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ACTUAL PROBLEMS OF PUBLIC RESPONSIBILITY FOR VIOLATIONS OF ANTITRUST LAWS: THE MATERIAL AND PROCEDURAL ASPECTS

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Disclosed systemic problems of legal regulation in the sphere of responsibility for violations of antitrust laws. Examines the norms of tort legislation for duplication of powers and allocation of competence between public bodies responsible in some way for the protection of competition. On the basis of examples of antimonopoly regulation in developed countries, here are offered approaches of resolving problems existing in Russian legislation.

Keywords: public responsibility, antimonopoly activity, antitrust legislation, antitrust regulation, liability for monopolistic actions, violations of antitrust legislation.

One of the problematic blocks of public-law regulation in the Russian Federation today remain the issues of regulation and application of public responsibility, including legal procedures for its implementation.

In recent years in the field of the development of competition law has been done a lot. On the basis of mainly foreign models have been formed the basic legal institutions and mechanisms allowing in general to carry out an effective policy for the protection of competition. According to estimates of practitioners and professionals-academics authoritative resource focused by antimonopoly body allows to take the most radical legal decisions and measures against violators of competition legislation. In general these prerogatives if there is an adequate political will allow to successfully restrain monopolistic tendencies and control the market

in terms of the permissible concentration and the competitive balance. However, the existence of these prerogatives on the other hand causes the problem of their adequate and effective use and the guarantees of compliance with the rights of individuals – objects of control. To achieve these goals we need a holistic system of non-contradicting public-law regulators of control activity, which include both a logically structured and conceptually grounded model of substantive prohibitions, obligations and sanctions and stable, clear procedures of the publicly-authoritative activity.

General dogmatic analysis of the legal environment of publicly-authoritative activity to prosecute offenders and to suppress violations of the antimonopoly legislation reveals many systemic issues of legal regulation in this area and allows us to conclude that in Russia today simultaneously coexist several directions and types of legislation, which differently regulate both material and procedural relations arising in this area, that does not contribute to the achievement any of aims of administrative and legal regulation – either the substantial effectiveness of publicly-authoritative activity, or the protection of subjective rights and legitimate interests of private subjects of public competitive relations.

From what regulators does consist an array of rules regulating publicly-tort competitive relationships? First, Antimonopoly legislation through its central act – the Law on Competition Protection [3] – contains a number of procedural articles and norms governing the consideration of cases on violations of antimonopoly legislation (see chapter 9, etc.). Second, if violations of the antimonopoly legislation fall under corpus delicti of administrative offences stipulated by the Code on Administrative Offences of the RF [1] (and in most cases they fall), administrative responsibility for such violations is applied in accordance with the procedural order, as enshrined in the CAO RF. Third, if the violation of the antimonopoly legislation shows the signs of a criminal offense, criminal procedural order come in force. In addition, in antimonopoly monitoring is also applied the legislation on operational-search activity, as well as the norms and institutions of other certain federal laws.

All of these directions of legislative and legal regulation have specific legal regimes, establish and apply special sectorial legal principles, provide for different composition of public subjects, not always addressed to coinciding categories of private entities, etc. Upon that, these types of legislative regulation are not put in a single system, which would be concurrently built around a single object – state antimonopoly control, public system of competition protection and subjective competitive rights of citizens. Procedural complexity is aggravated by the lack of

an elaborated concept in the model providing simultaneously both administrative and criminal responsibility for the same violation of antimonopoly legislation.

How do more specifically manifest the disadvantages of the current model? A number of problems arise in the substantive regulating unit. Criminal Code and Code on Administrative Offences of the RF contain several articles ensuring public-law protection from violation of antimonopoly legislation. In particular, article 178 of the Criminal Code of the RF [2] and articles 14.31-14.32 CAO RF stipulate responsibility for monopolistic activity in the context of articles 11-10 of the Law on Competition Protection (the title of article 178 of the Criminal Code of the RF – "Banning, restricting or eliminating competition", and it is based directly on the prohibitions laid down in articles 10 and 11 of the Law on Competition Protection). However, these three regulators – the Criminal Code, the Code on Administrative Offences of the RF and the Law on Competition Protection have many discrepancies and inconsistencies. Let us look at one of them.

