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**ADMINISTRATIVE RESPONSIBILITY IN THE FIELD OF PROTECTION OF
THE RUSSIAN FEDERATION STATE BORDERS:
PROBLEMS OF QUALIFICATION BY ARTICLES FALLING WITHIN THE
COMPETENCE OF INTERNAL AFFAIRS BODIES**

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Here is considered the collision of legal norms allowing during the bringing to administrative responsibility to choose under which article the committed illicit deed should be qualified. Analyzes the structures of considered offences and determines differences underlying the qualification of offences under related structures. Attention is drawn to the bodies of administrative jurisdiction which carry out proceedings on administrative offences in the area of protection the state border of the Russian Federation.

Keywords: administrative responsibility, protection of state borders, boundary regime, administrative offences in the area of protection of state borders.

Protection of state borders in accordance with paragraph «n» article 71 of the Constitution of the Russian Federation refers to the exclusive jurisdiction of the Russian Federation, which limits the range of administrative offences to only those of them, for which responsibility is provided by federal legislation. Thus, a complete list of offenses in the field of protection the state border of the Russian Federation is contained in the Code on Administrative Offences of the Russian Federation (hereinafter – CAO) and constitute a part of chapter 18.

Since in this chapter also lists administrative offences in the field of enforcement the regime of stay of foreign citizens or stateless persons on the territory of the Russian Federation, let's immediately determine that only Articles 18.1-18.8 and

18.14 of the CAO on the content of regulated relations can be attributed to the considered by us area.

The main functions and tasks to ensure the protection of state borders the current legislation imposes on the border guard agencies of the Federal Security Service, in connection with which they on the grounds of paragraph 1 article 28.1 and article 23.10 of the CAO institute and consider the main array of cases on administrative offences in the given field.

However, in accordance with paragraph 1 part 2 article 28.3 of the CAO the protocols on administrative offenses provided in articles 18.2, 18.3, 18.4, 18.8 and 18.14 of the CAO can be also drawn up by bodies of internal affairs.

Considering of cases under articles 18.1-18.7, 18.14 of the CAO is attributed to the competence of the border guard agencies of the Federal Security Service (Article 23.10 of the CAO) and under article 18.8 - of the Federal Migration Service (Article 23.67 of the CAO).

However, both consideration of a case, and drawing up a protocol involve conducting classification of a committed action and determination by an authorized official of the CAO article, which provides for punishment for a wrongful act (part 2 of article 28.2 of the CAO).

In this regard, let's consider the main problems in qualifying offences in the field of the state border protection provided for by articles of the CAO, under which the internal affairs bodies have the right to initiate proceedings on an administrative offence.

When qualification a deed under part 1 article 18.2 ("Violation of the Border Regime in the Border Zone"), the greatest complexity represents the need to distinguish the corpus delicti in addition provided in article 18.1 of the CAO "Violation the Regime of the State Border of the Russian Federation" and 322 of the Criminal Code of the Russian Federation (hereinafter - CC) "Illegal Crossing the State Border of the Russian Federation".

In respect of external manifestations the objective side of a deed, at first glance, can absolutely do not differ. A person caught up in the border zone without permission, at the time of detention just announces of his intention to stay within a particular inhabited locality of the Russian Federation, although it is located in the border zone.

In our view, in this situation is seen only a violation of the border regime, expressed in unconfirmed by relevant consent document "entry (pass), temporary stay, the movement of persons and vehicles in the border zone" [1]. Law "On the State Border of the Russian Federation" establishes the border zone within

the territory of settlements and inter-settlement territories adjacent to the state border on land, the coast of the Russian Federation, Russian banks of border rivers, lakes and other water objects, and within the territories of islands on the mentioned water objects. To the border zone on the proposals of local self-governments of settlements may not include some residential areas of settlements and sanatoria, holiday homes and other sanitary institutions, institutions (objects) of culture, as well as places of public recreation, active water use, devotion and other places of the traditional mass stay of citizens. At the entrance to the border zone installs warning signs [1] (On the rules of the border regime, see subchapter - Order of the FSS of Russia No. 458 from September 10, 2007 "On Approval the Rules of Border Regime" // RG [Russian Newspaper]. November 24, 2007).

However, a person may be in the border zone and in other cases. For example, after crossing the state border from contiguous territory or, conversely, only intending to cross the border.

In the first case, there is an offense under part 1 or 2 article 18.1 of the CAO or an offense under article 322 of the CC. In the second case we are talking about the attempt to commit a crime (article 322 of the CC, and part 3 article 30 of the CC).

The main qualifying feature in determining the *corpus delicti* is a fact of crossing the Russian border, for which is necessary to establish (and, accordingly, should be clearly stipulated in the protocol and case materials) the exact passage of boundaries, the place of detention of persons called to account, the existence of a valid document giving the right to cross the border. In addition, it is also necessary to determine whether the person has a permit for its crossing.

