


Legal grounds for the impossibility of applying administrative prejudice in the criminal law of the Russian Federation in sport: Analysis of modern approaches

MAMHYAGOV ZURAB ZUNELEVICH¹ , LESNICHENKO INNA PAVLOVNA², SARYCHEVA NATALYA VALERYEVNA², IVANOV SERGEY ANATOLYEVICH², ISTOMIN PETR ALTKSEEVICH²

¹*FGBOU VPO, North Caucasian Federal University, Stavropol, Russian Federation*

²*North Caucasian Federal University, Stavropol, Russian Federation*

ABSTRACT

Background: In this article, the author analyses the legal grounds for the inconsistency of the application of the institution of administrative prejudice in criminal law of sport and practice. Method: Based on the consideration of the concept of leading criminologists and processists, the problem of the ontological and legal substantiation of crimes and administrative offenses was deduced. This issue is raised in the framework of law of sport enforcement and scientific discussions regarding the nature of criminal and administrative law of sport and the criteria for their differentiation. Results: According to the author, the widespread use of administrative prejudice in criminal law of sport of sport raises doubts about the legality of the use of the institution of administrative prejudice in criminal law of sport enforcement. That is why as far as possible the solution of the issue related to the ontology of crimes and other offenses; it is so possible to build a modern theory of prejudice in criminal law of sport of sport. In accordance with the analysis of normative acts, the substantiation of a crime and an administrative offense today is mostly problematic due to the uncertainty of what constitutes a public danger and what it is for misconduct and crime. Conclusion: The author argues that administrative prejudice should be considered as a means of pre-criminal individualization of criminal law of sport measures.

Keywords: Sport; Legal grounds; Sport law; Administrative prejudice.

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Corresponding author. FGBOU VPO, North Caucasian Federal University, Stavropol, Russian Federation.

E-mail: d.research_r@yahoo.com

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INTRODUCTION

The system of pre-regulatory norms is a means of humanizing criminal law of sport, as it gives a second chance to a person who is held administratively liable and does not criminalize (or decriminalize) an act that was completely first time (Osipov et al., 2017; Melnikova et al., 2015). Based on the empirical material of investigators and criminologists in the field of crime investigation, problems and trends in the development of administrative prejudice in modern Russia have been identified and it has been concluded that in the Russian law of sport enforcement policy there is no single system of mechanisms for the formation of this institution in practice (Malkov 2011). The author of the study proves the lack of mechanisms for the application of administrative prejudice in the criminal law of sport of the Russian Federation (Bezborodov et al., 2021).

METHOD

Nowadays in the Russian Federation, the system of administrative and criminal law of sport is changing significantly (Chikin 2012). One of the important related institutions used in these areas is administrative prejudice, based on the interaction of administrative and criminal law of sport. In practice, this interaction, firstly, is expressed in the application of the norms of the Criminal Procedure Code, which are caused by the dependence on the previous fact of administrative responsibility for specific misconduct, and secondly, the general tasks facing administrative and criminal law of sport that are necessary to protect social relations from various unlaw of sportful assaults. Despite this intersectoral community, experts point to the position according to which criminal and administrative law of sport are independent since they have different subjects of legal regulation. Thus, in the first case - this is a crime, and in the second - an offence. Moreover, it is significant that the difference between these items should not be formal, but have material grounds. In practice, it becomes an unresolved issue - the distinction between crime and an administrative offence based on public danger. All this led to the emergence of discussions in the field of criminal law of sport. What is the problem? First of all, in the specific content of the concepts of crime and offence, their justification as separate objects (Yunusov and Serkova, 2015).

