


Additional Type of Punishment for Road Traffic Crimes: Possible Ways of Reform

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Abstract: The article deals with the preventive possibilities of the current additional type of punishment for road traffic crimes, as well as the justification of perspective additional types of punishment for the crimes under consideration. The purpose of the article is to study the sufficiency of the preventive value of an additional type of punishment in the form of deprivation of the right to hold certain positions or engage in certain activities for committing crimes provided for in Articles 264 and 2641 of the Criminal Code of the Russian Federation. Objectives of the study: - analysis of statistical data on the type of punishment under study; - legal analysis of an additional type of punishment in the form of deprivation of the right to hold certain positions or engage in certain activities; - highlight possible gaps in the current versions of the sanctions of Articles 264 and 2641 of the Criminal Code of the Russian Federation; - develop proposals and recommendations aimed at improving the effectiveness of this type of punishment. In the study, we have used a statistical method that allowed us to identify whether in all cases an additional type of punishment is applied in the form of deprivation of the right to hold certain positions or engage in certain activities for committing crimes under Articles 264 and 2641 of the Criminal Code of the Russian Federation. The comparative legal method has allowed us to formulate and propose a new additional type of punishment in the Criminal Code of the Russian Federation. In addition, the systematic and logical and legal methods made it possible to conduct a legal analysis of the existing criminal law norms, which are the subject of the study. In general, the conducted scientific research is an increment of knowledge in the field under consideration and allows the legislator to propose changes to the criminal legislation on the topic of the study.


1 INTRODUCTION

The most important prerequisite for the study is the statistical data that indicate the number of road traffic crimes committed on the territory of the Russian Federation and the types of penalties imposed for them.

We consider it is necessary to carry out a legal analysis of such an additional type of punishment as deprivation of the right to hold certain positions or engage in certain activities for committing crimes

provided for in Articles 264 and 2641 of the Criminal Code of the Russian Federation.

Despite the sufficient attention paid by scientists to the problems of criminal prosecution and sentencing for criminal violations of traffic rules and the exploitation of vehicles, we believe that the additional type of punishment for committing road traffic crimes is not sufficiently studied. Thus, in general, the issues of criminal responsibility and punishment for road traffic crimes were studied by the following researchers: V. V. Agildin (2016), A. I. Korobeyev (2019), V. V. Kusakin (2018), M. V.

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Midlovets (2017), A. I. Smolyakov (2020), A. I. Chuchaev (2021).

Despite the sufficient scientific study of the types of punishments imposed for crimes under Articles 264 and 2641 of the Criminal Code of the Russian Federation, we believe that the potential is not exhausted. Accordingly, there is a possibility of modifying the existing additional types of punishment, and the inclusion of new types.

The purpose of this study is to learn the sufficiency of the preventive value of such an additional type of punishment as deprivation of the right to hold certain positions or engage in certain activities for committing crimes provided for in Articles 264 and 2641 of the Criminal Code of the Russian Federation. Achieving the goal of the study is possible by solving the following tasks: - analysis of statistical data on the type of punishment under study; - legal analysis of the considered additional type of punishment in the form of deprivation of the right to hold certain positions or engage in certain activities; - identify possible gaps in the current versions of sanctions, in Articles 264 and 2641 of the Criminal Code of the Russian Federation; - develop proposals and recommendations that are aimed at improving the effectiveness of the considered type of punishment.

2 MATERIALS AND METHODS

Throughout the research, such methods as the general scientific dialectical method of cognition and special methods (statistical, comparative and legal, systematic and logical and legal) were used. To conduct the study, we developed a questionnaire for studying statistical data.

When writing the article, the materials of the official state bodies of the Russian Federation were used, such as: - information on the number of road accidents, deaths and injuries on the territory of the Russian Federation for 2020, obtained from the statistical reports of the Main Directorate for Traffic Safety of the Ministry of Internal Affairs of the Russian Federation; - information on the number of persons convicted under Articles 264 and 2641 of the Criminal Code of the Russian Federation, as well as statistical data on the number of sentences imposed by the type of punishment in the form of deprivation of the right to hold certain positions or engage in certain activities for the 1st half of 2019 and for the 1st half of 2020, which were filled in by the Judicial Department at the Supreme Court of the Russian Federation.

