Universal Decimal
Classification
342.9

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# THE TASKS AND PRINCIPLES OF THE LAW ON ADMINISTRATIVE RESPONSIBILITY OF THE PUBLIC CIVIL SERVANTS

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Supports tasks related to the participation of citizens in administrative prosecution of delinquents – public persons, combating corruption in the public civil service, with the removal of dual-use regulation (Federal and regional level) of the legislation on administrative responsibility of the public civil servants, etc. The principles of the legislation on administrative liability of the public civil servants for their regulatory consolidation in the Code on Administrative Offences of the Russian Federation are offered.

**Keywords**: public civil servants, administrative responsibility, the law on administrative responsibility, the principles of the law on administrative liability.



No doubt that the tasks of the legislation on administrative responsibility of public civil servants are an integral part of the common tasks of the legislation on administrative offences, enumerated in article 1.2 Code on Administrative Offences of the RF. Analysis of the article shows that the legislator declared tasks which are essentially an enumeration of legal relations' object, which protect the administrative and delictual legislation of Russia. This is a protection of the individual, the protection of human and civil rights and freedoms, citizens ' health, sanitary-epidemiological well-being of the population, protection of public morals, the protection of the environment, the established order of the state power implementation, public order and public security, property, the protection of the legitimate economic interests of natural or legal persons, society and the State against administrative offences. However, the legislation governing the administrative responsibility of public civil servants, in our opinion, has a more narrow and specific tasks.

For example, A.V. Chuev believes that "the main objectives, tasks, and functions of public civil servants responsibility, are greatly connected and are derived from the constitutionally vested regulations guaranteeing the recognition, observance and protection of the human rights and freedoms as a fundamental obligation of the State. Recognition of the highest value of human rights and freedoms is an

inherent feature of the Law abiding state. These constitutional orders are at the forefront of the administration and functioning of the State Machinery. The goals of this organization and its normative regulation system are in the protection of the individual's interests "[9, 82-83]. Indeed the priority of human rights cannot be realized without the obligation of the State not only to recognize shown principles, and without strict compliance with the human and citizen rights and freedoms. It follows that for any illicit acts, which violate the rights and freedoms of citizens committed by public civil servants, the servants must bear legal responsibility. And we believe that the mechanism of responsibility must be such that any citizen, whom interests have been violated, could initiate the procedure of holding an official liable.

The administrative responsibility of public civil service servants must have among its objectives: the protection of public relations, formed in the process of execution of the powers of federal governmental bodies, from illicit conduct of public civil servants contradicting to the interests of the State; the establishment of a mechanism to guarantee the rights of citizens; education of public civil servants in the spirit of compliance with the law , regulations and rules and thus preventing of administrative offences.

We agree with E.V. Sandal'nikova, that "the main purpose of the legal responsibility of public servants is not to punish the culprit and restore the violated law, but inducement of each public civil servant to lawful conduct and, ultimately, promoting of a legal culture formation of public civil servants and the whole society" [8, 55]. A similar view expressed A.V. Chuev: "the main purpose of the legal responsibility of public servants is inducement of each public civil servant to lawful conduct and, ultimately, promoting of formation of their legal culture" [9, 86].

The objectives of the administrative responsibility of the public civil servants, as well as overall legal responsibility, are: the formation of civil society and the Law-abiding state; prevention of new public servants' administrative delicts (i.e. the impact on future conduct); providing the lawful conduct of public civil servants; delinquency reduction, rehabilitation of social relations; education of civil servants' law abidance.

However, the role of negative component of legal responsibility, from our view, is also great, that is provided with an adequate punishment and inevitability of the delinquent punishment. The possibility to use severe punishment for an illicit deed contributes to forming of a public civil servant's need in lawful implementation of his official duties. When the public civil servant doesn't implement his duty, responsibility appears in its, so-called, negative (retrospective) significance – delinquent is subjected to measures of state compulsion for the committed offence.

