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PUBLIC PERSONS – THE SUBJECTS OF ADMINISTRATIVE RESPONSIBILITY OF THE CODE ON ADMINISTRATIVE OFFENCES OF THE RUSSIAN FEDERATION

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Considers the composition of public persons envisaged by international legislation on combating against corruption and by administrative and tort legislation of Russia. On the basis of public service, identifies the major groups of subjects of administrative liability covered by the category of a public person. Gives the author's definition of the concept of a public person.

Keywords: public person, public service, subjects of administrative responsibility, administrative responsibility.

Considering the wide range of subjects of administrative law (administrative legal relations), it is necessary to note the presence of a large group of entities executing imperious powers, giving orders which are obligatory for execution by persons and aimed to protect public interests, as well as performing public functions. Moreover, within the specified range of subjects included not only individual subjects, in it also present collective subjects of law.

Individual subjects of law that are on public service, appear in the administrative and tort legislation of Russia as:

- public civil servants,
- municipal civil servants,
- military personnel,
- officials,
- representatives of the authority,
- members of the tender, auction, bidding or a unified commission created by state or municipal customer, budget institution,

- staff of internal affairs bodies, bodies and institutions of the criminal execution system, State Fire Service, bodies of monitoring over traffic of narcotic drugs and psychotropic substances and customs authorities,

- Chairman, Deputy Chairman, Secretary or other member of the electoral commission, referendum commission with decisive vote,

- officials of federal executive power bodies, executive bodies of subjects of the Russian Federation authorized to exercise state control (supervision).

Code on Administrative Offences of the RF contains the following enumeration of the collective public subjects of law, which can be brought to administrative responsibility:

- public authorities, bodies of local self-government (for example, part 2 article 5.3, part 2 article 5.5),

- electoral associations (article 5.8),

- initiative group on holding referendum, another group of referendum participants (article 5.17, 5.18),

- organizations,

- legal entities which include legal entities of public law.

As is evident from the enumeration, not all collective subjects which can be brought to administrative responsibility, have the status of a legal entity.

Examining the common issues of public individuals responsibility, A. V. Semenov noted, that despite the fact that the subject of responsibility was a collective formation or a private individual, "in respect of the liability of public authorities the issue was not clarified, to the question of who should be understood by the public authorities was not found an answer in the Constitution of the RF, existing legislation. Hence the structure of legal corpus delicti turns out to be devoid of one of its most important components" [7, 22].

Should be agree with the author's statement that "the legislative gap (or "reticence"), the absence of the official normative interpretation on the matter exposes law enforcement agencies to the serious test" [7, 22]. As shows practice of application administrative and tort legislation, the mentioned provision does not contribute to protection of civil rights, human rights and freedoms, as well as economic interests of legal entities.

The presence of problems of the application in administrative and tort legislation the concept of a legal entity, elaborated by Civilistique, noted Professor V. E. Chirkin, pointing out that "in the Federal law No. 184-FL of October 06, 1999 on General Principles of Organization of Legislative (Representative) and Executive Authorities of State Power of the Russian Federation Subjects", the legislative and

executive bodies of the subjects of the Russian Federation are named legal entities, precisely, "having the rights of a legal entity" (paragraph 7 article 4, paragraph 4 article 20). This is a special kind of legal entities who execute not commercial activities but public administration" [9, 88].

Attempt of V. E. Chirkin to count the number of public authority bodies having the status of legal entity, has been discontinued, as was indicated in the author's article, due to exceeding by them tens of thousands with statement of the fact that the number of legal entities performing public functions in society became comparable to number of legal entities of a commercial nature [9].

However, we do not consider that it is essential to give a collective entity of administrative responsibility the status of a legal entity in order to bring it to administrative responsibility. In the Russian legislation and law are most widely used to refer the participants of legal relations the terms "person", "persons". Therefore, a more relevant for the administrative and tort legislation is the very definition of persons subject to administrative responsibility, and the formation of administrative offences structures.

Address to foreign legislation shows that under public persons are understood, mainly legal entities: the state, represented mainly by its central authorities; local communities (regional groups); public institutions. For example, by the terms of the law on the State Administration of Latvia established that a public person it is the Republic of Latvia as the primary legal entity of public law and formed public persons (formed public person it is a self-government or other public person created by or on grounds of law. The law assigns to it its own autonomous competence, including formation and approval of its budget. This person may have its own property). The mentioned law contains a definition of the body of a public person, which refers to an institution or official, whose competence and the right to implement a public person legal will is established by the main legal act of the relevant public person or by the law regulating its activity [10].

As pointed out by E. O. Tysenko, "in European law at the present time has been actively developing the concept of so-called "public institutions". The most characteristic features of such a public legal formation are the three elements: 1) signs of a legal entity in civil-legal sense; 2) passing by organization employees of a special public service (state and civil, military or municipal), i.e. serving the public interest; 3) specific socially meaningful mission" [8, 184].

