords: prejudice; administrative prejudice; legal regulation; legal technique; branch of law; legislation.

5.1.1. Theoretical and historical legal sciences.

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Introduction

Law has an orderly effect on social relations only because it is a complexly organized system. The legal system includes a division into branches and institutions. Consistency is connected not only with the existence of a whole complex of branches of law that ensure order and sustainable development of the society, but also with cohesion of the branches into a single whole. The most important basis for the unity of branches of law is constitutional law, which defines fundamental provisions of the state and social order. Thus, the idea of a rule of law and recognition of human rights and freedoms as the highest value are crucial for the development of any branch of law. Private and public, substantive and procedural law play their specific, system-forming role.

The mechanism of interaction of branches can be laid down within one branch and be represented by separate basic rules of law. For example, the consolidation of correction as a goal of criminal punishment determines the systemic unity of criminal and penal law. Intersectoral interaction, a rather complex research problem, has not been sufficiently studied. Solving this problem is important because it helps understand patterns of the legal system development and the mechanism of formation of new branches of law.

It is impossible to understand the content and nature of intersectoral cooperation without legal technology and the corresponding technical and legal tools. It is the legal technique as a means of constructing norms, institutions and industries that allows us to see internal mechanisms of this interaction.

We believe prejudice to be one of the means of realizing intersectoral cooperation. This concept is well known to legal science, but its unified interpretation has not been developed at the moment.

The following contextual meanings of prejudice are noteworthy:

1) exemption from the need to prove previously established facts. Thus, according to A.V. Kardants, prejudice is a legal technique that represents the rule of proof that the law enforcement decision of an authorized body that has entered into legal force, adopted in accordance with the procedure established by law on the presence or absence of a legal fact, is mandatory for all law enforcement agencies that resolve a legal case related to a previously resolved case about this fact [1, p. 30];

2) prejudice of a legal case in connection with the previous behavior of a person. For example, A.A. Chistyakov emphasizes common knowledge of the well-known term “prejudice” derived from the Latin “prejudicium” – a foregone conclusion, a decision made in advance, a circumstance that allows one to judge the consequences [2, p. 34]. It should be noted that within the framework of the second contextual meaning, scientists often talk about administrative prejudice.

These values are equally common in the legal literature. At the same time, it is impossible not to note their multidirectionality. In the first case, we are talking about prejudicial facts that are established and fixed in a document, in the second case, it is assumed that the norms of different industry affiliation are linked, which carry out differentiated regulation of the same relationship.

It seems that despite the terminological proximity these phenomena are different in nature and functional purpose. The development of a universal concept is extremely problematic. In this regard, it is highly questionable when the authors analyzing the definitions of prejudice in the first meaning suddenly abruptly turn to the consideration of the second [3, pp. 30–31]. In order to distinguish between these specific manifestations of prejudice, we consider it possible to talk about the prejudice of fact (law enforcement prejudice) and the prejudice of norms (rule-making prejudice). In the framework of this article, the concept of prejudice will be used in the framework of the second semantic meaning.

Legal nature of prejudice as a technical legal means of intersectoral cooperation

S.S. Zakharova rightly notes that there is no legal definition of administrative prejudice in Russian legislation. Most often, crimes with an administrative prejudice are characterized by the fact that the composition of the crime is the repeated commission of an administrative offense [4, p. 58].

If we consider administrative prejudice as a cause-and-effect complex, then the conditional cause is a repeated administrative offense, and the consequence is criminal punishment,

that is, the fate of the administrative case turns out to be a foregone conclusion and this decision has a criminal legal character. From this point of view, prejudice is more criminal than administrative in nature. However, the term "administrative prejudice" is commonly used in legal science, so we will adhere to the traditional dogmatic approach.

Experts in the field of criminal law have different opinions on the possibility of using prejudice. It seems that one of the reasons is the lack of a clear understanding of the nature of this technical legal means.

O.S. Kapinus, summarizing the opinions of the opponents of prejudice, draws attention to the following fundamental objections. This construction violates the constitutional prohibition on repeated conviction for the same crime; it blurs the boundaries between a crime and an administrative offense, criminal and administrative law [5, p. 38].

