

Legislative novels in the field of transport management: a retrospective and comparative legal analysis

*Olga Yakovleva**

Department of Criminal Law, Volgograd State University, Prosp. Universitetsky, 100, 400062
Volgograd, Russian Federation

Abstract. The Russian Federation today is a developed modern state. The state policy is primarily aimed at the protection of the rights and legitimate interests of society and the state. The rapid socio-economic development of society has led to an increase in the total number of vehicles, and an increase in the number of vehicles on the roads has inevitably led to the emergence and progressive increase in traffic crimes. The criminal legislation provisions regulating the punishment assignment for the road traffic offense by a person subjected to administrative penalty have been changing throughout the entire historical period and up to the present. Article 264.1 of the Criminal Code of the Russian Federation can hardly be called perfect. It is positive that the legislator is making attempts to reflect in the criminal law provisions the concepts proven and substantiated in the legal doctrine. The study's relevance is due to the need for analysis, scientific and theoretical understanding of the transport crimes problem in the Russian Federation.

1 Introduction

Each of the spheres of society's life must be provided with an appropriate level of security and legal regulation. Modern time is characterized by technological progress, which is only gaining momentum every year and decade. Road safety is a large and important area of public relations that arise, including during the operation of a vehicle, the legal regulation of which is simply necessary. These arguments are confirmed by the place that the protection of road safety occupies in the criminal law.

The provisions of the current criminal legislation do not fix the definition of a transport crime, and the formed modern approach to the definition of the concept of this concept necessitates a historical and legal analysis in order to identify two key aspects:

- historically established conditions for the formation of criminal legislation in the matter of criminal prosecution for committing transport crimes;
- identifying the features of the formation and development of the provisions of criminal law, its directions and trends in the field of sentencing for crimes that undermine traffic safety and operation of transport.

* Corresponding author: olgayakovlev@mail.ru

The emergence and development of criminal liability for the crime commission, which is provided for by Article 264.1 of the Criminal Code of the Russian Federation, has its own background. It is advisable to start a retrospective analysis by considering the main prerequisites for the emergence of the problem under study.

Historical and social prerequisites, in our opinion, are determined by two key aspects:

- technological progress that gave the world vehicles;
- the development of the legal awareness level of citizens, which led to needing to form a new legal institution for security and protection of both private and public interests.

The historical path itself is characterized by the heterogeneity of the decisions made by the legislator. This is explained by the abolition. And then the introduction and strengthening of the administrative prejudice institution.

Paying special attention to the part of the state to the problem of "drinking under the influence" led to quite obvious consequences, expressed in the tightening of the sanctions policy against the crime subject. For our country, this problem is not new. The first attempts to fight were made back in Soviet times. A retrospective analysis of the rule of law in force in the Soviet times and its modern counterpart shows that Article 264.1 of the Criminal Code of the Russian Federation enshrines the provisions according to which motor vehicle driving by a drunken person is recognized as criminal.

In addition to the domestic experience of regulation of the considered criminal act, in our opinion, a comparative legal analysis of the legislation is of great importance. Modern criminal legislation is not only the result of the experience experienced directly by domestic law, but also a reflection of the experience of foreign states, in particular, the countries of the Romano-Germanic and Anglo-Saxon legal systems. The criminal legislation of the countries of the near abroad is characterized by a significant borrowing of the provisions and concepts reflected in the Criminal Code of the Russian Federation. In addition, the legal position of a state may differ significantly from that of other states. This circumstance is due to the level of economic development, the political situation in the country, historical and cultural values, which undoubtedly has a significant impact on the formation of legal concepts. For neighboring countries, it is typical to single out transport crimes in separate chapters.

Somewhat distinctive in terms of legal consolidation of crimes that are part of transport crimes are the criminal law norms of European states. The criminal legislation of these countries has a wider list of crimes, which includes not only crimes that have direct interaction with transport: unsafe operation of transport or attacks aimed at disrupting the proper functioning of transport, but also public relations that are closely related to illegal actions, committed in relation to transport.

The criminal legislation of foreign countries has several features characteristic of all countries.

The first feature that unites all the criminal laws that are used in the framework of this study is the wording of the content of transport crimes.

In this case, we are talking about the fact that in the criminal codes of foreign countries, as well as in the Criminal Code of the Russian Federation, transport crimes are considered from the point of view of encroachments on transport, as a subject: operation of a technically unsuitable vehicle or violation of the rules that ensure safe and uninterrupted operation of transport during its operation.