In Russian law of sport, the concept of “*prejudice*” is reflected in various areas, in particular: in the Commercial Procedure Code (Art. 61 of the Commercial Procedure Code of the Russian Federation); in the Criminal Procedure Code (Art. 90 of the Criminal Procedure Code of the Russian Federation); and in the Code of Arbitration Procedure (Art. 69 of the Code of Arbitration Procedure of the Russian Federation) of general documents. In practical terms, it is important to analyse certain norms of the Criminal Procedure Code of the Russian Federation, which contain administrative prejudice. In law of sport enforcement, the issue of the necessity and usefulness of this institution has not been resolved (Zalcmane & Kamenecka-Usova, 2015). In defence of the understanding and adoption of administrative prejudice in the Criminal Procedure Code, it is important to identify many historical and criminological arguments. Based on a comparative analysis, it is possible to identify legal grounds for the unreasonableness of the application. A long period of criminal legal influence in Russia was carried out taking into account the personal characteristics of the offender (Selivertov 2018). Thus, in the XV century there were no official signs in the law of sport of differentiation of offences and crimes, and accordingly the criteria for determining responsibility, depending on the number of acts committed by the person. Thus, in the Judgment Code of Ivan III, an easy punishment was provided for the first tatba - whipping. In the event of a repeated commission by the same person of a similar crime, the person was subjected to the death penalty. Subsequently, in practice, practically all legal acts that contained criminal law of sport provisions provided for increased responsibility for the person who repeatedly committed the crime (Vishnyakova 2019).

According to the legal expert A. F. Berner, *“on the objective side, encroachment in the event of its repeated commission constitutes just a simple assault. On the other hand, repeated violation of the law of sport, despite the punishment already passed, indicates the presence of substantial guilt and danger”*. A processualist S. Budzinsky points out in the theory of criminal law of sport, they award different amounts of repetitive crime differently. This means that for the imputation of the repeated commission of the offence, the fact of serving the sentence for the first is necessary. Several experts point out the importance of only a final sentence. Indeed, in Soviet practice there are disagreements on the use of this institution. Some experts point to the hypothesis of the incorrigibility and danger of the perpetrator, which necessitates a more powerful warning since the first attack did not help to prevent new ones. As the Soviet proceduralist A. F. Kistyakovsky notes, *“a re-committed assault indicates the formation of the offender habits of committing unlaw of sportful acts, deep-rootedness and inability to correct the offender”*. This has largely changed the idea of the importance of prejudice in criminal law of sport. In describing the theory of private prevention of assaults, an expert in the field of criminal law of sport enforcement L. S. Belogrits-Kotlyarevsky points out the threat of re-committing an offence if this poses a threat to human life. In particular, this argument is against the use of this institution in criminal law of sport. The legal basis for applying sanctions against the offender and the offender is determined by the degree of danger. In this case, according to I. Ya. Foinitsky, the individual circumstances of the assault, which are the subject of state sanctions, are taken into account.

RESULTS

In post-Soviet criminal law of sport, the idea that repeated commission of a person by crime was a particular danger prevailed for a long period. However, practitioners most often defend the position that the repetition of administrative offences is unlaw of sportful to constitute criminal liability in composition, and accordingly, the fact of repetition is not a universal attribute in the composition of the act. This causes this attribute to be attributed to an additional factor, only in certain cases of insignificant infringement, repetition can be considered as a determining attribute for a positive solution to the issue of criminal liability. Legislators are faced with the question: which categories of repeat offences fall under administrative law of sport, and which under criminal law of sport. The concept of B. S. Nikiforov indicated that only criminal encroachment is the only basis for criminal liability, which proves the public danger of the perpetrator. Moreover, the expert points to several signs such as repetition, repetition, frequency of insignificant infringements indicate that the motives of the offence are not unjust. When analysing the possibility of using this institution, processors consider the phenomenon of the personality of the offender. The person who committed the offence during repetition is more inclined to commit it more deliberately, without nervous tension, hesitation between the intention to commit a crime or abandon it. The perpetrator is prone to commit systemic offences, appealing to the impossibility of criminal liability.

Thus, the inclination to commit crimes as well as the criminal habit are formed in the process of committing socially dangerous acts. Experts explained the presence of administrative or disciplinary prejudice in criminal law of sport as an influence of legal principles and systemic legal factors on the establishment of criminal liability for socially dangerous acts. The expert partially rejected the existence of legal grounds for criminal liability for repeated violations of the Code of Administrative Offences. However, in the 2000s, the norms of the Criminal Code of the Russian Federation started to be revised, where the prejudicial norms were excluded, and since 2003, increased liability for crimes committed repeatedly has disappeared. Practice shows that administrative prejudice is reflected in the Criminal Code of the Russian Federation in such articles as illegal production of abortion without serious consequences for the health of the victim (part 1 of Art. 123); illegal entrepreneurship without qualifying circumstances (part 1 of Art. 171); production, acquisition, storage, transportation or sale of unmarked goods and products (part 1 of Art. 171.1); illegal use of someone else's

trademark (part 1 of Art. 180), etc. In these articles, the legislator emphasises the special danger of the act for which the guilty person must be severely punished, in particular, if it concerns repeated episodes.