The disposition of article 322 of the Criminal Code provides for a mandatory component of the objective side of a crime the lack of "valid documents for entering the Russian Federation and exit from the Russian Federation, or without proper authorization obtained in accordance with the laws of the Russian Federation".

If the first part of the disposition is considered by everybody in one vein, the notion of "proper authorization" various representatives of state bodies understand in different ways.

So in March 2008 the Prosecutor's Office of Kaliningrad region terminated proceedings on the criminal case against a citizen of Palestine, who had crossed the state border of the Russian Federation beyond established checkpoints. Rationale for this decision was the correlation of "proper authorization" with availability of a visa.

Federal legislation understands a visa as an "issued by the authorized government body permission to enter the Russian Federation and transit through

the territory of the Russian Federation on the actual document certifying an identity of a foreign citizen or stateless person, and accepted in this meaning by the Russian Federation” [2, article 25.1].

Nevertheless, in our opinion, the authorization essentially consists of two important parts. First, this is a volitional act of the host country – in a certain sense, the state of de jure. Second, mandatory importance obtains the formalization of this right, confirming it in any material way – transfer into a state of de facto. Besides the implementation of the provided right will be almost impossible without the second part

Even when a visa is not required to cross the border of the State (on the basis of an international treaty), the passport of a citizen of the country with which was signed the contract of visa-free travel becomes the material confirmation of this right.

Measures to ensure national security in respect of foreign citizens and stateless persons begin from the time they apply to the missions of Russia abroad. In this context, the getting and availability of a visa will be evidence of conduct primary verification activities in respect of a particular person.

With that, the system of protection of national borders of Russia is traditionally being built in echeloned way. The second “cordon” in the process of resistance existing threat of penetration illegal migrants, as well as those whose stay in Russia recognized undesirable [2, paragraph 7, article 27] is a permission obtained from the border control authorities when crossing the state border. Not by chance this is reflected in the legislation, which established that the intersection “is implemented through the lines of the international rail, highways or other places determined by the international treaties of the Russian Federation or the decisions of the Government of the Russian Federation” [1, article 9].

Obtaining such permission from the border guard agencies, first of all, is preconditioned by the need to carry out checks on various real-time accounting.

And here we would like to refer to the opinion of the General Prosecutor’s Office, expressed in a joint letter, revealing the state of lawfulness in the field of migration legal relations: “Ministry of Internal Affairs of Russia jointly with the Russian Federal Security Service and other interested federal executive bodies within their competence need to analyze the efficiency of work on issuance and registration visa invitations for foreign citizens at the request of legal entities and the subsequent monitoring of compliance their activities on the territory of the country with the stated aims of visiting Russia “[5].

Thus, it is recognized that the activity of missions abroad should be strengthened, and by implementing internal control measures.

In this context, it seems that the statement on the consideration of visa as the only formal sign of the presence of a permission for crossing the border is not well-founded.

However, in the analyzed case with the Palestinian arguments about the need to taking in consideration this norm of the Russian Federation Law “On State Border of the Russian Federation” and consideration as a formal sign of “proper authorization” the availability of date-stamp in the passport of a foreign citizen, has not been taken into account by the prosecution office. The committed deed was classified only as a violation of the *rules* of crossing the state border, and the person was brought to administrative responsibility under part 2 of article 18.1 of the CAO.

Thus, we summarize: valid documents for crossing the border at a specific place; visa, if it is required for a particular person to cross the Russian border; the documents entitling to stay in the border zone and the lack of evidence of a person’s crossing the state border, under terms of conducted delimitation – allow to conclude that the presence of a detainee in the border zone is legitimate and does not come within the purview of considered articles of the CAO and CC.

At detection evidence of a crime provided for in article 322 of the Criminal Code or an offense under part 1 or 2 article 18.1 of the CAO institutes a criminal case or the case materials are to be transferred to the jurisdiction of the respective subject of administrative jurisdiction.

At qualification of a deed under part 2 article 18.2 of the CAO, in addition to the signs, specified by us as necessary for qualification under part 1 of this article, it is important to determine the type of activity, as well as existence of permit, compliance with established rules and place of its implementation.

Problematic issues may arise in delimitation of deeds responsibility for which is provided by article 18.3 “Violation of the Border Regime in the Territorial Sea and Inland Marine Waters of the Russian Federation” and part 3 article 18.1 of the CAO.

The main qualifying sign in this case becomes the place of an offense. Despite the fact that in all cases will be violated a specific rule, the content of this rule and place where an offense was committed determines the possibility of holding liable under the relevant article of the CAO and CC.