3 RESULTS AND DISCUSSION

One of the indicators of the level of driving culture in the country is the ratio of the number of people killed in road accidents to a certain number (usually per 100 thousand of the population). Taking into account that 16,152 people died on the territory of the Russian Federation in 2020, this rate is approaching 11 deaths per 100,000 people by the end of 2020. Nowadays, the Government of the Russian Federation has set a goal to reduce the number of deaths in road accidents at the rate of 8.4 deaths in 2024 and 4 deaths in 2030 per 100,000 people, which indicates the importance of the problem.

Table 1: Number of road accidents, deaths and injuries on the territory of the Russian Federation in 2020.

Crime scene	Road accident	Deaths	Injuries
<i>Road accidents</i>			
The Russian Federation	145 073	16 152	183 040
<i>Road accidents with drivers in a state of intoxication</i>			
The Russian Federation	15 552	4 347	20 440
<i>Road accidents with drivers who refused medical examinations</i>			
The Russian Federation	3 596	175	5 087
<i>Road accidents with drivers with signs of intoxication</i>			
The Russian Federation	19 112	4 515	25 469

Based on the data in Table 1, we can see that more than 55% of those who died in road accidents on the territory of the Russian Federation in 2020 are those who died as a result of driving under the influence of alcohol or are associated with the refusal of a medical examination or with signs of intoxication. Thus, in order to achieve the goal of reducing the number of deaths in road accidents at the rate of 4 deaths per 100,000 people in 2030, it is necessary to use additional types of penalties for road traffic crimes effectively, as well as consider the possibility of supplementing the text of the criminal law with new types of penalties that will contribute to achieving the goal of reducing deaths from road accidents.

Let us consider the current sanctions of Articles 264 and 2641 of the Criminal Code of the Russian Federation. Taking into account the name, the goals and objectives of the research, we will not deal with the penalties imposed as the main ones specified in the sanctions of Articles 264 and 2641 of the Criminal Code of the Russian Federation.

To conduct a legal analysis, it is necessary to refer to the general law regulations of Article 45 of the Criminal Code of the Russian Federation. This type of punishment in accordance with part 2 of Article 45 of the Criminal Code of the Russian Federation can be assigned both as the main type of punishment and as the additional type of punishment. Having studied the sanctions of Articles 264 and 264.1 of the Criminal Code of the Russian Federation, we have concluded that this type of punishment is specified by the legislator as an additional punishment. In various parts of Articles 264 and 264.1 of the Criminal Code of the Russian Federation, the considered type of punishment is assigned as mandatory or not mandatory to the main type of punishment for a period of up to three years. This term does not contradict the conditions specified in part 2 of Article 47 of the Criminal Code of the Russian Federation. According to which, the considered type of punishment can be imposed for a period from six months to three years. Due to a direct indication in the law, the type of punishment under consideration may be imposed for a period not exceeding three years. Upon further consideration of Part 2 of Article 47 of the Criminal Code of the Russian Federation, we can find an indication of the fact that if the sanction of the article of the Special Part of the Criminal Code specifically indicates the possibility of assigning deprivation of the right to hold certain positions or engage in certain activities, then in this case the court may impose this type of punishment for up to twenty years (Inogamova-Hegai L. V., 2016). It is not by chance that we have focused our attention on this circumstance. After the analysis of the practice of assigning this type of punishment, we will return to the idea of increasing the term of assigning the additional type of punishment for longer terms, taking into account the law regulations of Article 47 of the Criminal Code of the Russian Federation.

We will analyze the number of persons brought to criminal responsibility and assigned types of criminal punishment for the 1st half of 2019 and for the 1st half of 2020 in accordance with Form No. 10.1 (semi-annual), which was approved by Order No. 65 of the Judicial Department of the Supreme Court of the Russian Federation of 11.04.2017 (as amended by Order No. 108 of 30.05.2019) (Report on the number of persons brought to criminal responsibility and types of criminal punishment for the 1st half of 2019 and for the 1st half of 2020. Form No. 10.1 // [Electronic resource]: URL: <http://www.cdep.ru/index.php?id=79> (accessed 12.03.2021)).