Whether it is permissible from the scientific point of view of two or even three administrative offences in a new quality – a crime. It is important to identify individual articles of the criminal code that allow you to analyse the presence of a criminal offence. Thus, in articles 154 and 108 of the Criminal Code of the Russian Federation, the legislator establishes responsibility for acts committed repeatedly, art. 110, 117, 232, 241 of the criminal code for acts committed systematically, 23 articles provide various bonuses for individuals who are first-time offenders, and 14 of them are notes to the articles of the Special Part of the Criminal Code, which establish the grounds for exemption from criminal liability for persons who committed crimes for the first time. The legislator conditionally draws a conditional line between a criminal and an unapproachable act. V. V. Marchuk holds this position. He is as an example of the conditionality of borders between an offence and a crime highlights the General principle of the criminal law of sport that an action or omission, although formally containing signs of an act provided for by criminal law of sport, but due to its insignificance does not represent a public danger, is not considered a crime.

What is more, the mentioned notes to the articles of the Special Part of the Criminal Code of the Russian Federation have two drawbacks in comparison with the pre-conventional norms. First, they individualise criminal-law of sport measures at the stage of post-criminal activity, when damage to public relations has already been done or a real threat of causing it has been created. Secondly, the notes may have a criminal role: the person before committing the crime knows that in certain circumstances he can be exempted from criminal liability. At the same time, pre-regulatory standards also have these shortcomings. At the same time, these legal excerpts act as a means of individualising the measures of criminal legal influence that will be applied at the pre-criminal stage, and as a means of preventing socially dangerous acts. Thirdly, pre-regulatory standards are a means of humanising criminal law of sport. According to the proceduralist M. A. Kaufman, *“today it seems that the legislator is trying to solve the problems of criminalization and decriminalization by touch, by trial and error”*, while he gives a second chance to a person who has been brought to administrative responsibility and does not criminalize the act perfect for the first time. Fourth, forensic scientists, proceduralist do not reveal an act (action or inaction), which has a sign of special social danger. Of course, it is impossible to idealize the preventive capabilities of pre-regulatory norms. However, if such a tool is available in the arsenal of the law of sport enforcer, then it is foolish not to use it.

Amendments in administrative and criminal law of sport significantly affect the institution of administrative prejudice, which acts as a legal construct. Experts confirm this fact with statistics from legal practice. According to the information headquarters of the Russian Federation, liberalization of the system of punishments for administrative offences leads to a significant increase in their number, which is caused by a high level of legal literacy of the offender, who is aware that the theft, the responsibility for which is provided for in Part 1 of Art. 158; Part 1, Art. 159 or Part 1, Art. 160 of the Criminal Code for 1000 rubbles does not entail criminal liability. The offender realises the absence in this case of criminal liability. As a rule, such criminals taken together cause significant damage to individuals, organizations, and the state. These facts indicate that the sign of social harmfulness, which is characteristic of both crimes and administrative offences, has its qualitative content that is different from the content of the sign of public danger inherent only in crimes. In other words, no matter how many administrative offences committed by the perpetrators, they do not cease to be so, and do not acquire the properties of such a category of criminal law of sport as *“public danger”*.

Certainly, the commission of crimes and the onset of adverse consequences for an individual, society or state under conditions of democratization enhances interest and attracts the attention of experts and scientists.