The objective aspect of part 1 article 178 of the Criminal Code of the RF includes, in particular, such deeds as prevention, restriction or elimination of competition by entering into a competition-restricting agreements or implementing of organized actions restricting competition (*Note of the author*. For the purposes of this article there is no need to consider qualified offenses specified in part 2 and 3 of article 178 of the Criminal Code of the RF, so we dwell on the only part 1 of this article.)

It should be noted that the Law on Competition Protection includes the institute of admissibility of separate prohibited under a general rule agreements and concerted actions: these rules are contained in articles 11, 12 and 13 of the Law. However, neither the Criminal Code of the RF nor the CAO RF takes this approach. There is a paradoxical situation – an agreement that can be recognized as valid by the antimonopoly body, can simultaneously become a reason or cause for the criminal responsibility of a physical person for such an agreement under article 178 of the Criminal Code of the RF.

Article 14.32 CAO RF in this sense is more coordinated with the Law on Competition and punishes for conclusion by an economic unit an agreement or concerted actions *prohibited* by the antimonopoly legislation of the Russian Federation. That is, it is presumed, and it follows from the logic of correlation of antimonopoly (under the Law on Competition Protection) and administrative-tort procedure (procedure under the CAO RF), when at first antimonopoly body recognizes agreement or concerted action as valid or invalid, and only after there is instituted an administrative case under the CAO RF and applied responsibility under article 14.32.

For the implementation of Article 178 of the Criminal Code of the RF not required such a link either under the structure of the objective side of the article, or in force of criminal procedural procedure of institution of a criminal case, which is implemented without any procedural need to clarify admissibility or inadmissibility of an agreement from the economic point of view in the spirit of the principle of reasonableness (proportionality) and other approaches to the admissibility of agreements enshrined in antimonopoly legislation.

Further analysis and comparison of article 178 of the Criminal Code of the RF with articles 14.31-14.32 CAO RF, in the context of legal regulation of countering monopolistic activities in antimonopoly legislation, reveals a number of other major and minor inconsistencies and collisions that lead to violations of the rights of private actors, as well as reduce the effectiveness of public control.

On the other hand, criminal law creates unnecessarily broad terms of criminal liability application for the abuse of a dominant position. Thus, the law providing for the responsibility for the abuse of a dominant position recognizes as the base for this responsibility only repeated commission of the offense, namely, "the committing by a person the abuse of a dominant position for more than two times in three years, for which the person has been brought to administrative responsibility". Here we see some systemacity, the relationship of criminal and administrative-tort law in the regulation of public responsibility for violations of antimonopoly legislation, but this systemacity is built in such a way that raises many questions, and can hardly be considered satisfactory. So, and this is a general disadvantage of article 178 of the Criminal Code of the RF, it does not define precisely the subject of a crime. The fact is that the abuse of a dominant position is a tort of a collective subject, organization, or even a group of legal entities: antimonopoly legislation recognizes as the subject of such actions business entities, which more often include commercial and non-commercial organizations and in theory could include individual entrepreneurs (article 4, the Law on Competition Protection), and while the Criminal Code of the RF establishes responsibility only of individuals. Probably, article 178 of the Criminal Code of the RF, providing for responsibility for the abuse of a dominant position, means individuals whose actions have led to the violations of relevant organizations. But the law does not expressly say who can potentially fall under the prohibition of article 178 of the Criminal Code of the RF. It seems that this suggestiveness and legal uncertainty are not allowed in such an Act as the Criminal Code that restricts the freedom of the individual.

On the other hand, this connection of administrative and criminal responsibility causes a problem of a different kind – the difficulty of the actual possibility to bring

to criminal responsibility the person whose actions, instructions led to the abuse of dominant position by a subject of market. We recall that according to article 178 of the Criminal Code of the RF, punishable only a *repeated* abuse of a dominant position, which is recognized under the committing by a person the abuse of a dominant position for more than two times in three years, for which the person has been brought to administrative responsibility. Let us imagine that a top manager, guilty of abusing of dominant position by his organization, after committing an administrative offence for the second time in three years temporarily transfers to another position, to wait three years and then come back into place. Formally, the new top manager, who gave an illegal order, which led to a new abuse of the organization, cannot be criminally punished. This means the actual inability of article 178 of the Criminal Code of the RF to effectively prevent violations of antimonopoly legislation in the form of abuse by economic units of their dominant position.