The activity of public persons is connected with the implementation of public service, defined by the authors of the textbook on administrative law as the service

activity of physical persons to ensure execution of public law subjects' power of authority and is characterized by a number of distinctive features:

"public service represents an activity to ensure and protect the public interest;

functioning of the public service institutions consists of performing or ensuring execution of public-power functions and powers;

this activity is of the official nature, assumes the status of public service position;

passage of public service is carried out in the organizational structures of the subjects of public law: the state, municipal formations and legal entities of public law;

financial support for public service is performed at the expense of the state or a municipal formation (federal, regional or local budget, budget of state non-budget fund)" [5].

Determination of public persons subject to juridical responsibility, we believe, is dictated by the need for the concept that unifies all the power structures and which would cover all the subjects, actions (inactions) and decisions which one way or another have authoritative impact on citizens and legal entities, violate their rights and interests.

Analyzing collective public persons for their designated purpose (public administration, public social servicing, public benefits), we have distinguished the following public collective subjects of law (depending on the amount of powers, rights and duties):

1) public legal formations (state, subject of Federation, municipal formation);
2) public authorities, acting as legal representatives of public legal formations (we are talking about the persons who under the authority of the law in a given amount are vested with imperious powers, as well as directly influence on their implementation, i.e. about the agents of public authority);
3) institutions of public authority (economic units providing services, performing public social servicing, they appear usually on the basis of a legal act of a state body (law, decree, resolution, etc.) and in an instructive procedure.);
4) public law associations in the form of an organization (political parties, public associations).

It should be noted that in each selected subject there is an economic activity (for example, purchase of furniture or office supplies within budget), which is a small and insignificant part of their work. Such an activity is not regarded by us as the fulfilment of the functions of a public person.

We believe that public formation (state, subject of Federation, municipal formation) does not require the status of a legal entity to be recognized a self-sufficient subject of public law. Therefore, the application of the rules on legal entities in respect of public formations, in our opinion, serves to only one goal – to give them the status of a civil-legal relations subject, exclusively in connection with their participation in the civil property turnover (including with private actors). Possession by collective public persons the status of a legal entity is not a necessary element to resolve issues of their bringing to administrative responsibility, as this possession does not change the essence of a public person. The issue of feasibility and admissibility of bringing collective public persons to administrative responsibility remains important.

In our opinion, it is absurd to bring to administrative responsibility the very public formations – sovereigns of the appropriate territories and representing all of their population. However, it is quite permissible to bring to administrative liability public collective subjects, which we have listed in paragraphs 2) - 4), which represent only a small part of public formations, with appropriate restrictions in the rights and duties.

The origins of the administrative responsibility of public persons, in our opinion, come out from responsibility of an official for the commission of wrongful actions. Therefore, the remark of Karin Beche-Golovko, that "it is necessary to draw the clear line between the personal guilt of an official, that is, his actions as a private person, assessment of which refers to the competence of courts of law within the concept of "private responsibility", and the official guilt of an official, that is, his actions as a representative of authority, control over which is within the competence of administrative courts" is quite fair [6, 74].

After ratification by the Russian Federation the United Nations Convention against Corruption [2] of October 31, 2003 and Council of Europe Criminal Law Convention on Corruption [3] of January 27, 1999, the Russian legislator will have to make amendments to national legislation, including in connection with introduction to the legal validity of a new concept - a public official.

Paragraph a) of article 2 of the UN Convention against Corruption stipulates that "public official" is:

- any appointed or elected person holding any position in legislative, executive, administrative or judicial body of a Participant State on a permanent or temporary basis, whether paid or unpaid, irrespective of that person's post level;

- any other person who performs any public function, including for a public department or public enterprise, or provides a public service as it is defined in the domestic legislation of a Participant State and as applied in the appropriate field of legal regulation of that Participant State;
- any other person defined as a "public official" in the domestic legislation of a Participant State [2].

Article 1 of the Council of Europe Criminal Law Convention on Corruption of January 27, 1999, determines a "public official" as an "official", "public servant", "mayor", "minister" or "judge" that exist in national law of the State, in which the person implements his position, as they apply in the criminal law of this state, besides the term "a judge" referred above includes prosecutors and persons holding judicial posts.

Despite the fact that in accordance with part 4 of article 15 of the Constitution of the Russian Federation, international treaties of the Russian Federation, including the UN Convention against Corruption, are an integral part of its legal system, the legislator, as it seems, is experiencing some difficulties in the design of norms in administrative-tort legislation of Russia due to the "historical tradition" of application administrative responsibility to private subjects of law.