As a result of the analysis, it was found that under parts 1 and 2 of Article 264 of the Criminal Code of the Russian Federation in the 1st half of 2019, a total number of 2,729 people were convicted on the territory of the Russian Federation, where 1,556 convicts were sentenced to deprivation of the right to hold certain positions or engage in certain activities. Thus, this type of punishment was not assigned to 1,173 convicts. Also, according to parts 1 and 2 of Article 264 of the Criminal Code of the Russian Federation, in the 1st half of 2020, a total number of 1,969 people were convicted on the territory of the Russian Federation, 1,140 were sentenced to the punishment we are considering. Note that this type of punishment was not assigned to 829 convicts. We are trying to find an explanation for this fact. Since the sanction of part 1 of Article 264 of the Criminal Code of the Russian Federation allows to assign the type of punishment or to come to a conclusion about not assigning it. Or the court applies the regulations of Article 64 of the Criminal Code of the Russian Federation. We believe that these circumstances are sufficient to justify not assigning the considered punishment to all convicted persons under parts 1 and 2 of Article 264 of the Criminal Code of the Russian Federation. It should be noted that the punishment in the form of deprivation of the right to hold certain positions or engage in certain activities in two cases is assigned as the main type of punishment. The imposition of this type of punishment as the main one is associated with the application of the law regulations of Article 64 of the Criminal Code of the Russian Federation. But in this case, the court has no legal basis for assigning the same type of punishment as an additional one (Bondarev S. P., Bokhan A. P., 2017).

According to parts 3 and 4 of Article 264 of the Criminal Code of the Russian Federation, in the 1st half of 2019, a total number of 1,652 people were convicted on the territory of the Russian Federation, only 1,441 convicts were assigned the sentence we are considering. This type of punishment is not assigned to 211 convicts. At the same time, according to parts 3 and 4 of Article 264 of the Criminal Code of the Russian Federation, in the 1st half of 2020, a total number of 1,171 people were convicted on the territory of the Russian Federation, 1,043 were sentenced to deprivation of the right to hold certain positions or engage in certain activities. This type of punishment was again not assigned to 128 convicts. It is difficult to explain the facts of not assigning the considered type of punishment to 128 convicts, when the appointment of this type of punishment is mandatory! We link these cases of non-imposition of

this type of punishment with the application of Article 64 of the Criminal Code of the Russian Federation.

According to parts 5 and 6 of Article 264 of the Criminal Code of the Russian Federation, in the 1st half of 2019, a total number of 267 people were convicted on the territory of the Russian Federation, 231 convicts were assigned the type of punishment we are considering. This type of punishment is not assigned to 36 convicts. At the same time, according to parts 5 and 6 of Article 264 of the Criminal Code of the Russian Federation, in the 1st half of 2020, a total number of 171 people were convicted on the territory of the Russian Federation, 162 were sentenced to deprivation of the right to hold certain positions or engage in certain activities. From the above data, we can see that the type of punishment under consideration is not assigned to 9 convicts. The study of the sanctions of parts 5 and 6 of Article 264 of the Criminal Code of the Russian Federation allows us to conclude that the sanctions contain a direct indication of the mandatory appointment of this very type of punishment. It is quite difficult for us to agree with the position of the courts regarding the application of the law regulations of Article 64 of the Criminal Code of the Russian Federation in relation to persons who have committed a crime under Part 5, and even more so Part 6 of Article 264 of the Criminal Code of the Russian Federation (Bondarev S. P., Bokhan A. P., Chmyrev S. N., 2020).

Table 2: The number of persons convicted under Article 264 of the Criminal Code of the Russian Federation and the number of sentences imposed in the form of deprivation of the right to hold certain positions or engage in certain activities for the 1st half of 2019 and for the 1st half of 2020.

Period and part of the article	The total number of convicted	Assigned	Not assigned
The first half of 2019 (Parts 1 and 2 of Article 264 of the Criminal Code of the Russian Federation)	2 729	1 556	1 173
The first half of 2020 (Parts 1 and 2 of the Article 264 of the Criminal Code of the Russian Federation)	1 969	1 140	829
The first half of 2019 (Parts 3 and 4 of the Article 264 of the Criminal Code of the Russian Federation)	1 652	1 441	211

Table 2: The number of persons convicted under Article 264 of the Criminal Code of the Russian Federation and the number of sentences imposed in the form of deprivation of the right to hold certain positions or engage in certain activities for the 1st half of 2019 and for the 1st half of 2020 (cont.).