So we can see in the structure of criminal and legal prohibitions of article 178 of the Criminal Code of the RF, on the one hand, the excessive rigidity to the subjects restricting competition of agreements, on the other hand, incomprehensible liberalism to the subjects who are accessory to the abuse by organizations of a dominant position.

The above substantive regulatory issues of administrative and criminal responsibility for monopolistic actions in their interconnection with each other and antitrust regulators are closely intertwined with the procedural ones, arising from a common problem of eclectic signs of regimes to legal regulation of public-law relations in the field of competition.

The essential problems here are duplication of powers and lack of an effective model of the distribution competences between the number of public bodies responsible in some way for the protection of competition, as well as a not unified system of co-existence of administrative and antimonopoly, administrative and tort and criminal and procedural procedures to protection of competition and subjective competition rights.

Today in Russia there are several types of public subjects endowed with executive and instructive and law-enforcement powers to implement the powers of authority in the field of antimonopoly control. In this case, the separation of powers of controlling bodies is implemented not by type of markets, functional pattern, type of crime, levels of public administration and administrative-territorial division, and so on, but by the legal regime of activity of these subjects. Thus, monopolistic activity on the market of milk may be the subject of an investigation by the antimonopoly

authority. However, the same case may be of interest to internal affairs bodies, since article 178 of the Criminal Code of the RF under jurisdiction of the Investigation Committee of MIA, also provides for responsibility for monopolistic activities. Also, at General Prosecutor's Office operates an interagency working group to combat price fixing arrangement. However, investigative agencies of procuratorate have no powers to investigate cases under article 178 of the Criminal Code of the RF.

This system has a range of shortcomings, both in terms of protecting the rights of citizens (objects of control), and in terms of efficiency of public administration. Let's begin with the latter. Antimonopoly body has human resources and resources to conduct a full examination from the receipt of initial information on the case and beginning the pre-trial investigation till making an authoritative decision. However, the Federal Antimonopoly Service of Russia operates only in the context of the administrative antimonopoly procedure and has no any criminal and procedural powers. This means that in the actual discovery of elements of the criminal offence of violating the antimonopoly legislation, FAS should pass the case to law enforcement authorities. However, it seems, that the complex of relations, arising in connection with the need to resolve the question of instituting criminal proceedings, is not enough settled. Thus, in this regard the Law on Competition Protection contains only two interrelated norms. In Part 3 of Article 41 of the Law is established that "a decision on the case of violation of the antimonopoly legislation also contains conclusions on the presence or absence of the grounds for taking by an antimonopoly body of other measures to prevent and (or) eliminate the consequences of violation of the antimonopoly legislation, ensure competition (including the grounds for appeal to court, for the transfer of materials to the police, for sending recommendations on the implementation of actions aimed at ensuring competition to government or local government bodies)". Under part 1 of article 49 of the Law "Commission of antimonopoly authority on consideration a case of violation of the antimonopoly legislation after taking decision on the case decides question about issuing directions and about their content, as well as on the necessity to exercise other actions aimed at elimination and (or) prevention of the antimonopoly law violation, including the question of sending materials to the law enforcement agencies, referring a claim to court, sending proposals and recommendations to the public authorities and local government bodies".

The said provisions are formulated so that many issues remain unclear, such as whether is the Commission obliged each time to resolve the issue of the presence of a criminal offense, or it is not the duty of the Commission, but only a prerogative at discretion? What is a required set of signs and what is a basis of the consideration

of violation with respect to the presence of these signs? What set of violation's signs is needed to have sufficient grounds for referral of the case materials to law enforcement bodies? It should be noted that in fact the FAS to decide on such a referral should conduct a preliminary qualification of an action to detect elements of corpus delicti. In fact there is every indication of criminal procedural powers, but they are not reflected in the criminal-procedural legislation.

