

Information for citation:

Ankudinova, Ya. S. (2022) Some Aspects of Bringing to Administrative Responsibility Staff of the Prosecution of the Russian Federation. *European and Asian Law Review*. 5 (3), 5–11. DOI: 10.34076/27821668_2022_5_3_5.

UDC 342.951

BISAC LAW001000

DOI: 10.34076/27821668_2022_5_3_5

*Research Article***SOME ASPECTS OF BRINGING TO ADMINISTRATIVE RESPONSIBILITY
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The article deals with the issue of the specifics of bringing prosecutors to administrative responsibility of bodies and institutions of the prosecutor's office of the Russian Federation. The main directions for improving the procedure and procedure for conducting an inspection (official investigation) of the fact that a prosecutor has committed an offense are considered. General scientific methods of cognition – materialistic and dialytic, method of analysis and synthesis, special legal methods: formal legal method and method of legal modeling. Based on an analysis of the judicial practice of bringing to administrative responsibility and the practice of bringing prosecutors to disciplinary responsibility in the framework of inspections (official investigations) in relation to prosecutors of bodies and institutions of the prosecutor's office of the Russian Federation. It is proposed to recognize, taking into account the prevailing practice, the existing mechanism for bringing prosecutorial employees of bodies and institutions of the prosecutor's office of the Russian Federation to administrative responsibility as having significant shortcomings, to make advising adjustments on the part of the Prosecutor General's Office of the Russian Federation in the form of methodological recommendations, to work towards improving the mentoring mechanism and organizing personnel work in this direction.

Key words: *responsibility, prosecutor, administrative responsibility, responsibility of prosecutors, office investigations*

Introduction

As part of the study of the institute of participation of the prosecutor in the proceedings on administrative offenses, several main areas of consideration of the prosecutor as a special subject of the said proceedings are traditionally distinguished. So the prosecutor can be considered in the aspect of his participation in the role of the supervisory authority in accordance with Art. 24.6 of the Code of Administrative Offenses of the Russian Federation, exercising 'supervision over observance of the Constitution of the Russian Federation and the implementation of laws in force on the territory of the Russian Federation in the proceedings on administrative offenses, with the exception of cases that are in the proceedings of the court' (Dobrorez, 2016). The prosecutor is considered as a participant in proceedings on cases of administrative offenses (Basov, 2015; Vinokurov, 2017; Islamova, 2015; Melekhin, 2016). Participation of the prosecutor in the proceedings on cases of administrative offenses, which are his exclusive competence in accordance with Art. 28.4 of The Code of Administrative Offenses of the Russian Federation also acts as a kind

of independent direction (Mamatov, 2021). The prosecutor, as a participant in the said proceedings, can be considered within the framework of the exercise of his powers in the field of bringing to administrative responsibility persons with a special legal status, enshrined in the Order of the General Prosecutor's Office of Russia 'On the procedure for the exercise by prosecutors of powers in the field of bringing to administrative responsibility persons with a special legal status' dated November 23, 2015 No. 645 (Shilyuk, 2014; Subanova, 2018). In addition to the above areas of scientific research, it seems fair to single out such a promising area as the responsibility of prosecutors for committing administrative offenses, when the prosecutor acts as the subject who committed the offense (Aslanov, 2017; Balakleets, 2018; Verstunina, 2008; Leshchina, 2019; Likhodaev, 2018; Potekhin, 2017; Osintsev, 2019).

The institution of bringing the prosecutor to administrative responsibility is one of the little-studied areas, and is often considered in fragments within the broad administrative and legal issues. However, modern realities require us to comprehensively study the problems that arise when prosecutors are brought to administrative responsibility.

The purpose of the study is to identify the existing problems in the practice of bringing prosecutors to administrative responsibility and consider options for resolving existing controversial issues for a possible detailed study of this issue in the framework of subsequent scientific research.

Results

As a result of the analysis of the practice of bringing prosecutors to administrative responsibility, it becomes obvious that there are a number of main areas for improving work in this area:

1. To issue guidelines at the level of the General Prosecutor's Office of the Russian Federation, in which to establish an approximate list of administrative offenses that, within the framework of an internal audit, can be qualified as disciplinary offenses indicating, respectively, acceptable and objective types of disciplinary punishment and provide for exceptional offenses for which disciplinary liability cannot be applied.