One of the opponents of administrative prejudice in criminal law is I.V. Dvoryanskov. The scientist notes that it is based on a fundamental doctrinal position on the transition of quantitative indicators of public danger of illegal actions to a qualitatively different level. This, in turn, replaces the grounds of criminal responsibility, i.e. the emphasis shifts from the act to the individual and in fact to his/her public danger. After all, if we consider homogeneous acts committed in a certain period of time, then it is hardly possible to say that another crime is more dangerous than the previous one [6, p. 107].

A.A. Chistyakov cites an interesting statement by opponents of administrative prejudice. So, no matter how many administrative offenses people commit, they do not pose public danger and therefore will not develop into a crime, like as "a hundred cats cannot acquire the qualities of a tiger" [2, p. 34].

At first glance, we would agree with this figurative comparison. However, it seems that in some cases the quantity may still change to a new quality, which necessitates the need for criminal law measures.

We believe that liability for alimony evasion can serve as a convincing example. Does the situation of children worsen if a parent systematically evades paying alimony? Does this create risks to the health and normal development of the child and destroy the moral norms associated with parental responsibility for children? Absolutely! Repeated commission of an administrative offense creates a strong cumulative effect, which consists in a significant weakening of the property status of children. It is worth mentioning that this effect is not present in all administrative structures. So, it is obvious that crossing the road in an unidentified place or speeding over the established permitted limit cannot lead to the consequences that are possible in case of alimony evasion.

The quantitative side of administrative offenses requires a response from the state. The multiplicity of administrative offenses indicates the ineffectiveness of the sanctions and existing preventive measures, moreover, undermines the authority of the state as an entity that ensures and guarantees order in society. Despite the fact that outwardly the act remains the same, its multiplicity increases and significantly transforms the risks of harming public relations. That is why, in order to ensure order in society and prevent offenses, the state is forced to raise certain administrative offences to the level of crimes. Public danger is defined by the increased risks of harming relationships protected by criminal law.

Administrative prejudice opponents point out the impossibility to criminalize an act depending on public danger of an individual, since such criminalization is a derogation from the principle of liability for the commission of a socially dangerous act punished under criminal law (Article 5 of the Criminal Law of the Russian Federation) connected with the reactionary theory of the "dangerous state of personality" [7, p. 85]. We consider it possible to only partially agree with the position of R.A. Sabitov. Indeed, a person cannot be a source of criminalization (although one can argue with this statement if one analyzes the criminal liability provided for in Article 210.1 "Occupying the highest position in the criminal hierarchy"). However, the fact that punishment is applied to a person is a characteristic of objective reality rather than of the subject and his/her inner world. The subject's inner world is represented by guilt, purpose, and motive for committing a crime. The fact of punishment cannot be included in the circle of a person's inner world, punishment is an external characteristic of an unlawful act. Punishment is

a consequence of the corresponding administrative offense.

The repeated commission of an administrative offense by a person does not characterize an increased public danger to a person, but an objective process of increasing the risks of increased harm to a particular public attitude, as well as to the rule of law, which is created and protected by the state. Objective risks are devaluation of the rule of law, increased nihilism, an increase in the number of victims, a decrease in the authority of the state and law enforcement agencies, and creation of conditions for the formation of shadow law and order. These risks are not related to personality, they are determined by external signs, namely illegal behavior.

The legal nature of prejudice should not be interpreted only through the prism of the subject who commits a repeat offense. Prejudice is not a tool for mechanical criminalization. Not every repeated administrative offense can be criminalized. Only individual elements of crimes are connected through prejudice. Prejudice cannot be interpreted as a means of triggering the repressive mechanism of the state. Thus, O.S. Kapinus notes that the 1960 Criminal Code of the RSFSR provided for about 15 offences with administrative prejudice [5, p. 37].

In this regard, we believe that fears of I.V. Dvoryanskov that the practice of criminalization may be excessively broad are not fully justified, "There is no need to invent a new composition. 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" [8, p. 158]. On the one hand, the scientist's concerns are understandable. The state may choose to abuse such a powerful technical and legal tool. However, it seems that these concerns have no proper grounds, and the previous experience of the RSFSR and Russia convincingly proves this. The state does not seek to automatically duplicate administrative offences and considers them as elements of crimes. We should emphasize the prudence and caution of the state's policy in this matter.

O.S. Kapinus rightly points out that administrative prejudice becomes an indispensable means of differentiating criminal and administrative responsibility in borderline cases when it is difficult to draw a clear line between a crime and an administrative offense [5, p. 39].