As one of the objectives of the legislation on administrative responsibility of public civil servants we see overcoming of legal nihilism which takes place in the civil service. M.A. Mesilov considered the process of overcoming in two aspects – prevention and preventing of this negative phenomenon [6]. Prevention, in his view, consists of measures aimed at identifying and eliminating of the causes and conditions of the legal nihilism emergence, and preventing - from measures which are applied to ban the facts of distortion of legal consciousness and theirs overcoming.

And how don't accept with the author who rightly claims that "the law must be the result of the careful study of social relations' nature, time and place: the slightest omission in this area entails failure of the most positive aspirations. The law should clearly, accurately and distinctly formulate the content that the legislator had in mind. The main thing in the text of the Law – its accuracy» [6, 86].

As pointed out by A.N. Deruga "the building of administrative policy of the adequate administrative and delictual environment is essential for successful opposition to administrative offences. Modern understanding of this policy is based on the actions of federal legislation and subordinate normative legal legislations, directly or indirectly related to the Code on Administrative Offences of the RF.

Exactly here accumulate advanced views on the adequate measures of counter to certain types of administrative offences, the entire administrative delinquency; here are formed general and individual, professional and personal views about the qualities of an administrative offence, the importance and the need to combat with its massive manifestations "[2].

It is not a secret, about the number of problems in law-enforcement practice because of the low level of legal technology of the legislative body in Russia. The lack of scientific support of legislative activity at the gap between legislation and the law, we believe, is not the latest cause of legal nihilism of public civil servants. From our point of view, scientific provision of the law-making process should be presented at all stages, starting with question of the feasibility to develop this or that normative legislation, its concept and finishing with study the effectiveness of the application of already adopted law standards.

As one of the objectives of the legislation on administrative responsibility of public civil servants, we see the optimization of the relationship between the legal regulation of wide ranged public relations and the rights of law enforcement entities, while retaining control over their activities and clearly outlining the limits of discretion. We believe that it is impossible to predict all possible variants of tort conduct (deeds) of public civil servants. However, it is unacceptable that delinquent is able to evade responsibility for lack of structure (objective side) of the administrative offence, as

well as for the absence in the rule of law, the relevant legal categories and definitions, despite the detailed regulation of legal relations and their violation. As the task of the legislation on administrative liability of public civil servants we see formation of standards which provide mechanism for the implementation in national legislation the provisions of the Model Code of conduct for public servants, adopted in accordance with the recommendation № R (2000) 10 Committee of Ministers of Europe Council, for example, prohibiting public civil servant to extract personal gain from his official position in his relations with other State institutions, business, public organizations, etc. The public civil servant should bear an administrative responsibility for preventing such collisions, whether they are real, potential or may be established.

The administrative responsibility of public civil servants, in our view, should include the principle of proportional ascending and descending order. In the term of public civil servant is hidden the leader and specialist, public servant of power bodies at different levels and different competences, because of that their identical, due to object and objective side, administrative offences will have different public resonance (a different assessment of the civil society). The ratio should go from the volume of vested duties, the number of subordinates and level of subordination, the degree of infringement of the rights and lawful interests of citizens and legal persons, etc.

Previously A. f. Nozdrachev emphasized that "the Code on Administrative Offences of the Russian Federation doesn't contain formulations of administrative corruption offences, separated from criminal ones on the basis of the gravity of the consequences that have occurred. There are no administrative responsibilities of public servants for corruption offences in chapter "Administrative offences, infringing on the institutions of State power" [7]. The scientist also lamented the lack in the Code on Administrative Offences of the Russian Federation of an offence that is similar to bribe. "Getting by public servants of payment for performance of any action related to their official duties in favor of a bribe giver may not be a disciplinary offence. Judicial practice often recognizes bribe as a minor offence, if its size is insignificant. And in this case, the recipient is exempt from criminal responsibility and it's impossible to bring him to the administrative one, since there is no corresponding formulations in the Code on Administrative Offences of the Russian Federation"[7].

And we support A.F.. Nozdrachev in the call to formulate appropriate formulations of administrative offences of corruption nature. These formulations can be attributed not only to bribes, but abuse of official position, abuse of power, violation of professional ethics, extortion, and illicit engagement of entrepreneurial activity [5]. The task of the legislator will be to determine a clear line between corruption disciplinary misconduct, corruption administrative offence, corruption a criminal offence.

