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ADMINISTRATIVE RESPONSIBILITY THROUGH THE PRISM OF PHILOSOPHICALLY-LEGAL VIEWS

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Subjected to a critical understanding retrospective and perspective approach to the determination of administrative responsibility, bringing to administrative responsibility of legal entities, normatively enshrined objectives of administrative penalties.

Key words: administrative responsibility, retrospective responsibility, responsibility of legal entities, signs of administrative responsibility.

More than forty years ago, Professor I. A. Galagan in the introduction to his fundamental work "Administrative Responsibility in the USSR (State and Substantive Research)" noted that successes in the study of problems of administrative responsibility "does not reduce its relevance and does not exclude the need to further study of the called institute. The task is, on the base of theoretical generalization of achieved knowledge, to move to the further their development, analysis of not yet investigated, controversial or poorly developed issues" [7, 3].

Moreover, I. A. Galagan himself rightly pointed out that administrative responsibility as a specific phenomenon has all the signs of a general concept of legal responsibility. However, in administrative law, they are filled with specific administrative content. This applies to the grounds of occurrence administrative responsibility, its measures and procedures of application.

Taking into account the specific and common to all other types of legal responsibility signs, I. A. Galagan suggested the following definition: "By administrative responsibility should be understood application in the prescribed manner by the authorized agencies and officials administrative penalties, set forth in the sanctions of administrative and legal norms, to persons who are guilty of committing administrative offences, which contain state and public condemnation, animadversion of their identity and wrongful deed manifesting in negative for them consequences, which they must exercise, and aimed at the goals of their punishment, improvement and re-education, as well as the protection of public relations in field of the Soviet state administration" [7, 40-41].

Having replaced the phrase "Soviet state administration" to "Russian state administration" I am involuntarily convinced that the meaning of the I. A. Galagan work has not lost its significance even today.

However, the problematics of administrative responsibility is such that it was, it is and it will always remain relevant. That is why administrative responsibility, recognized by almost everyone as the major and simultaneously the most common type of legal responsibility due to the variety and massive scale of administrative torts, continues to attract researchers seeking answers to the question about its concept and content. This is not accidental, since there was no and still there is no the legally enshrined (normative) concept of "administrative responsibility", however, as well as the concept of "legal responsibility".

In this regard, in scientific and educational literature administrative responsibility is defined differently.

I. V. Maksimov and G. A. Shevchuk confine themselves to pointing out that "administrative responsibility is a type of legal responsibility and at the same time a type of administrative coercion. As an independent type of legal responsibility, it has its own special signs.

Firstly, the ground for bringing to it is a committing of an administrative offence.

Secondly, its application lies in imposing and executing of administrative penalties.

Thirdly, bringing to administrative responsibility is carried out in a specific order, which is characterized by efficient response" [3, 256].

Around the same approach is suggested by B. V. Rossinsky, who believes that "administrative responsibility is a type of legal responsibility, which is expressed in the imposing by a body or official, empowered with appropriate powers, an administrative penalty on a person who has committed an administrative offense" [4, 603].

Administrative responsibility has characteristics common to legal responsibility in general. However, it also possesses the specific features that are unique only to this type of legal responsibility:

1) administrative responsibility in most cases is an out-of-court responsibility;

2) administrative penalties are imposed by officials on the offenders, who are not subordinate to them;

3) administrative penalties are generally less severe than criminal penalties;

4) application of administrative responsibility does not result in a criminal record of an offender;

5) subjects to administrative responsibility can be not only individuals, but also legal entities;

6) administrative responsibility is established both by the CAO RF and by the adopted in accordance with it laws on administrative offences of the constituent entities of the Russian Federation [4, 603-604].

N. M. Konin notes that "administrative responsibility" is a provided by the legislation legal responsibility for an administrative offense, related to the application of administrative penalties (sanctions). As the main form and the most common type of administrative coercion it has its own purposes and a definite mission in the general system of legal responsibility" [6, 183].

According to D. N. Bakhrakh "under administrative responsibility is understood the application and exercising of administrative penalties for administrative offences by the subjects of functional authority, on the basis and in the manner prescribed by administrative law" [5, 24].

Similar approaches suggest many other authors revealing the content of administrative responsibility, primarily through the characteristic of its inherent features.