We consider fair the judgment of A.I. Zhmurova and A.N. Dobrova that the purpose of prejudice is to ensure the interaction of administrative and criminal legislation for their more effective operation [9, p. 64].

Compositions of administrative offenses and crimes cannot be considered as static values. Dynamism of public life determines organic interaction of administrative and criminal responsibility. In fact, both are a means of state (repressive) influence on public relations. The intensity, scale, and forms of this impact are historically determined and fluid. That is why it is extremely important to have mechanisms for the interaction of administrative and criminal law and the corresponding types of responsibility. Prejudice serves as the appropriate bridge that links the above-mentioned phenomena into a complexly organized dynamic system. Prejudice makes it possible not only to criminalize individual acts, but also to partially decriminalize them. Thus, A.A. Chistyakov points out that a number of acts are not initially declared crimes and are recognized as such in case the administratively punished person continues his/her criminal activity [2, p. 34].

Besides, O.S. Kapius draws attention to the fact that in Russia beatings without hooligan and extremist motives, malicious evasion of payment of funds for the maintenance of children or disabled parents, incitement of hatred or enmity, and humiliation of human dignity were partially decriminalized through administrative prejudice [5, p. 40].

A number of authors ignore these facts and interpret administrative prejudice somewhat one-sidedly considering it only a means of criminalizing acts. Thus, I.E. Bochkarev points out that draft laws submitted to the State Duma of the Federal Assembly of the Russian Federation, which provide for the decriminalization of certain crimes, are not always exclusively humane acts of the state, since they, along with decriminalizing norms, also contain provisions on administrative prejudice as a method of criminalization [10, p. 78].

However, we believe that the author substitutes concepts deliberately. Administrative prejudice cannot serve as a means of complete decriminalization; as a means of differentiated regulation it allows to establish responsibility for repeated acts. This is precisely its official

role. By excluding "instant" criminal liability, prejudice gives a second chance to a subject who may refuse to commit an illegal act again. If a person preserves this attitude, then there is a need for a stricter state reaction, such as criminal liability.

The legal nature of prejudice lies in the convergence and differentiation of the legal regulation of public relations through intersectoral interaction. In other words, prejudice is such a technical legal tool that provides the possibility of variably applying the method of legal regulation to those relations, the nature of which is characterized by dynamism, which determines a differentiated sectoral approach.

We believe that public danger of individual acts is not a static quantity. Variable public danger is characteristic of those acts that are on the verge of administrative and criminal liability. Prejudice makes it possible to make the regulation of liability for such acts flexible and rational.

The fact that, from a technical and legal point of view, there is currently no uniform practice for the registration of appropriate crime compositions may indicate the variability of public danger within the framework of administrative prejudice. As G.R. Barkaev rightly points out, the norms containing administrative prejudice are constructed in the law in different ways. In some cases (articles 116.1, 151.1, 157, 158.1, 201.2, 201.3, 215.4, 264.1, 280.3, 284.1, 285.6, 315 of the Criminal Code of the Russian Federation) in order to bring a person to criminal responsibility, it is necessary that a person be brought to administrative responsibility within a year, in others – only to 6 months (Article 212.1 of the Criminal Code of the Russian Federation). In addition, part of the criminal law norms containing administrative prejudice requires that a person commits two or more administrative offenses (Article 154.1 of the Criminal Code of the Russian Federation) [11, p. 278].

It is unacceptable to believe that there is an insurmountable wall between criminal and administrative responsibility and, consequently, the degree of danger of offenses and crimes is radically different. In our opinion, there are areas of relations that bring these types of responsibilities closer together. The institution of punishment is a vivid illustration. For example, a fine in accordance with Part 2 of Article 46 of the Criminal Code of the Russian Federation is set at five thousand to five million rubles, while administrative liability also allows for significant fines for citizens. So, in accordance with Part 2 of Article 11.6.1 of the Administrative Code of the Russian Federation, a fine for citizens may be set at up to one million rubles. Thus, it is quite possible that administrative liability will actually be more severe than criminal liability.

It is worth mentioning that the same size of the penalty in the form of a fine illustrates the similarity, proximity (if not identity) of public danger of individual acts.

We cannot agree with the opinion of I.V. Dvoryanskov that administrative prejudice is explained by the theory of punitive progression. As noted above, this is only one aspect of prejudice, which allows for partial decriminalization of acts. Thus, prejudice acts as a specific means of intersectoral communication and communication.