Detention of a person near the state border is possible only by border authorities, this limits the range of officials instituting cases under part 3 article 18.1. In this case, determination the limits of the border zone shall be based on the orders of FSS of Russia on the specific subject of the Russian Federation. Location of the offense predetermines the qualifications of a deed under a specific norm of the CAO.

We have in mind part 3 article 18.1 of the CAO – in relation to economic activity falling within the wording “at the state border of the Russian Federation, or close to it.” In article 18.2 of the CAO as the place of an offense is determined the border zone on land, quarantine territory within the border zone (except in the cases related to article 18.1). In article 18.3 of the CAO the place of an offense – the territorial sea, internal waters of the Russian Federation, the Russian part of the waters of border rivers, lakes and other water bodies, stationing sites of small-sized Russian self-propelled and not self-propelled (surface and submarine) ships (vessels) or ice vehicles.

Thus, the official must reflect in the protocol the nature of the activities carried out by the detained person and existence a permit for its implementation. And due to the fact that articles 18.1, 18.2, 18.3 of the CAO assume the punishment for conducting “fishing and other activities,” must be mentioned the place of its implementation, which also allows us to delimitate the content of those articles.

Article 18.4 provides for responsibility for the regime violation at the checkpoints across the state border of the Russian Federation. Protocols under this article, as a rule, are drawn up by border authorities’ officials of the federal security service.

At the same time, not excluding the possibility of theoretical realization by the internal affairs bodies of their powers, we note that special attention should be paid to the fact that the violation of the regime at checkpoints across the Russian state border and the violation of border regime by the same deed of a person usually are mutually exclusive.

Of course, at the presence in the border zone of a checkpoint may be a violation of articles 18.2 and 18.4 of the CAO, but to do this a person without appropriate permits or documents should enter the border zone and then get into the checkpoint, again, with no legitimate reason for this.

Regime at the checkpoints across the state border of the Russian Federation consists of the “rules of entry to these checkpoints, stay and departure from them individuals, vehicles, import, stay and export of cargo, goods and animals, which have been established exclusively in the interest of creating the necessary conditions for the implementation of border and customs control, and in cases stipulated by international treaties of the Russian Federation and federal laws, and for other types of control” [1, article 22].

Violation of the regime at crossing checkpoints [4] can be:

- entry to crossing checkpoints and exit from them of persons and vehicles, as well as import and export of cargo, goods and animals outside spe-

cifically designated for such purposes places and without the appropriate permits;

- entry (pass) to crossing checkpoints of Russian citizens, foreign citizens and stateless persons coming through the border of the Russian Federation in violation of the Federal Law No. 114-FL of August 15, 1996 «On Procedure of Exit from the Russian Federation and Entry to the Russian Federation»;
- entry (pass) to crossing checkpoints by the documents, certifying (confirming) the identity and official status of persons holding public posts of the Russian Federation, provided for by the Decree of President of the RF No. 32 from January 11, 1995 «On the Public Posts of the Russian Federation»;
- the absence of official documents and assignments (orders, travel documents, diplomatic cards) of employees of diplomatic missions and consular institutions of foreign states in the Russian Federation, of law enforcement officials, Russian Border Services Agency and its territorial bodies and jurisdictional institution, of the federal bodies of executive power exercising control in a crossing checkpoint;
- absence of documents certifying identity and (or) the post of members of fire and rescue teams, rescue teams, services of search and rescue support, ambulance teams which arrive to suppress fires, mitigate accidents and other emergency situations of natural and man-made nature, as well as evacuation of injured and seriously ill;
- presence in a checkpoint animals used in the implementation border, customs and other specified types of control is allowed without the presence of the special marks in personal pass of employees of state supervising bodies;
- non-compliance with regulations regarding the place and duration of parking at checkpoints vehicles of foreign transit, official vehicles of state supervising bodies' units, administration of the checkpoint, as well as access to them persons, compliance with routes traffic rules of this transport.

Part of the rules that constitute the regime at crossing checkpoints of the state border in their violation can form corpus delicti, qualified under article 18.2 of the CAO. The basis for differentiation from article 18.4 of the CAO is a place of a wrongful deed.

In accordance with paragraph 4 of the crossing rules of the Russian Federation state border pass can only be done at a checkpoint, the regime rules of which are approved by the order of its administration head in consultation with the heads of the border, customs bodies' units and administration of an airport (airfield), sea, river (lake) ports, railways and road stations. In addition, these rules must define spatial and time limits of their action, as well as the place and premises where is directly carried out border and customs control, and in cases stipulated by international treaties of the Russian Federation and federal laws, other forms of control.

As is the case with article 18.2 of the CAO, in the qualifications of an administrative offense is important to consider the possibility of bringing to responsibility a person detained at a checkpoint under part 1 or 2 article 18.1 of the CAO, or under article 322 and part 3 article 30 of the CC.