2. To carry out work on the development of a detailed mechanism for bringing prosecutors to administrative responsibility, the procedure and adopted acts in this area, with amendments to Art. 1.4 of the Code of Administrative Offenses of the Russian Federation.

3. To organize at the proper level informing the population regarding the prosecution of prosecutors, especially pay attention to offenses that have received wide publicity in the media.

4. Take measures to improve the work of the system of legal education, preventive measures and the application of comprehensive measures to prevent, detect and suppress the commission of administrative offenses and organize effective interaction with law enforcement agencies; pay due attention to the issue of modernizing the work of the mentoring institution, considering the issue of methods for its implementation and the possible need to develop incentive measures in this area.

Discussion

Special conditions for the application of measures to ensure the proceedings in the case of an administrative offense and bringing to administrative responsibility of prosecutors are established by the provisions of Part 2 of Art. 1.4 of the Code of Administrative Offenses of the Russian Federation, which has a reference norm to federal laws, and so Art. 42 of the Federal Law No. 2202-1 'On the Prosecutor's Office of the Russian Federation' defines the following features: the first is the existence of the exclusive competence of the prosecutor's office to verify the report of the fact of an offense committed by the prosecutor, and the second is special conditions for the application of measures to ensure proceedings in cases of administrative offenses in relation to prosecutors that 'detention, bringing, personal search of the prosecutor, search of his belongings and the transport used by him are not allowed, except in cases where this is provided for by federal law to ensure the safety of other persons and detention when committing a crime'.

If we speaking about the verification of the report on the fact of an offense committed by the prosecutor, it is worth noting that this verification is not a basis for his release from punishment, but only provides an opportunity to establish objective data in considering the issue of holding a prosecutor's office employee accountable and the presence in his actions of violations of the Code of Ethics of the Prosecutor's Office employee and grounds to apply disciplinary liability to the employee.

Verification of a report on the fact of an offense committed by a prosecutor is carried out on the basis of the provisions of the order of the Prosecutor General of the Russian Federation dated April 18, 2008 No. 70 'On conducting inspections (official investigations) in relation to prosecutors of bodies and institutions of the prosecutor's office of the Russian Federation' (however, there is judicial practice which reflects the fact of applying the provisions of the Instruction approved by the Order of the Prosecutor General of Russia dated April 28, 2016 No. 255 'On approval of the Instruction on the procedure for conducting internal audits in relation to prosecutors of bodies and organizations of the prosecutor's office of the Russian Federation' 'because they do not indicate that during the audit procedural violations were committed that led or could lead to an incorrect establishment of the circumstances of the misconduct'¹ the identification of these Instructions seems unreasonable) and acts as a factor guaranteeing the independence and autonomy of the prosecutor's worker, in order to protect him from unlawful influence or prosecution for decisions or actions that he takes in the performance of his duties within the framework of his work duties.

Speaking about the features of the application of the provisions of Art. 42 of Federal Law No. 2202-1 'On the Prosecutor's Office of the Russian Federation' it should immediately be noted that this category does not include prosecutors who have ceased service in the prosecutor's office – the provisions of Part 1 of Art. 42 of the Federal Law 'On the Prosecutor's Office' do not apply to them. So, A. A. Kopeikin appealed to the court with a complaint against the decision of the magistrate to bring him to administrative responsibility for hours.1 Article. 12.8 of the Code of Administrative Offenses of the Russian Federation, in which he asks to cancel the appealed decision and terminate the proceedings in connection with the fact that he is an employee of the prosecutor's office, from 03/02/1995 to 12/29/1997 he was a prosecutor, a decision was made in this case – to leave without satisfaction².

At the same time, if the person at the time of the commission of the administrative offense was an employee of the prosecutor's office, and before the consideration of the case on the merits, he was dismissed, in this case, the provisions of this article apply – Part 1 of Art. 42 of the Federal Law 'On the Prosecutor's Office'³.