It does not seem reasonable to replace administrative prejudice with another concept – "administrative recidivism". Thus, S.S. Zakharova notes that administrative recidivism is the intentional commission of a homogeneous administrative offense by a person who has been brought to administrative responsibility and subjected to administrative punishment for committing an administrative offense, the repeated commission of which during the period when the person is considered to have been subjected to administrative punishment entails criminal prosecution [4, p. 61].

We believe that the concept of recidivism can be used to characterize the repeatability of illegal actions of superfluous people at the industry level and is applicable to the same type of phenomena. In the case of prejudice, there is a transition from one branch of law to another. Prejudice is an intersectoral tool. It is important for coordinated regulation of relations due to the complex and diverse impact of various branches of law.

Possibilities of prejudice as a technical legal means of intersectoral cooperation

O.S. Kapinus analyzing administrative prejudice points out that it dramatically increases preventive capacities of the corresponding criminal law prohibition. The institution of administrative prerogative increases the flexibility and adaptability of legal protection of the interests of the individual, society and the state,

provides the legislator with broader opportunities in terms of intersectoral differentiation of criminal and administrative liability. This legal structure allows the legislator to carry out mild criminalization of acts following the principle of economy of criminal repression [5, p. 39].

With the help of administrative prejudice, it is possible to decriminalize the first-time acts provided for in parts 1 of Article 171.1, parts 1, 2 of Article 180, Part 1 of Article 191, articles 322.2 and 322.3 of the Criminal Code of the Russian Federation [5, p. 41].

As noted by T.V. Martynova and I.A. Yakovenko, the use of prejudice contributes to procedural economy, thereby avoiding unnecessarily long consideration of cases in courts [12, p. 199].

We believe that prejudice should not be limited to an administrative one. This tool can be used not only to link criminal and administrative law. For example, penal law may become a promising direction for the development of prejudice. D.S. Dalanov rightly points out the need for legislative consolidation of penitentiary prejudice [3].

D.S. Dalanov believes that penitentiary prejudice should be understood as bringing a convicted person to disciplinary or other responsibility changing the conditions of serving a sentence only if preliminary measures of influence provided for by penal and other legislation are applied [3, p. 33]. In fact, the author refers to Part 3 of Article 74 and paragraph "a" of Part 7 of Article 79 of the Criminal Code of the Russian Federation that allow for the possibility of revoking a suspended sentence (conditional early release).

Assessing D.S. Dalanov's approach, we consider it possible to back the opinion of E.V. Novikova, who points out that administrative prejudice involves the transition from administrative to criminal responsibility for the same act. This is not reflected in Part 3 of Article 74 and Part 7 of Article 79 of the Criminal Code of the Russian Federation [13, p. 107]. Let us draw attention to the fact that the issue of revocation of suspended sentence or conditional early release is within the framework of criminal law. Prejudice should also be considered as a technical legal means of intersectoral cooperation. It is undesirable to apply this concept in the norms of one branch of law, although the mechanism of their interaction has obvious similarities. We believe that conditional early release, as well as suspended sentence, represent a different technical legal means, more specifically a legal presumption that can be refuted by relevant facts. In this case real, rather than conditional, criminal prosecution measures are used against the person.

In our opinion, penitentiary prejudice can be used within the framework of other approaches. To substantiate our point of view, let's turn to statistical data.

The number of serious violations of the established procedure for serving sentences is an important indicator of the regime stability. This indicator has been relatively stable for a long time. Thus, in 2020, 17,941 violations were committed (1,299 – threats, disobedience to a representative of the correctional institution administration or insults) [14, p. 325], in 2021 – 17,095 (1,440 –threats, disobedience to a representative of the correctional institution administration or insults) [14, p. 325], in 2022 – 14,684 (1,090 – threats, disobedience to a representative of the correctional institution administration, or insults) [15, p. 376], in 2023 – 15,460 (1,211 – threats, disobedience to a representative of the correctional institution administration, or insults) [16, p. 527].

It is worth noting that Part 2 of Article 321 of the Criminal Code of the Russian Federation also provides for liability for the threat of violence. Under this article, 230 people were sentenced in 2020 [17], 257 – in 2021[18], 341 – in 2022 [19], 301 – in 2023 [20], and 237 – in 2024 [21].