Because of the commission of crimes and the onset of the consequences of the first order in society, significant changes of an internal nature occur, aimed at preventing the possible danger of new crimes. An administrative offence by its nature cannot be identical in composition to a crime. The basis of the criminal law of sport prohibition with administrative prejudice is: the commission of two or more administrative offences in a short period (for example, during the year), signs of a special subject (a person who previously committed an identical violation and brought to administrative responsibility) and, accordingly, the procedural decision of a court, other body or official on the appointment of an administrative penalty for the first act has entered into legal force. This fact allows us to summarise the following: these circumstances lie beyond the scope of the theory of *corpus delicti* in establishing the objective and subjective parties.

The processors are asking questions: What is the act, consequence and causal connection of crimes with administrative prejudice? How to establish the mental attitude of the perpetrator concerning two different administrative offences? Who, how and when will establish direct and indirect intent, criminal frivolity and negligence. In addition, is this possible in principle in the framework of, for example, administrative law of sport? If this situation exists, there are more questions than answers. In practice, experts on the issue of applying the institution of administrative prejudice in criminal practice indicate that administrative prejudice does not contain signs of a dangerous act. Several experts from Moscow State University of Law of sport named after Kutafin have a negative attitude towards the revival of this institution. They appeal to the fact that in modern Russia, in the context of the transformation of socio-political reality and the presence of a combination of gaps in the legislative system, there is no holistic and practical understanding of this legal reform. The proceduralist N.A. Lopashenko indicates that any administrative offence, in the case of repeatability and accumulation of independent administrative offences, is not related; they are different. The expert claims that a person, committing an administrative offence, commits it in different ways. Hence, the scientist's conclusion that the crime with administrative prejudice amounts to several independent, finally executed administrative offences that are not connected by the intent of the person is legitimate. The intent for each offence arises separately and is fully, completely implemented. In this case, there is no connection between these offences, and accordingly, in a criminal offence, administrative prejudice is present, and in an administrative offence. Today in law of sport enforcement there has been a tendency when, when recognizing the act as a crime, the legislator refers to a specific law of sport, most often to administrative law of sport, which contains signs of a multiplicity of misconduct, the totality of which constitutes a crime. The specificity of such formations, formed based on administrative prejudice, necessitates the existence of a set of administrative offences, in which each of the identical misconduct does not lose the specific features of institutions of a different industry. Experts in the field of criminal law of sport give legal arguments against the use of the institution of administrative prejudice in the Criminal Code. This is in particular explained by the principle of the criminal law of sport, indicated in Part 211 of Art. 6 of the Criminal Code: "*no one can be held criminally liable twice for the same crime*". Since the application of administrative prejudice is implemented on the principle that an administrative offence is, as it were, punished in a double order. In Russian practice, authorized law of sport enforcement authorities first bring the person to administrative responsibility, and in the event of a repeated commission of the same offence, they bring the person to criminal liability [8.17]. Administrative prejudice when forming the *corpus delicti* in practice erases that clear line that separates an administrative offence from a criminal offence, which is becoming one of the gaps in law of sport enforcement today.

A. G. Kibalnik, a leading specialist in the field of criminal law of sport, professor of the North Caucasian Federal University, adheres to the same concept, emphasizing that in the modern Russian society and law of sport enforcement practice there are no mechanisms of the introduction of administrative foresight [11, p. 281]. All this, according to the scientist, makes it impossible to introduce administrative judging in Russian

criminal law of sport on the European model. This makes it possible to reveal the absence of legal grounds for administrative judging in criminal law of sport of the Russian Federation. Experts of the Russian Academy of Justice I. V. Volkov, based on law of sport enforcement practice, identified problems in the theory of a special subject of crime. In particular, one of the most acute problems is when, based on the disposition of the article of the special part of the Russian Criminal Code, it is virtually impossible to determine whether the subject of a specific crime is a general or a special one, which has been in force for a long time in individual cases under Art. 159.4 of the Criminal Code. As a legal problem, the scientist points out the ambiguity of revealing the moment when a person acquires the features of a special subject of crime, which is directly reflected in Art. 264.1 of the Criminal Code of the Russian Federation when many clarifications were required from higher judicial bodies. This is a special problem of the existence of this institution in criminal law of sport. In my opinion, this issue is disputable, since it blurs the clear line between the administrative and criminal legal norm, at the same time turning a socially harmful act into a socially dangerous one by committing the first repeatedly. This is erroneous and incomprehensible to procedure lists as a socially harmful act should not and cannot constitute a crime. The impossibility of application of administrative prejudice in criminal law of sport is possible only in case of decriminalization of many elements of crimes with administrative prejudice, and solution of the problem in their social harmfulness, not a danger. In the other case, it is important to tighten the criminal law of sport, which will make it possible to differ systematically between an offence and a crime, when the latter will be completely excluded from administrative law of sport and introduced into the criminal law of sport. After that, it is necessary to subject a person who has committed a dangerous act to criminal liability from the first time, which will eliminate disputes about the moment when a person acquires special features of the subject. This will make it possible, inter alia, to rid processors of confusion and streamline the system of application of criminal law of sport.