Next, suppose that the case comes to the law enforcement bodies. The competent authorities again have to understand all the intricacies of the case, again conduct an investigation already in purposes and under the regime of criminal procedure to make at least a preliminary decision on the existence of a corpus delicti, not to mention a comprehensive investigation for indictment and start of court proceeding. Thus, the legislation essentially establishes a model of dual investigation of one and the same violation by two different bodies within different legal regimes, in cases where the violation of antimonopoly legislation also falls under the scope of the criminal law. The internal affairs bodies enter the process how would in the middle and are forced to get to the bottom of the case, including with the words of antimonopoly bodies' specialists who explain the case materials, if questions arise. At the same time, having deeply penetrated into the heart of the matter, conducted an administrative investigation and taken appropriate administrative decisions the antimonopoly authorities at the peak of understanding the situation are forced to distance itself from the case, passing it to new participants of proceeding. By itself, such a model does not look effective from the position of duplication of functions, double spending of public resources, overexpenditure for allowance of public servants. To this is added the problem of the quality of the investigation. If FAS has a narrow specialization, the entire body, its primary staff aims at the realization of the protection of competition, continually accumulates departmental experience of law-enforcement in this area, this cannot be said about law-enforcement bodies. Even the formation of a special division for antimonopoly investigations has made not much to change the situation.

From the point of view of a private actor this doubling the burden and costs is an actual "nightmare" to consistently withstand the law-enforcement press of various regulatory authorities on the same case.

On the other hand, it should be noted that according to the data of practitioners, often, regardless of the investigations conducted by the FAS of Russia, internal affairs bodies independently institute the cases, which have little to do with the issues and the subject of antimonopoly regulation, often artificially attracted to the elements of crimes covered by article 178 of the Criminal Code of the RF.

So, the questions of interaction of competitive bodies among themselves and with other bodies are reflected in legislation only partially and in the most general terms, even on enforcement issues directly affecting the rights and interests of citizens. Many important procedural matters are not regulated at all or regulated by departmental acts. It seems that this situation is hardly acceptable to regulate administrative and tort framework of antimonopoly relations and is directly not valid in the area of intersection of antimonopoly control and criminal procedure.

The second group of procedural problems arises from the lack of a legislative systematic unity in the regulation of the very *administrative* antimonopoly procedure.

As has already been noted, in today's Russia administrative and tort antitrust procedure is regulated at the legislative level, on the one hand by the antimonopoly legislation, particularly by the Law on Competition Protection, on the other hand by the Code on Administrative Offences of the Russian Federation. Just as in the case with the criminal procedure the antimonopoly legislation "relates" to the administrative and tort one vertically – by the sequence of application different types of legislation, but does not delimits horizontally (e.g., by types of markets or offences). In other words, firstly conducts an antimonopoly investigation under the procedures specified in the Law on Competition Protection. Then, if the violation falls under the articles of the Code on Administrative Offences of the Russian Federation (today most of the types of violations of antimonopoly legislation fall under the articles of the CAO RF) institutes a case under the CAO RF, and under the procedures already established in this act applies administrative responsibility for violations of antimonopoly legislation. Further it is getting even more interesting. Decision and order, that finish antimonopoly investigation on the procedures of the Law on Competition Protection may be appealed to the Court in the manner prescribed in the Law on Competition Protection and forensic-procedural legislation. Acts adopted under the procedures of the CAO RF, should be appealed in a different manner – separately from decisions and orders of the antimonopoly body, though, the acts provided for by the antimonopoly legislation (decision or order) and acts of the CAO RF (for example, the decision to impose a fine) are the acts on the same antimonopoly case. The situation is complicated by the fact that by many types of offences antimonopoly administrative acts are appealed both in arbitration courts and courts of general jurisdiction. This model leads to a procedural overload of the antimonopoly proceeding, legal collisions. There are problems of unification and delay of terms of consideration, the lack of uniformity of judicial practice, increasing costs of private actors on the conduct of the case, the appealing of the acts of an antimonopoly authority, legal stability.

