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REVIEW OF THE MANUSCRIPT OF KIZILOV VIACHESLAV VLADIMIROVICH "INSTITUTE OF ADMINISTRATIVE RESPONSIBILITY ON THE PART OF PUBLIC CIVIL SERVANTS OF THE RUSSIAN FEDERATION"

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Issues related to the increasing responsibility of the representatives of authorities have become more urgent after the elections to the State Duma. Common sense dictates that the daily aspects of the relationship of Government and civil society are not solved within the walls of the supreme legislative body of the country, but in the ordinary offices of officials, referred to as public civil servants. Bad law or good, its use is entirely dependent on the will of the subject – specific public civil servant with whom citizens and legal entities enter into legal relationships in everyday life.

Correctly having identified the duality of public civil servant among the subjects of administrative and tort legislation, author rightly argues that the official of public civil service can be as a delinquent and a person that prosecutes the offender.

On the basis of generalization of the practices of the Higher Arbitration Court of the Russian Federation, as well as statistical data on the structure of the State service the author displayed the objective conditions of necessity to introduce full-fledged Institute of administrative responsibilities of public civil servants. Among the objective preconditions for introducing of institution of administrative responsibility the author notes and historical predetermination of having been existing for many years relations between Government and citizens, Government and society, the tradition of "obedience of officials not to law but to regulations and the Chief". The author's comment is quite right that "formed Institute of appeal against illicit decisions or illegal actions or inactions of the governmental bodies and their officials is not bordered by the Institute of administrative responsibility on the part of government officials who have taken illegal decision or allowed an unlawful action or inaction", which is regrettable.

The absence in the current legislation of the Russian Federation of a crime structure for specific administrative offences leads to the situation when tort behavior of public civil servants remains without adequate State response to it. It is no accident that at a session of the Government Presidium of the RF, on June 9, 2011, the Chairman

of the Government focused attention on the need for the imposition of administrative liability of officials of the Federal Government for violations of the standards and procedures of provision of state services and further spread of this liability to the regional and local levels of Government (http://premier.gov.ru/events/news/15535/).

Appeal of the Chairman of the Government on the above issue to the Agency of strategic initiatives we think illustrates the lack of legislative approaches to solve the problems raised. That in its turn gives the value to the work of the author, who offered a range of structures of administrative offences, connected with tort deeds in public civil service area.

In contrast to studies of authors who claim on the presence in current legislation of the Russian Federation of norms on administrative liability of public civil servants in his work V.V. Kizilov shows convincing arguments about the absence of normative vesting of the institute of administrative responsibility on the part of public civil servants.

Rightly dividing the official offences of subjects of administrative responsibility – officials and public civil servants, the author implements his own analyses of administrative offenses' structures of the Code on Administrative Offences of the RF on object of normative vesting of administrative responsibility of public civil servants for torts which have been committed in the exercise of functions of the public civil servant.

There is no doubt that civil servants who perform organizational and instructive, administrative and economic functions, are subject to administrative liability, but in this case the responsibility is associated with failure to perform duties as head of the public body and is not very different from administrative liability of any legal entity's leader. This adoption is quite true. The author shows an illustration of approach to the issue of the administrative responsibility of public civil servants, the illustration contributes to the perception of the author's ideas.

Correctly indicated impossibility of borrowing the experience of Western democracy that relates to the formation of the Institute of administrative responsibility of public civil servants because juridical responsibility of civil servants in mentioned States has structure different from Russian one.

The author rightly connects a large number of recognized by courts unlawful decisions and actions of the power bodies and their officials with a huge number of

public civil servants. Deserves support the thesis about being involved in the illegal decisions and actions the power bodies of not heads of public bodies but public civil servants serving as the professionals.

It should be noted the correctness of that approval on feasibility of use of the individual responsibility of public civil servants, instead of collective one of a public body.