Period and part of the article	The total number of convicted	Assigned	Not assigned
The first half of 2020 (Parts 3 and 4 of the Article 264 of the Criminal Code of the Russian Federation)	1 171	1 043	128
The first half of 2019 (Parts 5 and 6 of the Article 264 of the Criminal Code of the Russian Federation)	267	231	36
The first half of 2020 (Parts 5 and 6 of the Article 264 of the Criminal Code of the Russian Federation)	171	162	9

Carefully analyzing the statistics, we also see cases of non-imposition of punishment in the form of deprivation of the right to hold certain positions or engage in certain activities under Article 264 of the Criminal Code of the Russian Federation, despite the fact that this type of punishment should be imposed unconditionally. So, under Article 264 of the Criminal Code of the Russian Federation in the 1st half of 2019, a total number of 27,112 people were convicted on the territory of the Russian Federation, of which 24,182 were sentenced to the type of punishment we are considering. This type of punishment is not assigned to 2,930 convicts. In the 1st half of 2020, a total number of 24,514 people were convicted on the territory of the Russian Federation, of which 22,743 were sentenced to the punishment we are studying. At the same time, this type of punishment is not assigned to 1,771 convicts. The existence of this fact, we also associate with the law regulations specified in Article 64 of the Criminal Code of the Russian Federation.

Table 3: The number of persons convicted under Article 264¹ of the Criminal Code of the Russian Federation and the number of sentences imposed in the form of deprivation of the right to hold certain positions or engage in certain activities for the 1st half of 2019 and for the 1st half of 2020.

Period and article	The total number of convicted	Assigned	Not assigned
The first half of 2019 (article 264 ¹ of the Criminal Code of the Russian Federation)	27 112	24 182	2 930
The first half of 2020 (article 264 ¹ of the Criminal Code of the Russian Federation)	24 514	22 743	1 771

We believe it is unacceptable that the courts do not impose the types of punishments that are mandatory to be imposed as additional types of punishment. This practice leads to distrust of the judicial system and significantly reduces the preventive effect of these sanctions.

Despite the cases of courts ignoring the mandatory imposition of punishment in the form of deprivation of the right to hold certain positions or engage in certain activities as an additional type of punishment, we consider it is possible to propose to the legislator to increase the terms of the sentence under consideration.

Let us consider possible options for assigning this type of punishment for longer terms than currently provided for by the sanctions of Articles 264 and 264¹ of the Criminal Code of the Russian Federation (Lyadov E. V., 2020).

Let us return to the initial point of our study. We repeat that the maximum penalty in the form of deprivation of the right to hold certain positions or engage in certain activities within the current version of Articles 264 and Article 264¹ of the Criminal Code of the Russian Federation should not exceed three years. Let us compare similar acts in terms of punishment, some of which are criminal offences and others should be qualified as administrative. We are talking about driving vehicles in a state of intoxication or with actions related to the refusal of a medical examination or with signs of intoxication or when such a condition acts as an aggravating circumstance.

Parts 1 and 2 of Article 12.8 of the Administrative Code of the Russian Federation establishing responsibility "For the management or transfer of

control ...", provide for a sanction in the form of deprivation of the right to drive vehicles for a period from one and a half to two years. That is, in this case, the lower limit of punishment for such an act in the Criminal Code of the Russian Federation is lower (from six months) than the Administrative Code of the Russian Federation (from one and a half years). And the upper limit is not very different: up to two years - in the administrative law and up to three years - in the criminal law.

So, we are talking about absolutely different types of legal responsibility and different public danger of acts. And the expression of public danger, as we know, is reflected among other things in the sanction of the legal norm (Razgildiev B. T., 2017). The greater the public danger of the act is, the stricter the sanction is, and vice versa. We believe that it is necessary that the minimum term of the additional type of punishment imposed in Articles 264 and 264¹ of the Criminal Code of the Russian Federation should not be lower than in the administrative legislation for similar acts. And also, depending on the severity of the consequences, the analyzed type of punishment can be five, ten, fifteen or even twenty years. We will say this in the conclusions.