As for the position of the legislator regarding administrative responsibility, it can be seen from the analysis of the CAO RF [2], which is for some strange reason called not as Administrative and Tort Code or Administrative Responsibility Code, but as the Code on Administrative Offences, although the area of public relations governed by the Code is much wider than its name.

So, in the CAO RF are enshrined the following signs administrative responsibility.

First, chapter II of the CAO RF, called "Administrative offense and administrative responsibility", allows to judge about that the legislator associates incurrence of administrative responsibility with the fact of committing an administrative offense.

Second, normative-legal regulation of responsibility for administrative offence is a two-level (part 1 of article 1.1 of the CAO RF) with the underlining of the supremacy and priority of the CAO RF over the adopted in accordance with it laws on administrative offences of the constituent entities of the Russian Federation (article 1.3 of the CAO RF).

Third, the subjects of administrative responsibility may be both individuals and legal entities (article 2.1 of the CAO RF), which meet the requirements of articles 2.3-2.6.1, 2.10 of the CAO RF.

Fourth, administrative responsibility is expressed in the application of administrative penalty, which is an established by the State measure of the responsibility for committing an administrative offence (part 1 of article 3.1 of the CAO RF).

Fifth, although the legislator does not explicitly call the goals of administrative responsibility, they are actually defined through the goals of application administrative penalty, namely the prevention of further offences both by an offender and other persons (part 1 of article 3.1 of the CAO RF). In this, an administrative penalty and, therefore, administrative responsibility, cannot have as its aim the humiliation of human dignity of a natural person who has committed an administrative offense, or the infliction of physical pain, as well as the infliction of harm to the business reputation of a legal entity (part 2 of article 3.1 of the CAO RF) .

Sixth, the proceedings on cases on administrative offences regulated by the provisions of section IV of the CAO RF, and within which is implemented the application of administrative responsibility, provides for a combination of judicial and non-judicial procedure of considering cases on administrative offences in accordance with the laid down in section III of the CAO RF jurisdiction of cases on administrative offences and established competence of judges, officials authorized to consider such cases.

However, some enshrined in the CAO RF signs of administrative responsibility cause disagreement of a number of scientists, both on principle and content of their legal regulation. Primarily, this refers to the distribution of administrative responsibility on legal persons.

The emergence of the institute of legal person's administrative liability Professor V. D. Sorokin explained as follows. Under conditions when it was necessary to define the type of responsibility of legal persons in case of violation by them the legislation, the legislator could reason, and, most of all, reasoned as follows.

Criminal liability is initially designed exclusively for individuals and for reasons of principle cannot be applied to legal persons. I stress that this is a "classic

criminal liability", which provides for as a criminal penalty deprivation of liberty, which of course can be applied only to natural persons. In modern version of the Criminal Code, appeared an alternative in the form of a fine. Thus, emerged a "market-based criminal responsibility", which allows rich citizens to break the law as severely as much money they have, and thus enables them to breach the criminal law without actual undergoing the negative consequences, the occurrence of which involves criminal prosecution. If V. I. Lenin declared: "Earth to peasants, factories to workers", the Russian legislators surpassed the leader of the world proletariat by enshrining in the Criminal Code of the RF the slogan "prisons to poor". I do not take into account the rare exceptions, such as the case of the president of the board in Company "YUKOS-Moscow" M. B. Khodorkovsky.

Inclusion of a fine in the list of criminal penalties allowed a number of authors to put and not without some reasons the question of extending the institute of criminal responsibility for legal entities [13]. Although it is not clear for me, how criminal responsibility, associated with the imposition of a criminal punishment in the form of a fine for a legal entity, will be different from the administrative responsibility of a legal person, who was sentenced to an administrative fine, especially if in one and in another case, the decision is made by a judge, i.e., in court. In addition it is difficult to imagine what could mean the concept "criminal record of a legal person" and "legal person with a criminal record". What is the practical sense of the criminal liability of legal entities, when today it is quite simple to eliminate it and to register under a different name? And then, what is the essential difference between the criminal and administrative responsibility except, of course, criminal record?

Another argument in favor of the establishment administrative liability of legal entities may be the fact that the process of bringing to administrative responsibility is far less cumbersome, and many times quicker than the procedure of civil-law responsibility.

