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# ADMINISTRATIVE ARREST: PROSPECTIVE LINES OF IMPROVEMENT THE LEGAL REGULATION



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The article analyzes the controversial provisions relating to the implementation in practice the provisions of the Code on Administrative Offences of the RF, which regulate the procedure of imposition and execution of administrative arrest. The author defines the ways of improving the institute of administrative arrest, formulates proposals clarifying certain provisions of the Code on Administrative Offences of the RF (hereinafter – CAO RF) concerning the procedure of imposition and execution of administrative arrest.

**Keywords:** administrative arrest, administrative punishment, administrative responsibility, administrative offense.

Administrative arrest is a special kind of administrative punishment, which is imposed by a judge in exceptional cases for certain types of administrative offences, since restricts the rights of citizens to freedom and personal inviolability.

Meanwhile, the results of activity of the federal courts of general jurisdiction and justices of the peace in 2012-2014 years indicate that the punishment in the form of administrative arrest has been imposed by the judges against 19.4% (in 2012), 18.02% (in 2013), 17.54% (in 2014) of persons from the total number of

people subjected to administrative punishment [7]. In 2014, the penalty in the form of administrative arrest was imposed against 1108024 people (an increase of +9.5% in respect of 2013). In addition, a steady tendency of increase in the number of articles, the sanctions of which provide for penalty in the form of administrative arrest, has been noted in the Code on Administrative Offences of the RF (hereinafter – CAO RF).

In accordance with part 1 article 3.9 of the CAO RF [1] (part 1 article 4.13 of the draft Federal Law № 703192-6 "Russian Federation Code on Administrative Offences (General Part)" [8]) administrative arrest lies in the detention of an offender in isolation from society and is set for a period of up to fifteen days, and for violation of the established order of organizing or holding meetings, rallies, demonstrations, marches or picketing or for organization of mass simultaneous holding and movement of people in public places that has entailed a violation of public order, for violating the requirements of state of emergency or the legal regime of counter-terrorism operation or for administrative offenses in the area of legislation on narcotic drugs, psychotropic substances and their precursors up to thirty days.

According to part 2 article 3.9 of the CAO RF (part 1 article 4.13 of the draft CAO RF) administrative arrest may be imposed in exceptional cases. The list of exceptional cases is missing in the CAO RF. We believe that administrative arrest can only be applied when considering the characteristics of offender's individuality and offense the use of other forms of punishment will not provide the implementation of tasks of administrative responsibility or if there are circumstances aggravating administrative responsibility.

Circumstances listed in article 4.3 of the CAO RF cannot be taken into account as aggravating if they are provided for as qualifying signs of certain formulations of administrative offenses.

In our opinion, administrative punishment in the form of administrative arrest should not be appointed in the presence of both mitigating and aggravating circumstances.

It is unacceptable to apply administrative arrest if a person, who committed an offense, is unable to bear the burden of property-related forms of punishment. It is for this reason nowadays there is no unified position on the issue of feasibility of application arrest as a form of administrative punishment in accordance with part 1 article 20.25 of the CAO RF in the legal community [5, 75].

List of persons in respect of whom the administrative arrest cannot be applied is provided in part 2 article 3.9 of the CAO RF. In December 2014 the Decision of the Russian Federation Government No. 1358 from December 12, (in the pursuance

of part 3 article 17 of the Federal Law "On the Order of Serving Administrative Arrest" [2]) approved the list of diseases that prevented the serving of arrest [3], thereby in fact, expanded the range of persons in respect of which a sentence in the form of administrative arrest cannot be applied. However, in practice, in imposing an administrative penalty judges do not always find out whether the person, against whom the proceedings are conducted, has diseases hindering the serving of arrest. As a result, in the course of taking a person, in respect of whom an administrative punishment in the form of administrative was imposed, during the medical examination the diseases hindering the serving of administrative detention get revealed, the duty officer of the place of serving administrative arrest denies admission to a place of serving administrative arrest and makes an entry in the log book. Decision on administrative arrest in fact remains unexecuted.

In accordance with part 1 article 32.8 of the CAO RF, a judge's decision on administrative arrest is executed by the employees of internal affairs bodies immediately after its taking. This situation is often justified by the fact that administrative arrest is preceded by administrative detention.

In accordance with part 1 article 27.3 of the CAO RF, administrative detention as a measure of maintenance of proceedings on cases of administrative offences is aimed at the execution of a decision on the case of an administrative offense. The period of administrative detention is included within the period of administrative arrest (part 3 article 3.9, part 3 article 32.8 of the CAO RF). A record (a decision of a prosecutor) on an administrative offence which entails an administrative arrest shall be delivered to a judge for consideration immediately after drawing it up (issuing it) (part 2 article 28.8 of the CAO RF), and a case on an administrative offence, the commission of which shall entail administrative arrest, shall be considered on the date of receipt of a record of the administrative offence and of other materials of the case, and in respect of a person subjected to administrative detention, shall be considered in 48 hours at most, as of the moment of its detention (part 4 article 29.6 of the CAO RF).