It seems that there is a serious problem related to the interpretation and differentiation of threat in criminal and penal legislation. In our opinion, it is almost impossible to make a consistent distinction between these threats.

It should be borne in mind that working in correctional institutions is associated with significant risks to the life and health of employees. In this regard, reliable security measures are needed. Numerous facts of bringing persons to justice for insults indicate serious risks to the life and health of employees. It is necessary to use prejudice in order to ensure a differentiated and consistent approach. We believe that the repeated commission of such a type of malicious violation as threats, disobedience to

a representative of the correctional institution administration, or insult should entail administrative responsibility, while the repeated bringing of convicted persons to administrative responsibility may well be considered as grounds for bringing a person to criminal responsibility.

In this regard, it is proposed to supplement the Penal Code of the Russian Federation, the Administrative Code of the Russian Federation and the Criminal Code of the Russian Federation with new norms using prejudice as a means of intersectoral communication.

We believe that the Penal Code of the Russian Federation can be supplemented by such an institution as penitentiary recidivism, i.e. repeated commission of the same type of malicious violation of the established order of punishment during the year in the form of minor hooliganism or threats, disobedience to a representative of the correctional institution administration. Accordingly, it is reasonable to introduce a new article with the same title as Article 321 of the Criminal Code of the Russian Federation in the Administrative Code of the Russian Federation, for example, Article 19.12.1 "Disorganization of the activities of institutions providing isolation from society". The disposition of the article might provide for liability for the commission of minor hooliganism, threats, and disobedience to a representative of the correctional institution administration by convicts during penitentiary recidivism. At the same time, Article 321 of the Criminal Code of the Russian Federation should be supplemented with Part 2.1 providing for criminal liability of convicts who have committed a malicious violation in the form of minor hooliganism, threats, and disobedience to a representative of the administration of a correctional institution during the period when convicts are subjected to administrative punishment under Article 19.12.1 of the Administrative Code of the Russian Federation.

These norms, on the one hand, would eliminate unjustified, arbitrary criminal prosecution of convicts and, on the other, would have a stronger preventive effect on convicts actively opposing the administration of a correctional institution and committing acts that disrupt normal operation of the institution.

Conclusion

The consistency of law and legal regulation is determined not only by internal qualities of law as a regulator, but also by the need for interaction between branches of law, which is achieved through various technical legal means, one of which is administrative prejudice.

Administrative prejudice is a technical legal tool that allows the state to ensure a differentiated approach in the implementation of legal liability measures. The study of the possibility and prospects of implementing administrative prejudice is of great practical importance. At the present stage, the state actively uses administrative prejudice, which determines the need for theoretical justification of the nature of this technical legal means. For example, a bill has currently been submitted to the State Duma providing for criminal liability for violating the requirements for the provision of mobile radiotelephone services to a foreign citizen and a stateless person by a person subjected to administrative punishment (Article 200.8 of the Criminal Code of the Russian Federation) [22]. The use of administrative prejudice is a stable trend in the legal policy of the modern Russian state.

The essence of administrative prejudice lies in the fact that it is the most important means of legal regulation, which is used by the state to implement a legal policy aimed at a coordinated, synergistic effect of criminal and administrative liability measures by ensuring differentiated regulation of issues of criminalization and decriminalization of individual illegal acts.

Prejudice, as a technical legal tool, plays an important role in ensuring the interaction of criminal and administrative responsibility, and allows for differentiated and fair regulation. It is important to take into account that prejudice makes it possible not only to criminalize certain illegal acts, but also to partially mitigate criminal repression.

There is certain regulatory potential of prejudice. Nowadays, in the Criminal Code of the Russian Federation and the Administrative Code of the Russian Federation, there are structures of illegal acts that could be combined through prejudice (for example, offenses in the field of migration). In addition, it is necessary to consistently include prejudice norms in penal legislation. The consolidation of the institution of penitentiary prejudice may have a positive impact on further development of penal legislation.

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INFORMATION ABOUT THE AUTHORS

VIKTORIYA V. KARPUNINA – Candidate of Sciences (Law), Associate Professor, associate professor at the Department of Socio-Humanitarian and State Law Disciplines of the Voronezh Institute of the Federal Penitentiary Service of Russia, Voronezh, Russia, vikavi5@rambler.ru, https://orcid.org/0000-0002-5201-7395

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