Thus, according to Professor V. D. Sorokin, distribution of administrative responsibility to legal entities was a rather forced than reasoned decision of the legislator, who, however, either in past or now, have not been able to decide on the manner in which legally correct to define the guilt of a legal entity. Let me recall that Professor V. D. Sorokin, who has not accepted the institute of administrative responsibility of legal entities, believed this decision wrong and destroying the integrity of the institute of administrative responsibility.

Today, however, administrative responsibility of legal entities is a prescription, which should be accepted by executor of law.

Continuing to analyze the features which theorists of administrative law give to administrative responsibility, can be also underlined such ones, which, although not enshrined in the CAO RF, but immanently inherent to it.

Surprisingly, but legislator does not focus his attention on the fact that the purpose of an administrative penalty, and therefore administrative responsibility, should lie, above all, in the legal assessment of the already committed deed, the gist of which is that the administrative punitive measure is aimed at ensuring of that the offender would compulsorily undergo certain negative consequences for his offence, encouraging him not to commit an administrative offense in future.

Hardly anyone will dispute that bringing to administrative responsibility by imposing on a natural or legal person an administrative penalty, first of all means a State's response to the guilty committed tort, which stipulates infliction to such a person any inconvenience of material, physical, and moral nature. So I cannot agree with the officially enshrined in the CAO RF position of the legislator, according to which the only purpose of application of an administrative punishment, and, consequently, administrative responsibility, is a private and general prevention of administrative offenses.

Can it be true, that according to the legislator, the purpose for the imposing of an administrative penalty is not the past, but future behavior, not a negative responsibility, but the formation of what has been called a positive responsibility? I think, that not the future conduct and deeds of a natural person, not the future deeds of a legal entity, not prevention of administrative torts should be enshrined as the main purpose of administrative responsibility, which is applied just according to the fact of an administrative offense. Let us remember that Hegel argued that man is only responsible for his actions, not beliefs [8, 144-145], not for the future hypothetically possible deeds. The same idea was also professed by K. Marks, who said, "Apart from my actions, I do not exist for the law, I'm absolutely not its object... Laws that make the main criterion not actions as such, but the way of thinking of a person, are nothing more or less than positive sanctions of lawlessness" [17, 14].

Proceeding from the fact that administrative responsibility is considered as one of the types of legal responsibility, representatives of the science of administrative law cannot stay away in a sharp discussion ongoing between supporters of the retrospective (negative) and perspective (positive) approach to the content of legal responsibility.

First ones traditionally noted that "legal responsibility since its appearing has always been the responsibility for the past, for a committed unlawful act. Otherwise, you can come to the unacceptable conclusion that the person, who has not

committed a crime, is already criminally responsible" [24, 43]. The content of any tort is not an alleged, but has already been manifested in a particular action deviant behavior [10, 286-331]. I stress the fact, that with due account for the recent totalitarian past of our country, in the Constitution of the RF is enshrined a provision stating that "no one can be forced to giving up their beliefs" [1, 29].

The second ones assert, that "responsibility covers not only the relations arising from the presence of the grounds for it, but also before that, in the process of the very implementation the obligation to bear responsibility for the performance of functions of the subject of management" [22, 138]. Positive responsibility they associate with the performance of an obligation, emphasizing that:

- "the provided for by the rule of law obligation of implementation activities useful for society. Implementation of legal responsibility, on the merits, it is always an exercise of legal obligations" [20, 29];

- "the beginning of a positive legal responsibility equally accompanies the category of labor discipline as an obligation to work conscientiously in a chosen field of socially useful activities, and perhaps, increasingly merges with it" [23, 31];

- "positive responsibility implies a "steady and honest performance of duties by the person to whom these duties have been assigned by law" [25, 75].

Proceeding from the fact, that "responsible behavior – it is such a behavior that is characterized by a deep awareness of the need to follow the requirements of legal and moral standards, respect for the law and justice, and implies active influence on the course of events, contribution to the common cause and development of society" [19, 43], responsibility "in a positive sense" is proposed to consider as a "responsible attitude to the performance of their job functions, to resolving scientific, industrial, social tasks, to any work that is entrusted personally to a man or a team" [15, 69].