A similar procedure of execution of punishment in the form of administrative arrest was provided for in the Code on Administrative Offences RSFSR (hereinafter – CAO RSFSR) [4]. According to article 303 of the CAO RSFSR, a decision on administrative arrest was executed immediately after its adoption, and in accordance with part 2 article 266 of the CAO RSFSR, the decision of a district court or a judge on imposing an administrative penalty was final and not subject to appeal in the manner of proceedings on cases of administrative offenses, except for cases provided for by legislative acts of the USSR and RSFSR.

In accordance with the Decision of the Constitutional Court of the Russian Federation No. 9-P from May 28, 1999 "On the case of verification of constitutionality of the part 2 article 266 and paragraph 3 part 1 article 267 of the RSFSR Code on Administrative Offences in connection with the complaints of citizens E. A. Arbuzova, O. B. Kolegov, A. D. Kutyrev, R. T. Nasibulin and V. I. Tkachuk", there were no existing legislative acts of the USSR and RSFSR, as well as normative legal acts of the Russian Federation, which would provide for such exceptional cases [6].

In our opinion, the current simplified procedure for the application of administrative arrest – the only kind of administrative punishment restricting human rights and freedoms cannot be justified by any reasons, including the objectives of saving energy and resources that the state has to spend on the search and coercion of persons evading execution of a decision on administrative arrest. However it is difficult to trace a different cause that has influenced the decision of legislator to adopt part 1 article 32.8 of the CAO RF.

It should be noted that the implementation of duty to perform a decision on administrative arrest is protected by the norms of the Russian legislation, in particular part 2 article 20.25 of the CAO RF "Evasion of Execution of Administrative Punishment".

CAO RF does not provide for a mechanism for the suspension of execution of a decision on imposing an administrative punishment in the form of administrative arrest in connection with an appeal on the decision handed down by a judge (part 2, article 31.6 of the CAO RF).

In accordance with part 2 article 30.2 of the CAO RF, an appeal against a decision of a judge to impose an administrative penalty in the form of administrative arrest shall be subject to submission to a superior court on the day of the appeal's receipt, and according to part 3 article 30.5 of the CAO RF, the abovementioned appeal shall be subject to consideration within 24 hours, as of the moment of its filing, if a person, brought to administrative responsibility, is under administrative arrest.

The problem is that despite the clearly perceived in this norm desire of the legislator to speed up the process of considering complaints against the decisions on administrative arrest, review of such complaints within specified time is almost impossible in practice. The time frame of consideration of complaint against the decision on administrative arrest does not contain a real possibility to resolve in a day all the possible petitions, assign and carry out an examination, request additional materials, call people, whose participation is necessary in consideration of the complaint. So much narrowed deadlines for consideration of

a complaint, with the present workload of judges, work on the reduction of the quality of judicial decisions.

In addition, in this situation, a question arises: what is the legal status of the subjects of administrative offence who have filed a complaint, when the execution of penalty against them has already actually started.

In accordance with part 3 article 30.16 of the CAO RF, a complaint against the decision on administrative arrest shall be reviewed within two months from the day of its acceptance by the court. Experience shows that such a long period of consideration of a complaint against the decision on administrative arrest established by the legislator, in most cases, does not allow quick resolving the issue of restoration of violated rights and freedoms of a person, who has already been brought to administrative responsibility and has served his punishment.

In view of the above, taking into account that the legal rules governing the procedure of imposition and execution of administrative arrest must be thought out and not be in contradiction with the provisions of the Constitution of the Russian Federation, we offer:

1. To introduce to the Code on Administrative Offences of the Russian Federation from December 30, 2001, No. 195-FZ, the following amendments:

Part 2 article 3.9 of the CAO RF shall be reworded as follows:

"An administrative arrest shall be established and imposed only in exceptional cases for individual types of administrative offences, and it may not be applied in respect of pregnant women, women having children of fourteen or younger, persons who have not attained the age of eighteen or disabled people of group I and II, in the presence of a disease hindering the serving of administrative arrest, soldiers, citizens, called up for military training, as well as officers having a special rank and serving at Investigative Committee of the Russian Federation, internal affairs bodies, bodies and institutions of the penitentiary system, the State Fire Service, the bodies for control over the circulation of narcotics and psychotropic substances and the customs bodies".

Part 1 article 20.25 of the CAO RF shall be reworded as follows:

"Failure to pay an administrative fine within the time limit enshrined by this Code, – shall involve the imposition of the double amount of the unpaid administrative fine, but not less than two thousand rubles, or compulsory work for a period of up to 50 hours".