So there are a number of court decisions on recognizing a decision in a case of an administrative offense as illegal due to the fact that officials of law enforcement and regulatory bodies listed in Chapter 23 of the Code of Administrative Offenses of the Russian Federation 'Judges, bodies, officials authorized to consider cases of administrative offenses' independently initiate cases of administrative offenses against employees of the prosecutor's office, which, accordingly, violate the norms of the law and give rise to the practice of canceling such decisions by the courts⁴.

For example, traffic police officers stopped the car in connection with the suspicion that the front windows of the car were tinted. The driver turned out to be an active employee of the prosecutor's office, which was reported to the traffic police, in violation of the requirements of the current legislation, a protocol on an administrative offense was drawn up against him under Part 3.1 of Art. 12.5 of the Code of Administrative Offenses of the Russian Federation, the vehicle was searched, a measure of administrative detention was applied to it and delivered to the duty unit of the Russian Ministry of Internal Affairs for the city of Smolensk, where it was also searched, in addition, special means were used – handcuffs. These actions were declared illegal⁵, and later the employees were found guilty of exceeding their official powers, they were sentenced to imprisonment from 3.5 to 4 years probation with a 2.5 year ban on holding positions in the civil service.

If a person, in the proceedings on an administrative offense, hid or did not report that he was an employee of the prosecutor's office, in connection with this he was held liable on a general basis, subsequent complaints or protests from a higher prosecutor about violation of the procedure for bringing

¹ Decision Soviet District Court of Makhachkala (Republic of Dagestan) dated August 26, 2019 in case No. 2-4234/2019, available at: <https://sudact.ru/regular/doc/pHP0Kxs126dn/>.

² Decision Leninsky District Court (Republic of Crimea) dated May 8, 2018 in case No. 12-53/2018, available at: <https://sudact.ru/regular/doc/kAfqfxkK2mHV/>.

³ Decision of the Surgut City Court (Khanty-Mansiysk Autonomous Okrug-Yugra) dated February 5, 2019 in case No. 12-46/2019, available at: <https://sudact.ru/regular/doc/gggj99Oqvsr5/>.

⁴ Decision of the Ermakovskiy District Court (Krasnoyarsk Territory) dated August 26, 2019 in case No. 12-85/201, available at: <https://sudact.ru/regular/doc/p4AwYW1EH5Y/>; Decision of the Borisoglebsk City Court (Voronezh Region) dated July 3, 2018 in case No. 12-50/2018, available at: <https://sudact.ru/regular/doc/7xOnvFjPek6M/>.

⁵ Decision of the Industrial District Court of Smolensk (Smolensk Region) dated September 12, 2016 in case No. 2A-3566/2016, available at: <https://sudact.ru/regular/doc/1dG1RDPrlsgm/>.

to responsibility with reference to part 2 Art. 1.4 of Administrative Code of the Russian Federation are not subject to satisfaction. For example, the Supreme Court of the Republic of Dagestan did not satisfy the protest of the Deputy Prosecutor of the Republic of Dagestan, citing the fact that he did not inform the traffic police inspector about his status as a person performing certain state functions, namely the position of the senior prosecutor of the prosecutor's office of the Chechen Republic⁶.

A similar situation, but this time the employee was dismissed from service based on the results of an internal audit, when, having violated the Prosecutor's Oath, the requirements of the Code of Ethics of the prosecutor's employee, wanting to hide his place of service, in connection with the violation of the Traffic Rules, the assistant prosecutor I.A. Yagofarova misled the traffic police officers by hiding the place of service, which led to the police officers conducting, in fact, an illegal check and making an illegal decision⁷.

From the above examples, we can conclude that the concealment of official position by prosecutors in the event of an administrative offense and subsequent attempts to cancel, in fact, illegal decisions will not be successful, which is confirmed by the above practice of court decisions. In this connection, the opinion of Osintsev D.V. regarding the fact that 'it is enough to mislead representatives of the administrative authorities... and using the status features to avoid administrative responsibility, retaining their official position, which can then be used to exert excessive influence, persecution and repression against... representatives of administrative bodies'(Osintsev 2018: 36) seems to be controversial.