This position of legislators is absolutely understandable and justified by the fact that the vehicle itself acts as a source of increased danger, and its operation in violation of certain norms and rules leads to an increase in the level of adverse consequences.

2 Materials and methods

The research methodology includes the main ideas, theories, principles of the domestic legal doctrine on the expediency of the existence of the administrative prejudice institution in Russian criminal law establishment of criminalized liability for "transport" crimes, by the subject subjected to punishment for misconduct.

When conducting the study, both private law and general scientific doctrinal methods were used: the formal legal method is used in the disclosure of the main categorical apparatus; retrospective method is when comparing Article 264.1 of the Criminal Code of the Russian Federation with the norms of the current legislation; analysis and synthesis are when comparing Article 264.1 of the Criminal Code of the Russian Federation with other crime elements, etc.

3 Results and discussion

The norm of the Criminal Code of the Russian Federation considered in this paper is an example of a rather controversial phenomenon in science and practice - administrative prejudice in criminal law. It is important to note that even before the introduction of an article in the domestic criminal law providing for criminal liability for violation of traffic rules by a subject subjected to administrative punishment, various opinions were expressed in the legal doctrine regarding administrative prejudice in criminal law.

A number of jurists believe that administrative prejudice in criminal law cannot be considered expedient, since the repeated commission of an administrative offense in itself does not endow this offense with new qualities. In other words, the commission of a repeated administrative offense does not affect the nature of this offense and its social danger. It should be noted that repeated offenses should be punished more severely, but only within the framework of their branch of law.

If we literally interpret the considered opinion regarding the expediency of the existence of an administrative prejudice, then we can conclude that if the committed offense falls under the conditions of administrative responsibility, then the commission of a homogeneous but repetitive offense can only lead to a tougher punishment, but again, within the framework of administrative law.

In this case, we are talking about the fact that driving a vehicle while intoxicated by a person subjected to administrative punishment, but not causing harm to property, life or health of other persons (that is, the absence of other signs qualifying this act as criminal), cannot be qualified as a crime, since the nature of the act, its public danger has the same characteristics as the commission of this crime by a person for the first time and bringing the person to administrative responsibility, that is, in this case, there is only one sign between administrative and criminal punishment - the repeated commission of the act.

Undoubtedly, citing such arguments, the expediency of the existence of an administrative prejudice is lost. At the same time, it is important to pay attention not only to external factors and dryly argue that only the secondary nature of the act separates the perpetrator from the onset of criminal liability, but also to understand that in this case we are talking about two categories that in themselves represent a danger: the state of intoxication and the vehicle.

Taking into account historical and foreign experience, a number of authors believe that the purpose of administrative prejudice in criminal law is to warn a person who has committed an administrative offense and subjected to administrative punishment that the repeated commission of the same act by a person may entail criminal liability. In other words, if the adopted administrative-legal methods and means did not work for the first time and the person repeatedly committed an administrative offense, then the repeated application of the same measures and means will not have the desired result.

Undoubtedly, each of the above points of view deserves attention and should be considered in detail and in detail and covered in the legal doctrine, since only a comprehensive consideration of this issue can bring it closer to the formation of an objective opinion on the advisability of the existence of an administrative prejudice.

I would like to once again focus on the following. The historical aspect of the criminalization of "traffic" violations by the subject to which administrative measures were applied indicates that the legislator considered it ineffective to take into account the offense as a criminalizing sign.

An analysis of a significant number of sources, opinions and theories shows that the norms of modern criminal law, which provide for the onset of criminal liability for violation of traffic rules by a person subjected to administrative punishment, were created in connection with the prevailing negative trend, the constant rapid increase in the number of traffic offenses due to drunk drivers.

Fixing the institution of administrative prejudice is still a debatable issue. The authors of scientific articles, scientists, lawyers who support administrative prejudice point to the existence of a real opportunity to ensure the flexibility of the legal impact on the person who committed the offense. On the other hand, there are authors and scholars who do not see anything positive in the existence of administrative prejudice, pointing to a high risk of blurring the boundaries between the commission of a crime and an offense. The insufficient scientific development of the issue under consideration leads to the existence of such conflicting opinions on the issue of the expediency of the existence of the institution of administrative prejudice in criminal law.

An essential step in the development and understanding of the expediency of the existence of this institution can be the experience of foreign countries that have gone this way. When analyzing, comparing various theories and foreign experience, one should not forget about the features that lie in national characteristics and the Russian mentality.

