

## SUMMARY

**for the dissertation of Alexander V. Tsybanev, submitted for the degree of candidate of legal sciences in specialty 5.1.2. «Public legal (state legal) sciences» on the topic «Subjects of proceedings in cases of administrative offenses in military courts»**

The active development of procedural legislation in recent years has touched upon the organization and activities of military courts, primarily by expanding their competence, which in itself already confirms the growing role of military justice in protecting the rights, freedoms and legitimate interests of citizens, strengthening the rule of law, and increasing military discipline.

Significant in the framework of military justice is the proceedings in cases of administrative offenses committed by military personnel and persons called up for military training. Judicial statistics indicate a fairly significant number of cases of administrative offenses that are considered by military courts.

An analysis of the practice of consideration by military courts of cases of administrative offenses committed by servicemen and citizens who are in reserve during their military training in dynamics indicates that judges are mainly guided in their work by the norms of the Code of Administrative Offenses of the Russian Federation and the explanations of the Plenum of the Supreme Court of the Russian Federation, and district (naval) military courts cope with the tasks assigned to them to verify the decisions and decisions of garrison military courts in cases of administrative offenses.

At the same time, a certain kind of law enforcement problems are associated with the design of the system of subjects of military judicial proceedings and their procedural status, since this institution is one of the immanent signs and elements of the procedural form of administrative responsibility. The law enforcement problems arising in the activities of military courts in connection with the consideration and resolution of cases of administrative offenses are largely due to the insufficient quality of legal regulation in terms of regulating the procedural status of the subjects

of proceedings in the case of an administrative offense, which makes it possible to speak of the relevance of its further improvement for military court proceedings.

The structure of the dissertation includes an introduction, three chapters combining six paragraphs, an opinion and a bibliographic list. The introduction substantiates the relevance of the research topic, formulates its purpose and tasks, object and subject, the degree of development of the scientific problem, the theoretical and methodological basis of the study, its scientific novelty, theoretical and practical significance, the results of testing the conclusions and results obtained. The first chapter contains an analysis of the theoretical and methodological foundations of the status of military courts as bodies of administrative jurisdiction. Military courts are dealt with in a system of administrative jurisdiction; the peculiarities of the jurisdiction and jurisdiction of cases of administrative offenses to military courts are investigated. The second chapter proposes the characteristics of the subjects of proceedings in cases of administrative offenses in military courts. Features of administrative procedural legal personality are determined as conditions for participation in proceedings on administrative offenses in military courts; the system of subjects of proceedings on cases of administrative offenses in military courts is presented. The third chapter is devoted to the study of the legal status of participants in administrative offenses in military courts. In conclusion, the main conclusions obtained from the study are presented.

As a result of the study:

- the author's understanding of the status of the military court as an authority of administrative jurisdiction and the subject of proceedings in cases of administrative offenses is presented;
- the peculiarities of the legal structure of jurisdiction and jurisdiction of cases of administrative offenses to military courts are disclosed;
- the conceptual framework necessary for the formation of the legal structure of a military court as an organ of military judicial administrative jurisdiction is justified, including definitions of such definitions as «administrative jurisdiction of a military court», «administrative-jurisdictional activities of a military court», the

general and special status of a military court as a subject of administrative jurisdiction;

- the subjects of administrative and tort proceedings were systematized in military courts and the specification of their administrative procedural legal personality was determined as conditions for participation in the proceedings;

- the peculiarities of the administrative and procedural status of the subjects of proceedings on cases of administrative offenses in military courts, conflicts and gaps in the relevant regulatory material were revealed;

- proposals were made to improve the current legislation on administrative offenses in relation to the regulation of the status of subjects of proceedings in cases of administrative offenses.