From the provisions of Art. 22, paragraph 2, art. 25, art. 42 of the Law 'On the Prosecutor's Office', Art. 28.1, 28.4, 28.8 of the Code of Administrative Offenses of the Russian Federation, the presence of the powers of the prosecutor to issue a decision to initiate proceedings on an administrative offense against a lower-ranking prosecutor follows. So, upon completion of the verification of the report on the fact of the commission of an offense by the prosecutor's employee, if there are sufficient grounds and evidence, the prosecutor who conducted the internal audit issues a decision to initiate an administrative offense case on the day the prosecutor of the constituent entity of the Federation approves the conclusion of the audit, which is signed by the official who compiled it and the person – employee bodies of the prosecutor's office, in respect of which an internal check was carried out and in respect of which a case on an administrative offense was initiated, after which a copy of the decision is handed over to the prosecutor, in respect of whom it was issued, against signature. Further, I am based on Part 1 of Art. 28.8 of the Code of Administrative Offenses of the Russian Federation, the original decision, together with the materials of the official investigation, is sent to the judge, to the body, to the official authorized to consider the case of an administrative offense.

An analysis of judicial practice shows that a greater number of offenses are committed by employees of the prosecutor's office in the field of traffic, attention to this topic was also reflected in a number of studies (Afonin, 2020).

It is worth noting here that there are certain aspects of involving prosecutors in connection with the presence of the Administrative Regulations for the execution by the Ministry of Internal Affairs of the Russian Federation of the state function for the implementation of federal state supervision of compliance by road users with the requirements of the legislation of the Russian Federation in the field of road safety⁸.

So, according to paragraph 291, in the event that an employee reveals sufficient data indicating the presence of an event of an administrative offense committed by a person who has presented documents confirming the performance of certain state functions (deputy, judge, prosecutor and other person), measures to ensure production are applied to the specified person in the case of an administrative offense and bringing to administrative responsibility is carried out in accordance with special conditions (in accordance with the provisions of part 2 of art. 1.4 of the Code of Administrative Offenses of the Russian Federation).

In accordance with paragraphs 303, 304 of the above Administrative Regulations, if sufficient data is found indicating the existence of an event of an administrative offense committed by a judge or a prosecutor,

⁶ Resolution of the Supreme Court of the Republic of Dagestan dated May 14, 2014 in case No. 4A-80/2014, available at: <https://base.garant.ru/124751456/>.

⁷ Ruling of the Supreme Court of the Republic of Bashkortostan dated March 17, 2016 in case No. 33-3960/2016, available at: <https://sudact.ru/regular/doc/cMw7gAaRkMxS/>.

⁸ Order of the Ministry of Internal Affairs of Russia dated August 23, 2017 No. 664 'On approval of the Administrative Regulations for the execution by the Ministry of Internal Affairs of the Russian Federation of the state function of implementing federal state supervision over compliance by road users with the requirements of the legislation of the Russian Federation in the field of road safety'.

the officer draws up a report about this, which, along with other materials, is immediately transferred to the head of the traffic police unit for their subsequent forwarding to the prosecutor, superior prosecutor.

If there are sufficient grounds to believe that the judge or prosecutor, while driving a vehicle, is in a state of intoxication, the officer, in order to ensure the safety of other persons, takes measures to stop the further movement of the vehicle until the conditions preventing the further movement of the vehicle are eliminated, which is reported to the duty officer. department of the traffic police unit (on duty of the territorial body of the Ministry of Internal Affairs of Russia at the district level) to immediately inform the higher prosecutors.

According to statistics, 4,088 prosecutors were brought to administrative responsibility for committing administrative offenses in the field of traffic in 2019, and in 2018, 3,532 employees. This was paid attention to. As part of the verification of the report of the fact that an offense was committed by an employee of the prosecutor's office, in the manner prescribed by order of the Prosecutor General No. 70, 9 people were dismissed from the prosecutor's office in 2019, in 2018 – 7. So the assistant prosecutor of the Republic of Dagestan drove a car that was not registered, not having the right to drive a vehicle, at the same time he showed the traffic police officers who stopped him an official certificate of a prosecutor's worker; assistant prosecutor of the district of Chelyabinsk, Chelyabinsk region, driving a vehicle while intoxicated, hit a traffic police car and fled the scene. At the same time, in this direction, cases of violation by the traffic police, the Ministry of Internal Affairs of the Russian Federation of the procedure for bringing prosecutors to administrative responsibility are revealed, subsequently the prosecutors took measures to cancel unlawful decisions in relation to employees of the prosecutor's offices of the Leningrad, Magadan and Sakhalin regions.