2. In order to ensure the execution of the decision on administrative arrest, it is necessary to enshrine in the order of the Ministry of Internal Affairs of the RF No. 83 from February 10, 2014 "On Approval of Internal Regulations in the Places of

Serving an Administrative Arrest" the duty of administration of the place of serving an administrative arrest to ensure the further fulfillment of imposed sentence at the end of treatment of persons subjected to administrative arrest.

3. Section XI "Medical Care of Persons under Administrative Arrest" of the order of the RF MIA No. 83 from February 10, 2014 "On Approval of Internal Regulations in the Places of Serving an Administrative Arrest" shall be added with paragraph $67^1$ as follows:

$67^1$. After the hospital treatment of a person against whom there was imposed a punishment in the form of administrative arrest, the administration of the place of serving of the administrative arrest provides a further execution of the imposed punishment.

4. Given that on January 20, 2015 a group of deputies introduced to the State Duma of the Federal Assembly of the Russian Federation the draft Federal Law No. 703192-6 "Code on Administrative Offences of the Russian Federation (General Part)", article 4.13 of which is devoted to administrative arrest, we consider it appropriate to include provisions that would exclude the possibility of immediate execution of a decision on the imposition of punishment in the form of administrative arrest to the draft of "Code on Administrative Offences of the Russian Federation (General Part)".

Elimination of these contradictions will increase the efficiency of administrative punishment in the form of administrative arrest and will properly protect the rights and legitimate interests of citizens.

**References:**


1. The Russian Federation Code on Administrative Offences No. 195-FL from December 30, 2001 (in idition of the Federal Law No. 265-FL from July 13, 2015) [Kodeks Rossiiskoi Federatsii ob administrativnykh pravonarushenii ot 30 dekabrya 2001 g. № 195-FZ]. *SZ RF – Collection of Law of the RF*, 2002, no. 1 (part 1), article 1.

2. Federal Law No. 67-FL from April 26, 2013 "On the Order of Serving an Administrative Arrest" [Federal'nyi zakon ot 26 aprelya 2013 g. № 67-FZ «O poryadke otbyvaniya administrativnogo aresta»]. *SZ RF – Collection of Law of the RF*, 2013, no. 17, article 2034.

3. RF Government Decree No. 1358 from December 12, 2014 "On approval of the List of Diseases that Prevent Serving of an Administrative Arrest" [Postanovlenie Pravitel'stva RF ot 12 dekabrya 2014 g. № 1358 «Ob utverzhdenii

perechnya zabolevanii, prepyatstvuyushchikh otbyvaniyu administrativnogo aresta»]. *SZ RF – Collection of Law of the RF*, 2014, no. 51, article 7442.

4. The Code on Administrative Offences of the RSFSR [Kodeks RSFSR ob administrativnykh pravonarusheniyakh]. *Vedomosti VS RSFSR – Gazette of the RSFSR Supreme Court*, 1984, no. 27, article 909.

5. Moiseeva O. V. About the Appropriateness of Application Administrative Arrest as a Form of Administrative Punishment [O tselesoobraznosti primeneniya administrativnogo aresta kak vida administrativnogo nakazaniya]. *Vestnik Tyumenskogo gosudarstvennogo universiteta – Bulletin of the Tyumen State University*, 2013, no. 3.

6. Decision of the Constitutional Court of the Russian Federation No. 9-P from May 28, 1999 "On the case of verification of constitutionality of the part 2 article 266 and paragraph 3 part 1 article 267 of the RSFSR Code on Administrative Offences in connection with the complaints of citizens E. A. Arbuzova, O. B. Kolegov, A. D. Kutyrev, R. T. Nasibulin and V. I. Tkachuk" [Postanovlenie Konstitutsionnogo Suda Rossiiskoi Federatsii ot 28 maya 1999 g. № 9-P «Po delu o proverke konstitutsionnosti chasti vtoroi stat'i 266 i punkta 3 chasti pervoi stat'i 267 Kodeksa RSFSR ob administrativnykh pravonarusheniyakh v svyazi s zhalobami grazhdan E. A. Arbuzovoi, O. B. Kolegova, A. D. Kutyreva, R. T. Nasibulina i V. I. Tkachuka»]. *Rossiiskaya gazeta – Russian Gazette*, from June 9, 1999.

7. *Summary statistics on the activities of the federal courts of general jurisdiction and justices of the peace* [Svodnye statisticheskie svedeniya o deyatel'nosti federal'nykh sudov obshchei yurisdiktsii i mirovykh sudei]. Available at : http://www.cdep.ru (access : 04.06.2015).

8. *http://asozd2.duma.gov.ru/main.nsf/%28SpravkaNew%29?OpenAgent&RN= 703192-6&02* (access : 27.05.2015).