The state military organization, the institutional basis of which is the Armed Forces of the Russian Federation, other troops, military formations, bodies and organizations, in the general architectonics of public authority and management, is a very complex and task-specific structure for ensuring military security as one of the basic components of national security as a whole. The effective functioning of a state military organization is due to a combination of factors, including spiritual potential as one of the foundations of military discipline, which is ensured, first of all, by the level of implementation of the principle of legality and the quality of military justice as one of the foundations of order in the army and a key institution of legal education work.

Military courts are part of the system of federal courts of general jurisdiction. The specification of the exercise of judicial power by military courts is due to the exercise of their powers within the framework of the system of bodies and organizations in which the federal law provides for military service, which is emphasized by the procedure for the deployment of district (naval) and garrison military courts. The current Federal Constitutional Law of 23.06.1999 No. 1-FCL «On Military Courts of the Russian Federation» was the result of the reform of the military judicial system, within the framework of which they received permission to create an independent and independent link of the judicial system, which is designed

to act as a guarantor of legality and justice in the field of military organization of the state.

The analysis of the current legislation made it possible to formulate the structure of the status of a military court in the unity of the target, structural, organizational and competence elements that form the basis for identifying a military court as in the system of subjects of law in general, as well as in the system of subjects of administrative jurisdiction, in particular. Attention was drawn to such a feature of the target block of the legal status of a military court as legal education, which accompanies the solution of jurisdictional tasks, primarily in terms of prevention, is included in the plans for the activities of military courts and is subject to assessment.

The analysis of the relevant certificates made it possible to conclude that both in terms of form and content, these analytical documents are generally compiled uniformly, and secondly, on the areas of legal education: consideration of cases in the location of military units in the presence of personnel; establishing the causes and conditions conducive to the commission of offenses; announcement of decisions on the case in the orders of the command and bringing these orders to the personnel, sending relevant information certificates to the command; publication of court decisions in the media, informing citizens about the work of the court through the media; carrying out other measures aimed at preventing offenses that contribute to the legal education of military personnel (conducting conversations, lectures on legal topics).

An unconditional feature of military courts, which distinguishes them from other judicial bodies of general jurisdiction, is that they have their own organizational and institutional structure, which is formed both on the territory of the Russian Federation and abroad, if this is provided for by an international treaty, in accordance with the deployment structures of the military organization of the state. The very fact of the presence of military vessels of this kind of territorial location is assessed as positive. At the same time, an analysis of international treaties on jurisdiction and mutual legal assistance in cases related to the deployment of

Russian military vessels in foreign territories, testifies to the limited jurisdiction of the Russian Federation in relation to its citizens, located outside the Russian Federation, which does not comply with Art. 2 of the Constitution of the Russian Federation and determines the need to reach agreements with foreign states on the full jurisdiction of the Russian Federation in relation to its citizens. Also, the deployment of military courts outside the territory of the Russian Federation raises the question of the ratio of subordination and jurisdiction in the system of military courts.

Analysis of the competence features of military courts in the scope of their administrative and jurisdictional powers made it possible to group the latter into several blocks: functional powers (to resolve cases of administrative offenses, establish the reasons and conditions for committing administrative offenses, their prevention, as well as powers to consider other administrative cases; to ensure the execution of the decision in the case); subject powers (to resolve the established category of cases); territorial powers (connection with the territory in which the military court operates); procedural powers (powers in the administrative-jurisdictional process, which in the aggregate unity constitute the content of its administrative-jurisdictional activities and are determined by the peculiarities of the implementation of administrative jurisdiction in a particular jurisdictional proceeding).

As a result of the study of the status of military courts in the system of administrative jurisdiction, theoretical conclusions were made regarding the scope and content of the administrative jurisdiction of the military court and its administrative-jurisdictional activities. The administrative jurisdiction of a military court is seen as a manifestation of administrative judicial jurisdiction and as military judicial administrative jurisdiction. From this general view, the concept of administrative jurisdiction of a military court in the framework of proceedings in an administrative offense case was distinguished.