On the other hand, only the external connection, but not a system combination of antimonopoly jurisdictional procedures with the procedures of the CAO RF, does not allow in the administrative process, which is implemented in the framework of the procedures established in antimonopoly legislation, to realize the potential of standards and principles established in the CAO RF and confirmed by the many acts of higher judicial bodies, including the Constitutional Court of the RF. Formally, neither the principle of presumption of innocence, nor other principles established or arising from the norms of the CAO RF, are not important for antimonopoly legislation, since neither the CAO RF is systemic for sectorial laws determining features of the administrative and legal regulation of controls in some areas, nor the Law on Competition Protection contains indications that the general principles and rules established by the CAO RF are indispensable for the application of antimonopoly procedures of the Law on Competition, and shall be applied as filling up deficiencies of the last.

We have examined, not all the problems, inconsistencies, contradictions of substantive and procedural regulation of the issues of the grounds and implementation of public responsibility for violations of antitrust legislation, but even they can speak of a serious systemic crisis of legal regulation in this area. Lack of conceptual unity and system logic aimed at effective public control and protection of competitive relations and the rights of consumers and market participants from unlawful infringement of other private entities as well as the state, is also shown in comparison of the domestic model with the approaches of foreign countries, which are notable for stable system of public-law regulation of competition protection, including with regard to the regulation of public responsibility for violations of antimonopoly legislation.

Foreign experience in its turn demonstrates the unification in matters of material and procedural regulation of public responsibility for violations of antimonopoly legislation, despite the fact that different countries have their own specificities and characteristics peculiar to their legal system as a whole.

Thus, in the U.S.A public responsibility for antitrust violations is unified in the framework of criminal responsibility, that is provided for under both the federal level and at the level of states [7, 9, 10 and 6]. Distribution of grounds of criminal responsibility occurs in accordance with the general approaches of distribution of competencies between the Federal and states' antimonopoly agencies on the whole.

Considering the federal level as an example, it should be noted that, despite the fact that two public subjects are entrusted with public defense of competition,

only one of them – the Ministry of Justice, represented by Antitrust Department, has the powers to apply criminal measures and conduct criminal proceedings. The second one is the Federal Trade Commission that acts within the framework of administrative procedures. However, unlike Russia, the FTC does not apply measures of administrative responsibility, which according to Russian understanding is absent in the United States, but the FTC is authorized to apply other measures of administrative coercion, aimed at preventing and suppressing illegal monopolistic actions. So there is no situation of competition and contradiction in corpus delicti of criminal and administrative offences in the area under consideration.

In addition, corpus delicti and criminal sanctions for monopoly are contained in the antitrust act – the Sherman Act. Hence the complete unification of antitrust prohibitions and a criminal corpus delicti, absence of conflicts and contradictions between them.

It should also be noted that the American system of criminal responsibility for monopoly is unified and logical in terms of the subject of responsibility. As is well known, the United States provides criminal responsibility for individuals and legal entities. As the Antitrust Department of Ministry of Justice conducts antimonopoly criminal proceedings from the beginning of receipt of initial information on a case till the prosecution in court, within criminal proceedings is provided a comprehensive investigation of the case, where detects the offense, installs the guilt for specific individuals and legal entities, and in court if he agree to a guilty verdict will be passed a punishment, both to the organization and the citizen who is guilty of monopolistic activities of his company. This system does not require the initiation of two parallel procedures – criminal and administrative ones to ensure penalty of antimonopoly offence against separately individuals and separately legal entities.

The American experience of regulating public investigations and public responsibility for monopolistic actions is not dominant in the world, and most countries characterized by the unification of public responsibility within the administrative law. The classic example here is Germany [7; 9]. In this country the administrative responsibility for monopolistic actions is envisaged in the antimonopoly (competitive) legislation. In one law stipulated prohibitions and the validity of actions limiting competition, powers of antimonopoly authorities, procedures for their activities, procedure of application of administrative and control measures, including the procedure of application of responsibility measures, corpus delicti, types and amounts of penalties. It also does not cause confusion

and contradiction between the system of prohibition and regulation of public responsibility for their violation.