The study by the author of the intentional guilty deed of a public civil servant in the administrative offence is no coincidence and dictated by the realities of life. There are no developed theories of intentional guilt in Administrative Law unlike Criminal Law, and administrative practice is guided by development of colleagues another branch of law. Undoubtedly, there are differences in intentional guilty deeds in administrative and tort relations among the different subjects of administrative responsibility. The author having based on the special status of a public civil servant as a subject of administrative and tort relation, what is proved by the author's definition of administrative offence of a public civil servant, examines the intellectual and volitional aspects of intentional tort deed committed by a public civil servant.

Noteworthy the author's contraposition of the intent and good faith misconception. Indeed, unlike other individual subjects of administrative law, public civil servant, especially empowered official's executive authority in his professional activities should be governed by the laws and know them, his activity must be lawful and not cause harm to citizens and legal entities, and good faith misconception (juridical mistake) of the public civil servant is permissible only in the rare cases reviewed by the author.

Deserves support the conclusion of the author that the presence of intent in subjective side of administrative offence of public civil servant, should be a ground of the offender's stricter administrative responsibility.

Considers the issue of careless guilty deed of a public civil servant in administrative offence, the author does not accidentally found the lack of classical forms of negligence in cases of guilty act of a civil servant in the administrative and tort relations. Are quite possible cases of informed desire of the specific consequences of the deed of the offender – public civil servant, but with a lack of understanding of the wrongfulness of his acts, and the author proposes to allocate the cases as a kind of careless forms of guilt.

The author quite rightly comments that careless form of guilt is bordered by the lawful actions of public civil servant, arising from his discretionary powers. One cannot but agree with the author's claim that the

It's impossible to disagree with the author that "person which provides obligatory for implementation instructions and influence the emergence, modification or termination of the rights and duties of a managed entity should be imposed with the duty to foresee the possibility of harmful effects as a result of his acts ". The author rightly identified difficulties that can arise when establish guilt in the form of negligence, and paid his attention to the fact that "assessments of public civil servants of their own deeds quite strongly correlates with his intellectual and mental characteristics."

Author's study of issue of administrative fine to a natural person, as seems to us forced the author to address the problem of the legality of the use of mentioned sanction in extrajudicial procedure to an individual entity of liability which is a public civil servant.

In our view, the thesis on possibility of extrajudicial use of administrative fine to public civil servants is quite well-founded. Undisputed is an adoption on presence of features of public civil servant status in the system of individual subjects of administrative responsibility, due to offences which are being committed by officials.

In the light of recent changes to the tort legislation of Russia one cannot accept another author's thought about the application of warning in limited cases – if offence is committed for the first time and not associated with the offence in respect of property, health, rights and freedoms of natural persons, as well as the property rights and interests of legal entities.

The refereed work has a polemic with the famous legal scholar A.B. Agapov on the purpose and value of monetary penalty (an administrative fine). Support should be given to the author's opinion that the administrative fine is not a restriction of property rights, but their termination.

I will agree that the administrative fine shall be the principal administrative penalty applying to a public civil servant. In our opinion, the author's suggestion about changing of the way of calculating administrative fines applicable to public civil servants is actual. We should, as stated in the manuscript, move from setting fines in absolute calculation to the introduction of the principle of multiplicity of wages (salary) or other income of the offender.

It was appreciated that the author did not stop at delinquencies of public civil servants themselves, and covered all relations arising in the sphere of legal regulation of public civil service, including cases occurring before citizen's entering to the civil public service and after its completing, and he also provided administrative responsibility of third persons violating the Law on the public civil service (illegal employment of civil servant).

Justified is the development by the author of certain administrative offences on the basis of the ideas of the author on the decriminalization of some offences which are consistent with the direction of the modernization of tort Law, given by the President of the Russian Federation.

Continuing to develop the theme of administrative responsibility on the part of public civil servants, the author logically come to the need for research elements of administrative offences' structures of the specified subjects, one of which is the objective side of an administrative offence.

Feature of the author's approach to the research is definition of the forms of objective side of empowered subject's administrative offence through the prism of the implementation by public civil servants of administrative and legal norms. In this work correlated application, usage, compliance with and enforcement of administrative legal norms with possible tort deeds (actions or inactions) of public civil servant.