An analysis of the issues of jurisdiction of administrative cases to military courts made it possible to conclude that the legislator in determining its content

focuses not on the nature of the case, but on the peculiarities of the legal status of the person who committed the administrative offense. At the same time, the procedure for considering and resolving cases of this subject group is universal, and the priority of this criterion does not affect the procedural status of the person in respect of whom military court proceedings are being conducted in the case of an administrative offense. It is also not the status itself that matters, but the proven information about such status that the subject of administrative jurisdiction should have at the time of the resolution of the case.

It was also pointed to the temporal sign of generic jurisdiction in relation to military courts, since we are talking about the commission of an administrative offense during the period of military service or stay at military training camps. At the same time, attention is drawn to the fact that the generic criterion of jurisdiction has a broad content due to the extension of the administrative jurisdiction of military courts stationed outside the Russian Federation to persons who do not have the status of a serviceman or equivalent persons.

The issues of territorial jurisdiction of cases of administrative offenses to military courts were investigated, which resulted in the conclusion that the specifics of the legal status of a military court as an administrative jurisdiction body formed by the Law on Military Courts are not fully taken into account. This is obvious in terms of determining the subject of military vessels deployed outside the territory of the Russian Federation. In connection with issues of jurisdiction, some rulemaking proposals were made.

It was established that the jurisdiction of a certain category of cases to military courts was not formed spontaneously - it was long, a deeply grounded historical process that determined the specifics of determining the jurisdiction of cases to military courts on the basis of the subject, and not the generic criterion, which, in fact, ensures the social and political significance of this part of the judicial system, which, in addition to the fundamental function of the administration of justice, can be seen as an institutional element of military security. In this regard, the study justifies the conclusion that "civilian" jurisdiction is not able to replenish the socially

significant functions of military judicial jurisdiction in the field of national security, legal education, ensuring the rule of law and law and order within the framework of the military organization of the state. Additional opportunities are also being substantiated to expand the jurisdiction of military courts in cases of administrative offenses, both according to subject and territorial criteria, in particular, in conditions of emergency legal regimes.

The concept of a subject of military judicial proceedings in cases of administrative offenses should be interpreted, on the one hand, as a certain kind of procedural form of participation in the proceedings, on the other hand, as persons with certain signs of administrative procedural legal personality. The concept of a subject of production is wider than the concept of a participant in production. The system of subjects is represented by the court (judge) as a subject of administrative jurisdiction and the actual participants in the proceedings with various procedural functions, depending on their attitude to the outcome of the case. The peculiarities of the system of subjects of military judicial proceedings are determined, first of all, by the peculiarities of the subject of administrative jurisdiction (military court) and the peculiarities of the person in respect of whom the proceedings are being conducted in the case of an administrative offense (military personnel, persons called up for military training), which ensures the greatest degree of efficiency in resolving cases in relation to a specialized circle of subjects.

In terms of the study of administrative procedural legal personality as a condition for participation in proceedings on administrative offenses in military courts, emphasis is placed on the peculiarities of the emergence and maintenance of special administrative procedural legal capacity of a person in respect of whom proceedings are being conducted in the case of an administrative offense in a military court, its relationship with the material legal capacity of a serviceman and a person equated to him. The administrative and procedural capacity of military personnel or persons called up for military training allows them to ensure the implementation of their administrative and procedural legal capacity. Administrative and procedural capacity of this category of persons is ensured directly by their status, which allows

us to say that a defect in their capacity is actually impossible or, at least, unlikely, although not excluded. As a result, there are features of the administrative tort of this category of persons, as indicated in the work. The dependence of material and procedural legal capacity was also investigated in relation to other participants in military court proceedings in the case of an administrative offense.

The study of the legal status of subjects of proceedings in the case of an administrative offense in military courts was based on the experience of classifying subjects of the administrative process, but taking into account certain specific criteria. The work proposes a version of such a classification, which, among other things, is built on the criteria of legal interest in the fate of the case.