Conclusions

As a result of the analysis of the practice of bringing prosecutors to administrative responsibility, it becomes obvious that the guarantees provided to prosecutors in the field of administrative responsibility are not their personal privilege.

The presence of a special procedure for bringing to responsibility for committing an administrative offense an employee of the prosecutor's office – conducting an internal audit, is more often not in a positive way in relation to the prosecutor's worker. There are cases when, in connection with an internal audit, an employee was dismissed from the prosecutor's office, but was not later held accountable in the case that became the basis for this audit or was acquitted. The very fact of conducting an audit against a prosecutor's worker indicates that the prosecutor, by his behavior, raised doubts about the conscientious performance of his official duties and may serve as a basis for dismissal in accordance with subparagraph 'c' paragraph 1 of Art. 43 of the Law 'On the Prosecutor's Office', regardless of the result of the audit.

At its core, this check is of a public law nature, providing increased legal protection of prosecutors precisely because of the publicly significant powers they exercise, contributing to the unhindered activities of the prosecutor's office, its independence and independence.

But it is worth noting that this mechanism inherently contradicts the principle of uniformity in the practice of administrative application and the principle of publicity in making decisions on administrative cases.

There is an opinion that the presence of a peculiar approach to holding prosecutors accountable contradicts the fundamental constitutional principle of the equality of all before the law, due to 'the impossibility of tracking the fate of an administrative offense and imposing a sanction for it is not presented to an unlimited circle of people' (Selivanov, 2019). The lack of adequate information to the public about the facts of bringing employees to administrative and disciplinary responsibility is a kind of flaw. At the same time, the presence of publications in the media regarding the commission of offenses by prosecutors arise upon their commission and are often very much discussed. In this connection, it seems fair to intensify work in relation to bringing information to the public regarding the prosecution of prosecutors, especially to pay attention to offenses that have received wide publicity. It seems logical to consider the issue of the possibility of publishing statistical data on these facts.

In particular, in order to streamline the practice of applying disciplinary punishments, it is advisable at the level of the Prosecutor General's Office of the Russian Federation to issue methodological recommendations in which to establish an approximate list of administrative offenses that, within the framework of an internal audit, can be qualified as disciplinary offenses indicating, respectively, acceptable and objective types of disciplinary punishment, as well as to determine possible exceptional compositions for which disciplinary liability is not applied.

An indication of a detailed mechanism for bringing to administrative responsibility these persons, the procedure and adopted acts in this area seems to be one of the main directions in improving the mechanism for holding prosecutors accountable, it is logical to clarify all special subjects of Art. 1.4 of the Code of Administrative Offenses of the Russian Federation with the introduction of appropriate amendments to the specified norm.

It should be noted that when conducting checks on specific facts of offenses by employees of the prosecutor's office, inadequate preventive and educational work of the direct supervisors of the offender is established as a reason contributing to their commission. What is the reason to believe that a properly built system of legal education, preventive measures and the use of comprehensive measures to prevent, detect and suppress the commission of administrative offenses, conduct lectures, talks, thematic audits initiated by the Prosecutor General's Office of the Russian Federation, as well as organize effective interaction with law enforcement agencies will serve as a solid basis for preventing the commission of further offenses by employees of the prosecutor's office. In addition to the issue of working with the management staff, it is logical to note the need to modernize the work of the mentoring institution, which today, although it is inherent in the bodies and organizations of the prosecutor's office, which is undoubtedly a positive moment, since this institution has long been lost in a number of state bodies, but there is an objective need to improve areas of mentoring, both in considering the issue of methods for its implementation and in the possible need to develop incentive measures in the work of this direction.

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Date of Paper Receipt: August 18, 2022

Date of Paper Approval: November 1, 2022

Date of Paper Acceptance for Publishing: November 30, 2022