Comparing the concepts of "state-level official" and "public official" used in these Conventions with the concept of an official, that is defined in Russian legislation, shows that the concepts of international conventions cover a larger number of real subjects of legal relations, since they include the following:

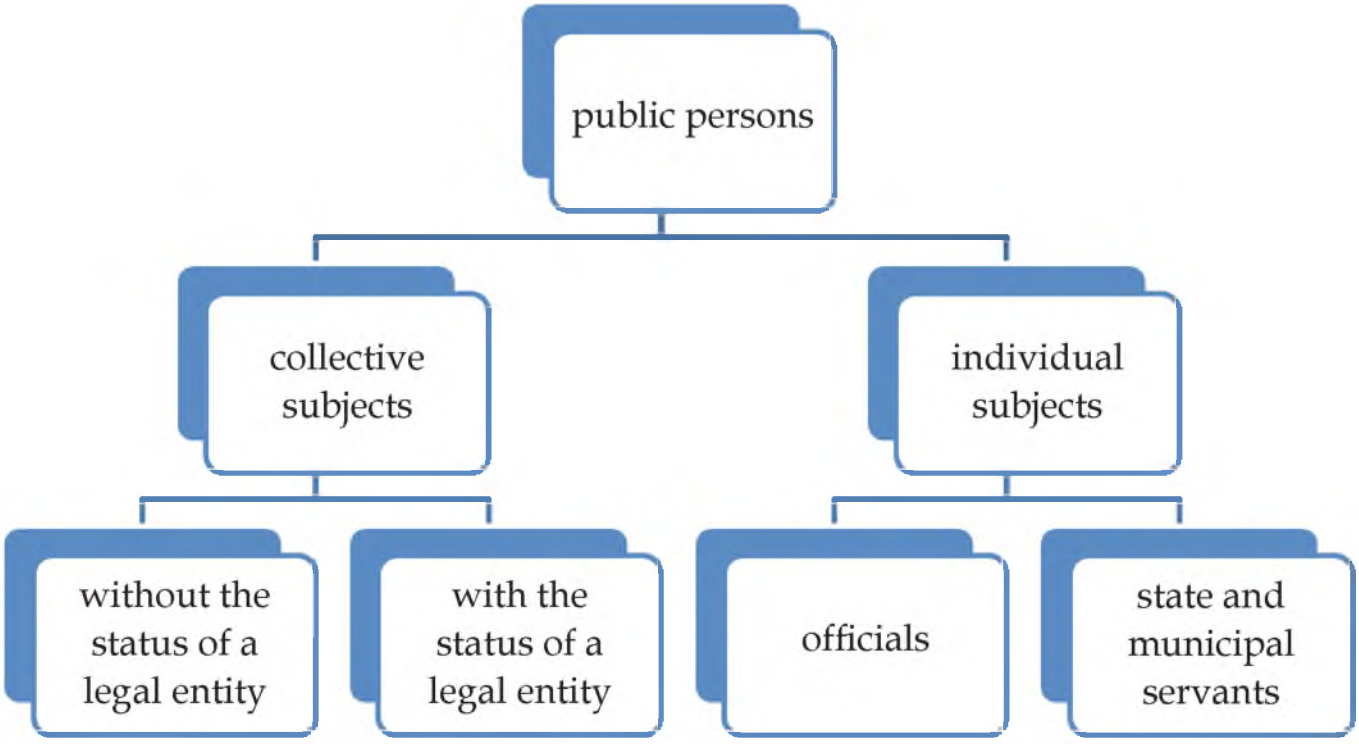
- public servants, which are not among officials (for example, service and technical personnel of state bodies, state and municipal institutions and organizations, etc.);

- state and municipal servants (including officials) of foreign countries, servants of public international (interstate, intergovernmental) organizations.

In our opinion, the range of public persons in international conventions is unreasonably increased by service personnel and technical staff of state bodies, state and municipal institutions and organizations. In reality, these individuals can only be mediators in legal relations of a public official and a private subject of law, because they themselves have no imperious powers. Mediation may be punished under the Criminal Code of the RF (for example, when giving a bribe), however, there is no corpus delicti of a mediator if a public official has not committed an administrative-legal tort.

It seems to us, the closest to a public official (an individual public person) is the category of a representative of the authority (the subject of administrative responsibility) that covers all the categories of public officials which are described in the comments and study materials. However, in the context of the subject of administrative responsibility the range of real subjects of the category "representative of the authority" is much less. Outside the external administrative legal relations employees of state, supervisory or controlling bodies, endowed in accordance with the law instructive powers in respect of persons who are outside of the service subordination, do not act as representatives of the authorities. In our opinion, not all persons performing service in collective public formations may be considered public persons. The legal nature of the conduct of a public official in the relations with citizens is provided as by a separate government agency and by the state (public authority) as a whole.

From the analysis of Russian public persons on the subject of administrative responsibility we have determined the following composition of subjects:



Public persons indicated in the picture can and should be brought to administrative responsibility, which should become an obstacle to a criminal corrupt crime.

Under individual subjects should be considered physical persons implementing legislative, executive or judicial power, as well as employees of state, supervisory or controlling bodies endowed in accordance with the law instructive powers in respect of persons who are outside of the service subordination or the right to

make decisions binding for execution by citizens and organizations, regardless of their departmental affiliation [4].

Summing up described, we can formulate common definition for collective and individual public persons:

A public person is a collective or individual subject of law empowered by law to take decisions leading to emergence, cessation or modification of the rights and duties of an unspecified number of individuals.

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