In the legal literature notes multilevel nature of the responsibilities of public civil servants with reference to the two-level system of the civil service. For example, A.V. Chuev notes that "the administrative responsibility of all public civil servants begins due to the Code on Administrative Offences of the Russian Federation, and public servants' of subjects of the Russian Federation one due to, adopted in accordance with it, the laws of the subjects of the Russian Federation on administrative offences. This is conditioned with the fact that administrative legislation in accordance with part 1 article 72 of the Constitution of the Russian Federation is related to subjects of joint administration of the Russian Federation and the subjects of the RF "[9, 87-88]. Therefore, the next task of the legislation on administrative responsibility of public civil servants should be adjusting the rules excluding the joint management of the issues that determine administrative responsibility of public civil servants. Absurd is the situation where different members of the Russian Federation will be perceived differently against unlawful actions by public civil servants, or even worse, the person disqualified from the civil service in one subject of the Federation will legitimately enter into public service of another subject of the Federation. The administrative responsibility of public servants should occur only on the basis of Code on Administrative Offences of the Russian Federation.

Legislation on administrative responsibility of public servants should not allow an abuse of right in evaluation of deeds which infringement to the rights and freedoms of citizens and economic interests of legal entities. It should not be forgotten that the civil public servants in the rank of officials of the administrative jurisdiction bodies implement measures of administrative compulsion against perpetrators of public interest protected by the rules of administrative law and, naturally, can implement the right limitation of management operators.

So, in legislation should be clearly seen the balance between public danger on administrative offences by administrative jurisdiction bodies' officials and managed entities.

D. N. Bakhrakh has rightly wondered – why citizen illegally brought to responsibility, after recognition of his innocence must continue to fight for his rights, and he responded: "If an official has violated the law, the natural sense of justice implies that the victim will be apologizing, and the perpetrator will be punished. Impunity corrupts power entities. The law could set a rule requiring authority, whose officials have hold or attracted a citizen to an administrative responsibility, if he is excused to bring him the formal apology "[1].

The norm of part 5 article 7 of the law of the Russian Federation from April 27, 1993 "On appeals to court of actions and decisions violating the rights and freedoms

of citizens" that provides the adoption of responsibility measures in respect of public servants who have committed actions (decisions) recognized illicit, does not really applied in practice. The legislator said: "A", but did not say "B". As said professor D.N. Bakhrakh, and we agree with him that in the law should be vested the right of the person whom rights or freedoms have been violated to submit a petition about bringing the guilty official to disciplinary, administrative or even criminally responsibility [1].

Existing administrative legislation rarely involves in the participation of interested individuals (citizens and representatives of legal entities) in proceedings on administrative offences of public civil servants. The administrative jurisdiction bodies as a whole negatively concerns to citizen participation in administrative prosecution of guilty officials of the public civil service. And only the status of the victim allows to private juridical entities to participate in the proceedings on administrative offences of public civil servants.

Unfortunately, the current Law of the Russian Federation actually establishes immunity not only civil servants but also all public organizations' officials from the claims of citizens, in respect of which they carried out illicit, inappropriate actions. As pointed out by D.N. Bakhrakh, "the maximum that can make the victims - the cancellation of an illegal act. Citizens not even have the right to raise the question of the possibility of bringing the servant to criminal or administrative, disciplinary, financial or civil liability, not saying that they don't have the right to hold officials liable. To any of these types of servants' legal liability a servant can be held liable only by other ones. A citizen has a right only to request administrative complaints against the impunity of those who have violated his rights "[1].

Science of administrative law should review the role of civil society in the administration and jurisdictional processes, introducing the so-called public control in cases on administrative offences of public civil servants. This will restore the confidence of civil society in the activities of the administrative and juridical bodies and will not call into question the inevitability of punishment of official- delinquent. From here follows the objective of the legislation on administrative liability of public civil servants is to ensure the participation of private legal entities to participate in the processes of administrative prosecution of delinquents – public civil servants of Russia by administrative jurisdiction authorities.