It should be noted that in Germany, the criminal law contains offenses and responsibility for them in the field of competition, but these structures are not associated with the cartel (competitive) law and aimed at the suppression and prevention of specific types of unlawful infringements. The emergence of these structures relates to 1997, when by the Law on Combating Corruption in the Criminal Code of Germany was introduced chapter 26 "Crimes against Competition" [8]. This chapter contains several crimes and punishes mainly managers and employees of commercial organizations that go to conspiracy with competitive firm against the interests of their firm. So, chapter 26 establishes responsibility for agreements limiting competition in the description of goods, bribery and graft in business. The cartel (competitive) law of Germany in its turn is directed against other acts, traditionally forming in the world practice the subject of antimonopoly control – abuse of dominant position, market cartel conspiracies, etc. Thus, criminal procedure and criminal prohibitions against anti-competitive actions is not in competition with the administrative and tort procedure and administrative offenses, have different objectives and are used to counter the various illegal phenomena. The administrative procedure and administrative responsibility for monopolistic actions in its turn are fully unified and brought into a single system within the cartel (competitive) legislation.

Many other European States follow similar principles and approaches. So, competition legislation of Spain includes the full amount of systematic administrative and legal rules of antimonopoly control, including all stages of the administrative antimonopoly procedure from the primary obtaining of information and institution administrative proceedings till the jurisdictional decision involving at the same time the application of administrative sanctions. Moreover, the main competitive law contains all needed material rules – prohibitions, administrative procedures, a list, types, sizes of penalties for violation of these prohibitions, the cases and procedure of their application, the base for release from liability and other relevant issues.

Besides, according to the adopted in Spain model of administrative and legal regulation, the sectorial legislation, governing individual directions of public management and control and defining the functions, powers and procedures of activity of some separate public entities, must comply with the basic administrative and legal acts, such as the Laws "On the Legal Regime of Public Administration and General Administrative Procedure" [11] "On the Organization and Activities

of the General State Administration" [13] "On the Administrative-litigatory Court Proceedings" [14]. Gaps of the competition law and other sectorial acts in such a system are imperatively completed by institutions and norms of general procedural laws. Typical in this respect the approach adopted in the administrative and legal regulation of public activity for the protection of competition. Despite the fact that more than half of the country's basic competition act – the Law on Competition Protection is devoted to administrative procedures, including that have been regulated major institutions, stages, actions, elements of the antimonopoly procedure, procedure of sanctions application, their types and application cases, etc., herewith, according to the direct order of article 19 of the Law on Competition Protection in the cases not-settled by the law operate the general rules of the legislation on public administration of Spain, including the Law "On the Legal Regime of Public Administration and General Administrative Procedure", "On the Organization and Activities of the General State Administration". This provides common rules, legal principles, and guarantees of private subjects of competition law – the objects of antimonopoly investigations during the whole antimonopoly procedure – from receipt of preliminary information on possible violations and the institution of proceedings till the application of coercive measures against violators and further contesting the acts and actions of competition authorities in court. In General, publicly-authoritative activities on protection of competition in Spain is unified under the administrative legal regulatory regime.

Unification of public responsibility within the administrative and legal regulation is typical of the European Union as a whole, as quasi-government formation and independent public subject of antimonopoly control with functions and powers independent from the member states. Typical sanctions, which are imposed on violators by the European Commission within the framework of EU competition law, are fines, which can reach 10% of the turnover of a guilty company [7].

The identified material and procedural problems of regulating public prosecution of antimonopoly violations, raises serious questions over the need to streamline the domestic model.

It seems, that in view of traditions of the Russian legal regulation of administrative responsibility, the differences in the subjects of criminal responsibility in Russia and most foreign countries, in terms of responsibility of legal entities, the least satisfactory condition of exactly criminal-legal means to counter monopolistic activities in Russia and their meager role in achieving purposes of antimonopoly policy should be developed approaches, on the one hand, taking into account these

circumstances, on the other hand providing systemic change of legal regulators in this field so far as is necessary to achieve two main goals and objectives of the publicly-tort antimonopoly law – the effectiveness of the public protection of competition and antimonopoly control, and protection of the rights of private entities of publicly-tort competitive legal relations.

The above circumstances and global trends of unification and system unity of regimes of publicly-tort antimonopoly activity make the society to seek for development such a system also in Russia choosing a priority type of legal regime. The specificity of domestic publicly-tort regulators gives more preference in choosing of the administrative and legal regime as a priority one. In the context of the ongoing reform of the internal affairs authorities, in particular, on the issue of declining the amount of functions, this approach obtains additional justification and relevance.