CONCLUSION

Based on these polar positions to this legal institution, scientists have concluded that for it to be possible to introduce this institution into the system of Russian criminal law of sport it is necessary to create several conditions:

Based on the above, we can conclude that the law of sport enforcement policy of post-Soviet Russia today lacks a system of mechanisms for the introduction of administrative foresight in criminal law of sport. It is possible that soon if these conditions are met, a legislative platform for the creation of the institution of administrative foresight will be created. Administrative litigation is a correlated link between two branches of Russian law of sport - criminal and administrative. It allows a clear distinction between administrative offences and criminal offences, and it can be considered as a way of decriminalization of certain criminal offences through the incorporation of excluded elements from the Criminal Code of the Russian Federation into the Code of the Russian Federation on Administrative Offences.

REFERENCES

- Bezborodov, D. A., Berestovoy, A. N., Kravchenko, R. M., Rakhmanova, E. N., & Topilskaya, E. V. (2021). Special features of criminal statistics of criminality in the field of sport. In SHS Web of Conferences (Vol. 108, p. 03010). EDP Sciences. <https://doi.org/10.1051/shsconf/202110803010>
- Chikin D.S. (2012). Crime with administrative prejudice as a form of a single crime // Russian investigator.--№23.-P.17-18.

- Ivanchin, A.V. (2017), On the benefits of the prudent use of administrative prejudice in criminal law of sport (in connection with the decision of the Constitutional Court of the Russian Federation of February 10, 2017, NN№ 2-P) / A.V. Ivanchin // Criminal Law of sport. - NN№ 4. - S. 50-53.
- Malkov V.P. (2011), Administrative prejudice: the pros and cons // Bulletin of the Academy of the General Prosecutor's Office of the Russian Federation. -№ 3.-S. 58-64.
- Melnikova N.A. (2015). Administrative prejudice in Russian legislation // Management and economics in the conditions of economic instability: problems and prospects // Materials of a scientific and practical conference. Vologda branch of RANEPА. Vologda, S. 444-449.
- Osipov, A., Kudryavtsev, M., Galimova, A., Zhavner, T., Fedorova, P., Shulyatev, V., & Pesniaeva, N. (2017). Analysis level of the special proficiency of cadets and officers of the Internal Affairs authorities of the Russian Federation to the physical interditory effort by criminals.
- Selivertov N. O. (2018). Problems of applying the institution of administrative prejudice in the criminal law of sport of the Russian Federation // Bulletin of the Ryazan Academy of the Federal Penitentiary Service of Russia. -№25.-S.12-16.
- Sytnikov V.O. (2013). Legal problems of the design of the objective side of the offense under Art. 151.1 of the Criminal Code // Gaps in Russian law of sport. No. 6.-S.167-170.
- Vishnyakova N.V. (2019). Crimes with administrative prejudice: problems of a legislative and law of sport enforcement nature // Bulletin of the Siberian Law of sport Institute of the Ministry of Internal Affairs of Russia.- No1.-P.5-11. https://doi.org/10.51980/2542-1735_2019_1_5
- Yunusov A.A., Serkova T.V. (2015). Administrative prejudice in Russian criminal law of sport // Actual problems of economics and law of sport. № 1.-C.278-282.
- Zalcmane, K., & Kamenecka-Usova, M. (2018). The problematics of sports law in latvia: civil and criminal law statutory acts perspective. In Society. Integration. Education. Proceedings of the International Scientific Conference, Vol. 4, pp. 332-346.