Along with the work carried out by scientific theorists, it is simply necessary to carry out preventive work with the population, aimed at raising the level of legal consciousness and legal education.

Only a full range of all possible measures can fruitfully influence the eradication of the existing negative statistics of traffic violations by a person subjected to administrative punishment.

An important feature of the considered elements of the crime is the vehicle driving fact. In other words, the vehicle must be in motion, otherwise, if a drunk person is driving a non-moving vehicle, then these actions of the person cannot be recognized as criminal. A similar practice was also formed when applying Article 211.1 of the Criminal Code of the RSFSR [1].

A big step in development has been made on the fact establishment of the vehicle driver intoxication.

In order for a person vehicle driving in a state of intoxication to be criminally liable under Article 264.1 of the Criminal Code of the Russian Federation and Article 211.1 of the Criminal Code of the RSFSR must be met certain conditions.

So, regarding the comparative analysis of the above articles subject, we note the following.

Firstly, they are characterized by a special subject, which is an individual who meets certain requirements:

- an individual must have reached the criminal responsibility age;
- at the time of the crime commission, it is sane;
- is the vehicle driver.

The current law rule fixes for the subject all of the above characteristics, earlier legislation there was an indication of the need to have a penalty for a misdemeanor or a conviction for

crimes of this kind, which has not been extinguished (Article 117 of the Code of Administrative Offenses of the RSFSR).

Turning to modern legislation, we see that a conviction for crime committing while intoxicated, which is provided for in Article 264 of the Criminal Code of the Russian Federation (parts 2, 4, 6), included in the qualified composition of Article 264.1 of the Criminal Code of the Russian Federation [2].

It should be noted that the crime subject in the above articles is the person who drove the vehicle, while this person may have a driver's license; may not have a driver's license due to its withdrawal; may not yet have a driver's license due to appropriate training.

Secondly, the crime subject and crime object in the articles under consideration are also similar.

So, various vehicles can act as the target of this crime category: cars, buses, trams, tractors, etc., and the crime object is public relations in the field of road safety, protected by law.

The crime object in both cases is public relations protected by law in the road safety field.

As noted earlier, a big step in development has been made in the fact formation of intoxication of the vehicle driver.

In the science of criminal law, many concepts of intoxication are given.

For example, N.G. Ivanov and other authors believe that intoxication is understood as an abnormal state of a person caused by the use of alcohol, drug, or intoxicating substances [3; 4; 5].

A significant impetus for creating conditions for a medical examination for alcohol intoxication was the established administrative practice of imposition of administrative responsibility for the use of narcotic drugs without a doctor's prescription. This practice is also relevant for vehicle drivers.

To date, the medical examination system is quite well-established, there are no particular difficulties in establishing both alcohol and drug intoxication.

The norms analysis of the Criminal Code of the Russian Federation and the Criminal Code of the RSFSR [6] showed that these legal norms are mostly similar, and the difference, for example, in the impossibility of conducting a medical examination for drug intoxication is due to the insufficient development of technical potential, and, in general, the absence of an urgent need for such a study, because after there was a real need for a medical examination for drug intoxication, successful attempts were made to create the rules and conditions for its implementation.

In general, these rules of law are similar in key issues.

Based on the analysis results, the question arose: what served as the basis for the exclusion of Article 211.1 from the Criminal Code of the RSFSR and the revival of a similar rule of law after such a long period of time?

This issue is due to the expediency problem of the existence of the administrative prejudice institution and the need to understand the absence of such expediency over a long period of time. But this question will remain rhetorical since the problems that existed in the USSR still exist today, only quantitative indicators have increased: due to the rapid development of transport, the total number of vehicles on the roads has increased, and the number of drivers driving vehicles in a state of intoxication has increased accordingly.

In modern doctrine, the issue of the prerequisites for the exclusion of Article 211.1 from the Criminal Code of the RSFSR is not sufficiently covered, which is a significant omission. The identification of such prerequisites would make it possible to catch the motives of the legislator and analyze the current situation in the matter of traffic offense by a person subjected to an administrative penalty. Perhaps, scientific developments in the designated area would contribute to the formation of a more reasoned opinion about the expediency, or,

on the contrary, about the inappropriateness of administrative prejudice, taking into account the already existing domestic experience.

When analyzing the disposition of Article 264.1 of the Criminal Code of the Russian Federation, the question of the discrepancy between the title of the article and its essence and content was obvious.