Within the framework of the general characteristics of the system of subjects of administrative and tort proceedings, military courts present fundamental differences between a military court and other subjects of administrative jurisdiction. It was concluded that the participants in the administrative offense case are united by administrative-procedural communication with a specific body of military-judicial administrative jurisdiction and participation in the consideration of an administrative offense case with a specific procedural purpose and procedural functions. This connection is expressed in various forms of interaction (direct or indirect) of the military court and other participants in military court proceedings when considering and resolving an administrative offense case in order to achieve the goals and solve the tasks of administrative responsibility. The totality of such ties forms an integral administrative and procedural relationship in administrative and judicial proceedings.

The Code of Administrative Offenses of the Russian Federation forms a system of persons with a legitimate interest in proceedings on cases of administrative offenses. At the same time, the Code does not directly establish the specification of the procedural status of these persons in relation to military judicial proceedings. At the same time, the current legislation and law enforcement practice indicate that the features arising from the special status of military personnel and persons equated to them affect the practical implementation of the procedural status of all interested



parties. This is most characteristic of the procedural status of the person in respect of whom proceedings are being conducted in the case of an administrative offense. At the same time, it should be noted that the problems of normative consolidation and the practice of implementing the procedural status of persons with a legitimate interest in proceedings on administrative offenses in military courts are both highly specialized, arising, in fact, from the special status of military personnel and persons equated to them, and the general nature characteristic of administrative and tort proceedings in general.

Analysis of the judicial practice of military courts has demonstrated the most frequent situations of abuse of the right of persons in respect of whom proceedings are being conducted. Based on this analysis, some proposals of a normative nature are made, presented in the form of provisions submitted for protection. Attention is also drawn to some features of administrative-jurisdictional proceedings on disciplinary offenses of military personnel, which can act as a procedural form of official reaction to the commission of an administrative offense by military personnel, in relation to military-judicial proceedings in an administrative offense case.

Modern geopolitical realities, an increased level of militarization of international relations, systematically occurring armed conflicts and wars dictate the need for the Russian Federation to have not only well-trained, but also well-legally protected Armed Forces, other troops and military formations and other structures of the military organization of the state. This, in turn, outlines the problems of comprehensively ensuring the rights and legitimate interests of military personnel and persons equated to them, victims of an administrative offense, as well as from other unlawful encroachment. The importance of this issue is no less than the issues of combat readiness and combat effectiveness. It seems that the peculiarities of the status of military personnel, built on multiple restrictions and prohibitions, should be compensated by additional guarantees for the protection of their rights in jurisdictional processes, including in administrative and tort proceedings. In this regard, a number of conclusions were made regarding the expansion of the

possibility of protecting the rights of this category of persons within the framework of the mechanism for providing free legal assistance. In addition, an analysis of judicial practice showed that it is far from always that a military court considers an administrative offense case with the participation of a defense lawyer.

The Code of Administrative Offenses of the Russian Federation forms a system of persons assisting the administration of justice in cases of administrative offenses in military courts, but does not establish the peculiarities of the procedural status of these persons in relation to military court proceedings. At the same time, these features arising from the special status of military personnel and persons equated to them are revealed on the basis of an analysis of the current legislation and judicial practice and affect the practical implementation of the procedural status of this category of participants in military proceedings. At the same time, it should be noted that the problems of normative consolidation and practice of implementing the procedural status of persons assisting in the administration of justice, as well as persons with a legitimate interest in proceedings on administrative offenses in military courts, are both highly specialized, arising, in fact, from the special status of military personnel and persons equated to them, and the general nature inherent in administrative and tort proceedings in general.

Thus, the study demonstrates that the law enforcement problems arising in the activities of military courts in connection with the consideration and resolution of cases of administrative offenses are largely due to the insufficient quality of legal regulation in terms of regulating the procedural status of participants in the proceedings in the case of an administrative offense, which allows us to talk about the relevance of its further improvement for military court proceedings.