Unlike the authors' researches which focus on the objective side in form of inaction the author gives convincing arguments about the existence in objective side of offences of civil servants simultaneously both forms of an illicit deed – actions and inactions.

The author successfully argues his point of view on the possibility of the greatest manifestation of tort actions in process of public civil servants' realization of administrative and legal norms by applying ones.

Rightly the author notices defectiveness of the definition of administrative offence applied by the legislator as to collective and individual subjects of administrative responsibility, as we see it, he doesn't arbitrarily raised the need to formulate concepts for special subjects, which include civil servants. Today the problem of forming the institute of administrative responsibility of public civil servants is actual, this problem cannot be solved without identifying its main provisions, central place among which must be given the definition of administrative offence of public civil servant.

The author is certainly right by entering into the definition of administrative offence specifying for an exception from this type of offences the torts that are criminally punishable.

Despite the need to discuss definitions of administrative offences for various subjects of administrative responsibility, author's definition of administrative offence of public civil servant, in the light of being held administrative reforms and anti-corruption activities of the State, meets with approval.

Indeed, an official of the public civil service is a special offender, due to possession at the time of the administrative offence of a special status.

The author reasonably raises the question of the separation from the Institute of administrative responsibility of Sub-institute (a special Institute) of administrative responsibility of public civil servants. There is no doubt in the need to reform the institution of administrative responsibility, because in recent times repeatedly have been raised the issue of establishing an effective mechanism for countering with delinquency exhibited by the power bodies.

Proposed by the author way of forming of special institutions of administrative responsibility which will be differ in subject composition deserves careful consideration.

Feature of the author's approach to the study is the use of related legal science – theory of State and law. The reasoning of the author about the content of the legal institution of administrative responsibility on the part of public civil servants is considered to be logical. It is competently and in accordance with the classification of legal institutions has been set out the characteristics of the Institute which is being studied by the author.

The author gives convincing arguments about the existence of the objective preconditions for forming of the Institute of administrative responsibility on the part of public civil servants, as well as examines the subjective factors impeding the process.

Defines institution of the administrative responsibility of public civil servants as guarding and legal Institute of administrative law, the author correctly points out that there is regulatory functions in the Institute.

Existing scientific and practical commentary to article 2.4 of the Code on Administrative Offences of the RF although note the broad category of «official» potential delinquents which are being brought to administrative liability, how-

ever, do not provide adequate scientific and legal evaluation of associated by the legislator all persons in a note to the article. In the works of legal scholars the issues of feasibility of such consolidation in a normative definition of official of autonomous subjects of administrative law also haven't been adequately reflected. That is why the study of the multiplicity of the real subjects of administrative liability united with help of the legal category of an official of administrative and tort legislation is timely.

It should be noted that the author's approach to the analysis of the norm of article 2.4 of the Code on Administrative Offences of the RF to the object of feasibility of normative fixing on the part of administrative responsibility for official offences of various subjects of administrative law is innovative and is based on identifying the differentiation of subjects, as the participants of administrative-legal relations.

The value of research is increased through author's position, expressed on the need to divide categories of officials at the separate subjects of administrative responsibility: public civil and municipal servants, representatives of the authorities, officials, individual entrepreneurs. However the author hasn't limited mechanical division of the category "official" but has introduced sufficient arguments to this division and his own definitions, relating to the administrative responsibility of officials.

The author's definition of an official of the public civil service deserves the attention, as well as the highlighting among the officials of the public service a person vested with special powers of a representative of the authorities.

Author's works, like the refereed monograph, in our view, should have a resonance in legislative activities, as it helps to see the real issues of legal regulation requiring resolution at the legislative level.

In our view the monograph "Institute of administrative responsibility on the part of public civil servants of Russia» is the result of the author's serious scientific investigation of problem issues of administrative law, namely the Institute of administrative responsibility.

General conclusion: the monograph of Kizilov V.V. "Institute of administrative responsibility on the part of public civil servants of Russia" on its scientific level and practical orientation deserves an appreciation and can be recommended for publication in the form of a monograph.