In addition to the above proposals, we will also focus on possible additions to the text of the criminal law. In the State Duma of the Russian Federation with a certain frequency, proposals are made on the possibility of confiscating a vehicle that was under the control of a person who committed a crime, responsibility for the commission of which is provided for in Articles 264 or 264¹ of the Criminal Code of the Russian Federation (in 2018, the bill was developed by deputies of the Arkhangelsk Regional Assembly). For example, on March 16, 2021, the State Assembly - Kurultai of the Republic of Bashkortostan, introduced the bill No. 1130809-7 "On Amendments to Article 1041 of the Criminal Code of the Russian Federation". This bill is aimed at implementing the possibility of confiscating a vehicle from a person who is intoxicated or has refused a medical examination, if such a vehicle belongs to a guilty person or other owner. Such bills do not arise without a reason, they are the reaction to the challenges that we see in everyday life. Probably, this is a request of the society at the present time (Vellinga N.E., 2017). After all, it is an absolutely unacceptable situation when people continue to drive vehicles in a state of intoxication, whose number of violations is estimated in the hundreds. And all this in the end, as we see, leads to human casualties.

We will express our opinion on this issue. In general, we have a positive attitude to the idea of

confiscating a vehicle from persons who drive it in a state of intoxication, provided that the consequences specified in Articles 264 or 264.1 of the Criminal Code of the Russian Federation will occur (Simonato M., 2017). We will devote one of our next studies to this topic.

In the framework of this study, we will draw attention to the norm that is enshrined in paragraph 5 of article 131-6 of the French Criminal Code "Bringing to a standstill one or more vehicles belonging to a convicted person for a period of no more than one year, in accordance with the provisions of a decree of the Council of State" (Ljungholm D. P., 2019). We believe that this type of punishment can be included in the Russian criminal legislation in a modified version, taking into account the legislative technique.

Taking into account the fact, that the punishment in the form of deprivation of the right ... or to engage in certain activities as an additional type of punishment is not imposed by the courts in all cases of conviction, as evidenced by the data indicated in Tables 1-3. And the very fact of the execution of this type of punishment comes down to the formal withdrawal of the driving license, that will not stop the person from further driving the vehicle, despite the ban (Civello G., 2019). More drastic measures are needed, such as a physical restriction on the use of the vehicle.

Taking into account foreign experience, along with the additional type of punishment provided for in Article 47 of the Criminal Code of the Russian Federation, we also propose to introduce a restriction on the use of a vehicle. We anticipate objections to this type of punishment, which can only be imposed as an additional one. The main one is the restriction of property rights. Yes, this right will be limited, but limited by law! The owner or other owner of the vehicle should be aware of the consequences and more carefully and selectively approach the issues of trust, transfer of the right to drive a vehicle. These changes are aimed at ensuring the protection of life and health of citizens, ensuring the safety of traffic and exploitation of transport, as well as reducing the number of road accidents and the severity of their consequences.

4 CONCLUSIONS

Summing up our research, we note the following. It is necessary to set a lower term for an additional type of punishment in the form of deprivation of the right to hold certain positions or engage in certain activities

for at least one and a half years. The upper limit of an additional type of punishment in the form of deprivation of the right..., in part 1 of Article 264 of the Criminal Code for up to five years or without it, in parts 2 and 3 of Article 264 of the Criminal Code for up to ten years, in Parts 4 and 6 of Article 264 of the Criminal Code for up to twenty years and in Part 5 of Article 264 of the Criminal Code for up to fifteen years. In article 264.1 of the Criminal Code of the Russian Federation, the upper limit of the sanction is in the form of deprivation of the right to hold certain positions or engage in certain activities for a period of up to ten years.

The second important result of the study is that we consider it possible to propose to the legislator to include in the text of the criminal law a norm that restricts the use of a vehicle, framed as: Article 47.1 Restriction on the use of a vehicle.

The restriction on the use of a vehicle is applied to a person who is sentenced to deprivation of the right ... for the same period.

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