The discrepancy between the title and the content of the article was that Article 264.1 was called: "Traffic offense by a person subjected to an administrative penalty." At the same time, the disposition of the article primarily indicates the presence of the fact of not administrative, but the criminal penalty.

In other words, the article content was much broader than its title. But the title did not reflect the real essence of the article in question. Moreover, many authors rightly noted that the title of the article is not only narrower in comparison with the content, but also contradictory to the content, which leads to a violation of one of the fundamental law principles is the principle of legality, and may also prevent the inevitability of punishment. V.V. Agildin notes that the elimination of this contradiction is possible only by amending the article title [7;8]. Doctrinal and law enforcement interpretation and discussion of this circumstance led to a change in the title of Article 264.1 of the Criminal Code of the Russian Federation: "Driving a vehicle while intoxicated by a person subjected to the administrative penalty or having a criminal record."

As can be seen from the analysis of the new version of Article 264.1 of the Criminal Code of the Russian Federation provides the legislative authority for the symbol "conviction for crimes against road safety". The provisions of Article 264 of the Criminal Code of the Russian Federation have also changed. Qualified compositions of this norm provide for liability for negligently causing grievous bodily harm and death to a person, two or more persons. If these acts are committed by a person in a state of intoxication or are associated with leaving the place of its commission.

In the cases under consideration, the main incriminated signs are the state of intoxication and leaving the location of the crime.

In our opinion, the new version of Article 264.1 of the Criminal Code of the Russian Federation absolutely justifiably provides for tougher criminal sanctions, since, as the commission of a crime by a person in a state of intoxication, and leaving the location of a crime, are characterized by an increased public danger, respectively, from the state measures should be taken aimed not only at restoring social justice through the criminal prosecution of the perpetrator but also measures aimed at preventing and suppressing subsequent crimes.

When conducting a legal analysis of the article under consideration, it is important to note that: the disposition construction and the name formulation indicate the legal writing shortcomings. In the scientific and educational literature, it has been repeatedly noted that the Special Part of the Criminal Code of the Russian Federation, or rather, some of its articles, do not correlate with each other, which is confirmed by the existing opinions of legal authors, in this case, Article 264.1 of the Criminal Code of the Russian Federation is one of the data articles. To fill the existing gaps in the law, it is necessary to work out in detail the article in question at the legislative level, changing and supplementing the necessary provisions or excluding them.

In the scientific and educational literature, the legal analysis problem of Article 264.1 of the Criminal Code of the Russian Federation is little studied. There is not enough information to correlate the positive and negative aspects of the criminalization of driving while intoxicated, which greatly complicates the study.

Conducting a distinction analysis between violations of traffic rules by a person subjected to administrative penalty with other elements of a crime is to some extent similar to determining the expediency of the administrative prejudice existence.

The administrative prejudice institution in criminal law and the attitude towards it is the main stumbling block to the legal doctrine [9]. And this is not unreasonable. Recall that the administrative prejudice essence lies in the fact that a person is subjected to criminal liability for committing a crime, if earlier, for the same (in composition) crime, he was subjected to an administrative penalty. The primary question that may arise when analyzing an administrative prejudice is: "Does this approach violate the criminal law requirements that no one can be tried twice for the same crime?" This question comes up frequently in legal doctrine, and a positive answer to it forms the basis of the opinion of the authors expressing their disagreement with the administrative prejudice institution [10].

We believe that considering administrative prejudice as a punishment for the same crime indicates an insufficient understanding of the essence of this institution.

In our opinion, everything is quite reasonable.

Repeated driving while intoxicated indicates the insufficiency of the available administrative and legal means to effectively counteract these acts, which, together with other factors, can be considered as a significant reason for the criminalization of the relevant actions, which, while remaining administrative offenses in their normative basis, by their nature and the level of public danger turn into a crime [11].

It seems that the position of the legislator of foreign countries on this issue could serve as a positive example for the domestic lawmaker. This is due to the fact that the experience of other states allows us to determine the complexity of the legal regulation of a particular institution, in particular, the legal regulation of transport crimes.

An analysis of the legislation and experience of foreign countries is an important part of doctrinal research, since, as practice shows, in recent years the criminal legislation of many countries has undergone changes that were borrowed from the legal system of other countries.

An analysis of the legislation of foreign countries indicates that in some cases, the crimes in question are separated into separate chapters (as in the domestic criminal code), and in others, transport crimes are defined in close connection with crimes committed against transport.

The study of the legislation and experience of foreign countries allows us to determine the path taken, and what difficulties the legislator and law enforcer had to overcome in order to achieve modern results of legal regulation.