At the entry to the territory of Russia the fact of crossing the state border is present at all times. This leads to the fact that the qualification of a wrongful act identified in the checkpoint (e.g., staying a person without valid identity documents), is usually carried out under part 1 or 2 article 18.1 of the CAO, or under article 322 of the CC.

Mainly, the problems of qualification of the wrongful deed occur when leaving Russia. So, the arrival at the checkpoint indirectly evidences of the intention to cross the border, that in presence of additional facts evidencing of the advance preparation and desire to violate established rules may be qualified under article 322 and part 3 article 30 of the CC.

Note that the rules of crossing the state border officials [1, p. 9] include:

CAO, as we know, does not provide for responsibility for attempting to commit an administrative offense. In this regard, arrival to a checkpoint without valid documents for crossing the state border, yet does not form an offense structure under part 1 or 2 article 18.1 of the CAO, because you cannot be punished for breaking the rules of crossing the border, if the fact of the crossing has not took place.

It should be noted that the rules of crossing the state border by persons [1, article 9] include:

- crossing the state border on land only through the ways of the International railway, road transport or in other places determined by the international treaties of the Russian Federation or the decisions of the Government of the Russian Federation;
- time of crossing the state border;

- the order of moving from the state border to border crossing checkpoints and in the opposite direction;
- impossibility of alighting man, unloading cargo, goods, animals and taking them on vehicles;
- a temporary restriction or termination of the crossing of the state border on its separate parts to ensure the security of the Russian Federation;
- defined by international treaties of the Russian Federation, the acts of the Government of the Russian Federation procedure of the state border crossing by rescue, emergency and recovery groups (forces) for localization and liquidation of accidents of natural and man-made nature.

Thus, from the above list is seen that the indication of the presence of valid documents as a mandatory rule of crossing the state border is missing. This allows us to state that an illegal appearance of a person in checkpoint for going abroad must be qualified under article 18.4 of the CAO or under article 322 and part 3 article 30 of the CC.

Article 18.8 provides for responsibility for violation by a foreign citizen or stateless person the rules of entry into the Russian Federation or the regime of stay (residence) in the Russian Federation.

To the field of protection the state border refers not the whole disposition of the article, but only those provisions of part 1 as violation by a foreign citizen or stateless person the rules of entry into the Russian Federation, expressed in violation of the established rules of entry into the Russian Federation and transit through the territory of the Russian Federation.

The problem of differentiation of the norms of article 18.8 from part 2 article 18.1 of the CAO did not emerge immediately. In the original version it was impossible to bring to responsibility under this article for violating the “rules of entry into the Russian Federation”. “Transit through the territory of the Russian Federation” at the same time was included only as an indicator of violation the “regime of stay in the Russian Federation”, which implied the possibility of institution of a case only in the territory of the Russian Federation (after crossing the state border) and automatically excluded this article from the field of protection the state border.

However, after making amendments in 2006 [3] namely mentioned provisions of article 18.8 of the CAO may cause issues in qualifying.

Rules of entry into the Russian Federation [2] include also the order of crossing the state border of the Russian Federation, the violation of which entails

administrative responsibility under article 18.1 of the CAO. In general, it allows bringing to responsibility persons for their violation under any of these norms.

Thus, there is a conflict of legal norms, allowing in the course of bringing to responsibility to choose under what article to qualify a particular deed. The only difference is that the organs which institute it and consider it are different (except for the Court in the case of administrative banishment). In particular, article 18.1 of the CAO – border authorities of the Federal Security Service, but article 18.8 of the CAO – bodies of the Federal Migration Service. In addition, as we have noted, under article 18.8 of the CAO a protocol can be drawn up by Police officers.

Both articles provide for sanctions as an “imposition of an administrative fine in the amount of from two thousand to five thousand rubles with an administrative deportation from the Russian Federation or without it”. In this regard, we can say that this conflict may play a role only in determining the amount of administrative fine in view of the recurrence of the committed deed (paragraph 2, part 1 Article 4.3. of the CAO). It is about that, in spite of committing a wrongful act relating to one generic object (homogeneity of legal relations in the framework of the chapter 18 of the CAO) its fixation occurs in different state structures, that usually does not allow to take into account the primacy or replication as a mitigating or aggravating sign, respectively.

Having reviewed some features of qualification unlawful deeds, which threaten the interests of an individual, society and the state in the field of protecting the state border of the Russian Federation, it should be noted that the principle of unavoidability of punishment can be implemented only in the light of mentioned by us differences of corpus delicti of administrative offences and crimes, in the course of proper record-keeping and adequate assessment by public officials the objective side of what has occurred.

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