It seems that the renunciation of the criminal prosecution for violations of antimonopoly legislation, stipulated in article 178 of the Criminal Code of the RF will not weaken the potential of public authorities in the fight against monopolies, what is a confirmed by many examples from foreign practice. On the other hand, the unification of public control within the institutions of administrative law will let to move from extensive to intensive development of legal regulators, their continuous improvement, because it will enable the elite and the expert community to focus on improving of a more compact group of norms, interconnected into a single system within a single administrative and legal regime.

At the same time, in this approach remains the problem of bringing to a more coherent and unified system of administrative antimonopoly legislation and administrative-tort legislation (CAO RF). Search and detailed justification of specific proposals in this area is beyond the scope of this article, however, we can make some general considerations on the matter.

First, of course, such a system of unification is necessary. Second, given the foreign experience, on the one hand, and the current Russian model of regulation of administrative responsibility, on the other, we can talk about two possible ways of development of the system in the field. One of the approaches is related to the unification of all the issues – from the institution till the consideration of a case and the application of administrative sanctions in the legislative body of antimonopoly legislation. The second approach involves the development of the Code on Administrative Offences of the Russian Federation to the level of a system act for sectorial administrative and legal legislative regulators, in part of conducting administrative investigations, establishing the guilt of a subject, applications the measures of

administrative coercion. However, the second approach encounters a number of theoretical and practical complexities of a systemic nature, that causes delay in the procedure of resolving the issues raised in this work. So, the CAO RF covers not all areas of administrative and control activities, focusing on the issues of regulation and application of administrative responsibility, and in order to give it a systemic nature in the legal regulation of administrative and jurisdictional procedures in general it is necessary to think about the reforming or even replacing by this unified act of such acts as the Federal law No. 294-FL of 26.12.2008 [4], linking changes with forensic-procedural legislation, in particular, Arbitration Procedure Code of the RF and a number of other system acts.

In this connection probably more preferable in tactical plan, in our view, is the autonomous development of administrative-tort regulators within the antimonopoly legislation with simultaneous developing of a systemic administrative and legal legislative act or systemic group of administrative and legal laws, which ensure unified principles of administrative and legal regulation, defining the general principles, approaches of the publicly-authoritative activity, establishing common standards and guarantees for private subjects of public legal relations. Such an updated legislation forming the system, framework of administrative and legal regulation, could replace the current scattered administrative and legal acts and become, for example, by experience of Spanish or German model, an effective guarantor of lawful activities of both antimonopoly administration and other responsible for different areas of public administration.

References:

1. The Code on Administrative Offences of the Russian Federation, No 195-FL of December 30, 2001 (as at October 29, 2011) [Kodeks Rossijskoj Federatsii ob administrativnyh pravonarushenijah ot 30 dekabrja 2001 g. № 195-FZ (po sostojaniju na 29 oktjabrja 2011 g.)]. *System GARANT* [Electronic resource], Moscow: 2012.

2. The Criminal Code of the RF, No. 63-FL of June 13, 1996 [Ugolovnyj kodeks RF ot 13 ijunja 1996 g. № 63-FZ]. *System GARANT* [Electronic resource], Moscow: 2012.

3. Federal Law No. 135-FL of July 26, 2006 On Competition Protection [Federal'nyj zakon ot 26 ijulja 2006 g. № 135-FZ «O zashhite konkurentsii»]. *System GARANT* [Electronic resource], Moscow: 2012.

4. Federal Law No. 294-FL of December 26, 2008 On the Protection of Legal Entities' and Individual Entrepreneurs' Rights in the Course of State Control (Supervision) and Municipal Control [Federal'nyj zakon ot 26 dekabrja 2008 g. № 294-FZ «O zashhite prav juridicheskih lits i individual'nyh predprinimatelej pri osushhestvlenii gosudarstvennogo kontrolja (nadzora) i munitsipal'nogo kontrolja»]. *System GARANT* [Electronic resource], Moscow: 2012.