Obtaining such knowledge allows not only to adopt effective mechanisms of legal regulation, but also, often, to avoid possible mistakes in legal regulation.

Of great interest for the study is the study of the position of foreign states on the issue of criminal liability for driving while intoxicated.

As has been repeatedly noted, drunk driving is a global problem and permeates the entire world legal system to a greater or lesser extent. The provision uniting all the countries under consideration, reflected in the criminal legislation, is the consolidation of criminal liability for driving while intoxicated. At the same time, it is important to understand that the procedure for regulating this kind of social relations is largely determined by the development of the country and its historical culture.

In addition, most states provide for the institution of administrative prejudice. Thus, the Baltic criminal law establishes liability for "drunk driving", but in the event that during the year the subject committed a similar offense.

It seems interesting and expedient the position of the legislator, who has a differentiated approach to the issue of the degree of public danger of previously committed crimes, determining the punishment. That is, whether the person was previously brought to criminal or administrative responsibility for a similar crime. Thus, the punitive impact has a different degree.

Administrative prejudice is not typical for all countries. For example, German criminal law provides for liability for driving while intoxicated without the premise that the subject is

liable for an administrative offense in this area. The position of the legislator, in this case, is categorical - even a person driving a bicycle while intoxicated is subject to criminal liability. The introduction of this kind of changes in domestic legislation will be a significant and fundamental addition to the novelties already introduced.

4 Conclusions

The criminal legislation provisions regulating the punishment assignment for the road traffic offense by a person subjected to administrative penalty have been changing throughout the entire historical period and up to the present. Article 264.1 of the Criminal Code of the Russian Federation can hardly be called perfect. It is positive that the legislator is making attempts to reflect in the criminal law provisions the concepts proven and substantiated in the legal doctrine.

Federal Law No. 258-FL of July 1, 2021, "On Amending Article 264.1 of the Criminal Code of the Russian Federation" introduced significant changes to the provisions of Article 264.1 of the Criminal Code of the Russian Federation [12]. It is somewhat premature to talk about the effectiveness of criminal law novels in the field of traffic safety since the only objective indicator can be judicial practice, which has not yet been sufficiently formed. But it should be said that, in our opinion, the new version of Article 264.1 of the Criminal Code of the Russian Federation more clearly shows the focus not only on the development of the administrative prejudice institution but also on the achievement of general criminal tasks, for example, such as the prevention of criminal activity, as evidenced by the tightening of the sanctions of this article.

Arguing about the expediency of the existence of the administrative prejudice institution in modern Russian criminal law, I would like to once again turn to the new version of Article 264.1 of the Criminal Code of the Russian Federation. The legislator has significantly improved this article, starting from its name, ending with the introduction of a criminal record as a mandatory qualifying feature, as well as tightening the sanctions of the article itself.

The new version of the article reflects the doctrinal base of the last seven years, which repeatedly pointed out and proved the need for appropriate changes. It is worth noting that the main idea and message of this article have been preserved. In this case, we mean administrative prejudice.

The history of the formation and development of responsibility for transport crimes knows periods without fixing administrative prejudice in criminal law, but this approach has not become more effective. In general, I would like to say that at present, taking into account the level of development of society and the state, the existence of additional measures of criminal liability for crimes against traffic safety will definitely not "harm".

Perhaps the trends in the development of society will dictate other conditions, and criminal law will have to abandon administrative prejudice, but today, we believe that its existence is absolutely reasonable. "Reasonableness" is also determined by the fact that the previously existing domestic legislation contained the norm in question. Decades passed, and the legislator returned to the institution of legal prejudice, and it should be noted that not only in the field of "traffic" crimes. But also in the economic sphere. In addition, the experience of states testifies to the qualitative impact of this institution on the behavior of the subject, including a preventive one. The increase in traffic on bicycles, any other two-wheeled transport requires, in our opinion, the establishment of criminal liability for driving this type of vehicle while drunk. German legislation can serve as an example in this matter, including questions of legislative technique.

The main criteria for criminalizing the type of crime under consideration should be recognized as follows: sufficient mass violation of traffic rules by a person subjected to an administrative penalty, associated with a relatively high degree of repetition of driving a

vehicle by a person in a state of intoxication, as well as failure to comply with the requirement to undergo a medical examination for intoxication; the possibility of providing strong evidence of the commission of a crime under Article 264.1 of the Criminal Code of the Russian Federation, and the fundamental possibility of criminal prosecution of those responsible.

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