Solution of tasks facing the legislation on administrative responsibility of civil servants is not possible without compliance with the fundamental principles. In the legal literature are mentioned such basic principles of juridical responsibility as lawfulness, usefulness, democracy, responsibility only for a illicit act, the presumption

of innocence, inevitability, individualization, humanism, equality of all before the law, which in our point of view are also inherent in the administrative responsibilities of public civil servants. These principles are interrelated with defined by us objectives over the legislation on administrative liability of public civil servants. And this is natural, because under the principles of administrative responsibility as a legal institution are understood the fundamental, aspects, which determine the content of the legislation on administrative offences [3, 34]. Some of these principles are vested in norms directly applicable in the Code on Administrative Offences of the Russian Federation - principle of equality before the law (article 1.4), the presumption of innocence (article 1.5), the principle of legality (article 1.6). Other principles can be identified from the content of the articles of the legislation on administrative offences.

The meaning of the principles of legislation on administrative offences is in that their violation depending on the nature and materiality attracts recognition of the held proceeding on case to be invalid, the abolition of the decisions issued on the result of the proceeding or recognition of the collected materials that do not have the force of proofs. That's why, the authority of the administrative jurisdiction which prosecutes a public civil servant-delinquent must strictly observe with the principles determined by the legislation. In this part the Russian legislators should learn from the positive points of the Code of the Republic of Kazakhstan on administrative offences which establishes in articles 9-27 all the fundamental principles of administrative and delictual legislation:

- Article 9. Legality
- Article 10. Exclusive competence of the Court
- Article 11. Equality of persons before the law
- Article 12. The presumption of innocence
- Article 13. The principle of guilt
- Article 14. Inadmissibility of repeated bringing to an administrative responsibility
- Article 15. The principle of humanism
- Article 16. Immunity of person
- Article 17. Respect of person's honor and dignity
- Article 18. Personal privacy
- Article 19. Immunity of property
- Article 20. The independence of judges
- Article 21. The language of proceedings
- Article 22. Relieving from the duty to give witnesses' evidence
- Article 23. Guaranteeing the right to qualified legal assistance,

- Article 24. The publicity of court proceedings on administrative offences
- Article 25. Provision of security during case proceedings
- Article 26. The freedom to appeal procedural actions and decisions
- Article 27. Protection of rights, freedoms and lawful interests of persons [10]

The administrative responsibility of public civil servants has, in our opinion, all the features inherent to juridical liability. These include: punitive, regulatory, restoring, preventive and educational functions.

Regulatory function of administrative responsibility of civil servants is expressed in consolidating the legal status of a public servant and provides its behavior which is socially significant corresponding to the public and State interests. The disposition of the norms of law on administrative responsibility of public civil servants discloses their juridical meaningful conduct.

Punitive function of administrative responsibility on the part of civil servants is expressed in adverse consequences that are caused by a public servant – delinquent. Its means are public sentence (censure) of offender, and deed that he committed and application of the envisaged by law administrative penalties, up to the deprivation of the legal status of public civil servant (disqualification).

Preventive function of administrative responsibility of public civil servants consists in facilitating the formation of the public civil servant's informed choice of a behavior's positive variant by blocking the negative, anti-social conduct under threat of administrative penalty application. In respect of public civil servants, the effectiveness of this function is determined by the clear knowledge of the assigned responsibilities for implementation and compliance with the requirements of the norms of law and implementation the sanctions of negative nature in the case of an administrative offence.

Educational function of administrative responsibility of public civil servants aimed at individual consciousness of public civil servant as a subject of responsibility and influencing on the development of a legal, political and moral consciousness of legal culture of the individual and respect for the rights and freedoms of other persons. In our opinion this feature gradually loses its value, as evidenced by the growth of delinquency in the public civil service [4].

Restoring function of administrative responsibility is aimed at restoring of social relations which have been exposed to deformation as a result of offence committed by a public civil servant. This function is implemented in the process of proceedings on administrative offences of public civil servants, when together with the designated administrative punishment the official of public civil service must enter into legal relations with the victim and to implement legitimate legal action.

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