5. The Order of the Federal Antimonopoly Service of the RF No. 356 from 31.10.2007 on Approval Administrative Regulations of the Federal Antimonopoly Service on Execution of State Functions to Monitor the Compliance with Antitrust Legislation Restricting Agreements' Competition of Economic Units [Prikaz FAS RF ot 31.10.2007 № 356 «Ob utverzhdenii administrativnogo reglamenta Federal'noj antimonopol'noj sluzhby po ispolneniju gosudarstvennoj funktsii po osushhestvleniju kontrolja za sootvetstviem antimonopol'nomu zakonodatel'stvu ogranichivajuwih konkurentsiju soglashenij hozjajstvujushhih sub''ektov»]. *System GARANT* [Electronic resource], Moscow: 2012

6. Zhidkov O. A. Legislation on Capitalistic Monopolies [Zakonodatel'stvo o kapitalisticheskih monopolijah]. *Izbrannye Trudy – Selected works*, editor-in-chief Muromcev G. I., Trikoz E. N., Moscow: 2006, 608 p.

7. Nikerov G. I. Legal Protection of the Competitive Environment [Pravovaja ohrana konkurentnoj sredy]. *Grazhdanskoe i torgovoe pravo zarubezhnyh stran: Uchebnoe posobie – Civil and trade law of Foreign Countries: study guide*, under general edition of Bezbah V. V., Puchinskij V. K., Moscow: MTsFEhR, 2004.

8. *The Criminal Code of the FRG* [Ugolovnyj kodeks FRG]. Translation from German, Moscow: IKD Zertsalo-M, 2001, 208 p.

9. Jacheistova N. I. *International Competition: Legislation, Regulation and Cooperation* [Mezhdunarodnaja konkurentsija: zakonodatel'stvo, regulirovanie i sotrudnichestvo]. New-York; Geneva, 2001.
10. Gelihorn E., Kovachic W. E. *Antitrust Law and Economics in a Nutshell*. 1994.
11. Law No. 30/1992, of November 26, About the Legal Regime of Public Administration and Common Administrative Procedure [Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común]. *BOE*, 27-Nov-1992, no. 285, available at: http://noticias.juridicas.com/base_datos/busca-db-leg.php (acessed: 04.05.2012).
12. Law 7/1996, of 15 January on the Retail Trade [La Ley 7/1996, de 15 de enero, de Ordenación del comercio minorista]. *BOE,* 2-Mar-2010, no. 53, available at: http://noticias.juridicas.com/base_datos/busca-db-leg.php (accessed: 04.05.2012).
13. Law 6/1997 of 14 April On the Organization and Functioning of the General State Administration in Accordance with the Provisions of the Tenth Added Clause, and its own Statute [Ley 6/1997, de 14 de abril, de Organización y Funcionamiento de la Administración General del Estado, de acuerdo con lo previsto en su disposición adicional décima, y en su propio Estatuto]. *BOE*, 15-Abr-1997, no. 90, available at: http://noticias.juridicas.com/base_datos/busca-db-leg.php. (accessed: 04.05.2012).
14. Law 29/1998, of 13 July, On Regulating the Administrative Courts [Ley 29/1998, de 13 de julio, reguladora de la Jurisdicción Contencioso-Administrativa]. *BOE*, 14-Jul-1998, no. 167, available at: http://noticias.juridicas.com/base_datos/busca-db-leg.php (accessed: 04.05.2012).
15. Law on the harmonization of powers of the State and the Autonomous Communities in the field of competition protection [Ley 1/2002, de 21 de febrero, de Coordinación de las Competencias del Estado y las Comunidades Autónomas en materia de Defensa de la Competencia]. *BOE,* 22-Feb-2002, no. 46, site of the National Competition Commission of Spain available at: http://www.cncompetencia.es/Inicio/Legislacion/NormativaEstatal/tabid/81/Default.asp (accessed: 04.05.2012).
16. Law 60/2003 of 23 December on Arbitration [Ley 60/2003, de 23 de diciembre, de Arbitraje]. *BOE,* 26-Dic-2003, no. 309, web-site Noticias juridicas available at: http://noticias.juridicas.com/base_datos/Privado/l60-2003.html (accessed: 04.05.2012).
17. Law 15/2007, of 3 July, On Protection of Competition [Ley 15/2007, de 3 de julio, de Defensa de la Competencia]. *BOE*, 2007, no. 159, available at: http://www.cncompetencia.es/ (accessed: 04.05.2012).