Placing the question "does have the right to exist the division of legal responsibility to retrospective and prospective one?" some authors rather cautiously reply: "From a certain point of view – yes it does, because in a certain way it reflects the actual legal reality. However, legal responsibility in a special legal sense can only be called responsibility for the wrongful acts" [16, 407].

Much more categorical V. M. Baranov, who believes that "to talk about positive legal responsibility is hardly possible. In this case, refers to a kind of "integrated", common social responsibility of lawful behavior of an individual…

In accordance with the concept of "positive" responsibility this responsibility swells to incredible and unnecessary dimensions. Everybody bear responsibility both those who in good faith, voluntarily, consciously perform their duties, and those who commit offences. I think that this is an artificial theoretical construction. This exaggeration of responsibility does not correspond to the nature of the traditional legal institute" [26, 504-505]. A similar position is taken by O. F. Ivanenko, who notes that "legal responsibility can only be understood as the offender's undergoing of these adverse consequences, experiencing on himself the form of public coercion established by the state. Application of the sanction of a legal norm to its offender means to bring him to legal responsibility, to make him to be responsible for committed deed, causing him deprivation of mental or material nature" [12, 4].

Considering administrative responsibility as an especial kind of legal responsibility D. N. Bakhrakh also notes that "the problem of responsibility is inextricably linked to the problem of the freedom of will" [5, 21]. In support of this he cites the assertion of Marxism's classics which has not lost its sense even today, that "a man bears full responsibility for his actions only if he committed them having absolute freedom of will ..." [18, 82]. This view is shared by other authors, arguing that "responsibility is a dictated by the objective conditions, their awareness and subjectively set goal necessity of vigorous activity for the implementation of this goal. Freedom creates responsibility, responsibility directs freedom" [14, 72].

Proceeding from my own understanding of the retrospective and prospective responsibility, I agree with D. N. Bakhrakh that positive responsibility "implies recognition of the need of relevant activity, a sense of responsibility. It can be considered as an internal regulator of conduct that closely merges with the duty, obligation, as responsibility for the future. Negative responsibility is understood as a negative assessment of an offense by colleagues, state and society, as society's response to the violation of its interests and norms, as the imposition of sanctions for violation of social rules" [5, 22].

Original and reasonably interesting approach demonstrates A. A. Yurchin, according to whom from the institutional and practical point of view it would be reasonably to present legal responsibility as the relationship between two subjects, in which one party (the subject of responsibility) having freedom of will and choice, undertakes by virtue of possessing of a certain status to form its conduct in accordance with the expected model, the other party (the instance of responsibility) monitors and evaluates this conduct and (or) its results; in the case of negative evaluation and presence of guilt it has the right to react in

a certain way [27, 8]. But with such an understanding there should be a mutual administrative responsibility, including the responsibility of power subjects of administrative and tort relations to physical and legal persons not endowed with state powers of authority [9, 110-113].

For me, it is also clear that understanding of administrative responsibility today must be formed with taking into account not only the traditional approaches demonstrated by most scholars, but also on the basis of the achievements of other subject areas.

As rightly said Professor V. D. Plesovskikh , "administrative responsibility as a complex theoretical and practical category can be viewed in different aspects: historical, social, economic, financial, legal, organizational, informational, etc. Therefore, its scientific understanding involves several levels:

a) dialectical-ideological;

b) general scientific (interdisciplinary);

c) individually scientific;

d) transitional from cognitive-theoretical to the practical and transformative activity" [21, 54].

V. D. Plesovskikh defines administrative responsibility as "an instrument of the state's domestic and foreign policy, one of the instruments of creating and launching the mechanism of innovative development of the country" [21, 55]. Although I am not quite clear how administrative responsibility relates with the foreign policy of the Russian Federation, and how it will determine the innovative development of Russia, but one thing is certain for me: it is time for new approaches to understanding administrative responsibility.

Among contemporary scholars of administrative responsibility the most constructive I see the position of A. S Dugents, who believes that "administrative responsibility is a complex legal system consisting of separate elements, each of which has both similarities and specific features" [11, 7].

A. S. Dugenets emphasizes that "administrative responsibility is a reflection of the state and society needs in combating the destructive system – administrative delinquency. The latter is defined by manifestation of many social, economic and individual factors, which, however, does not remain unchanged. The dynamism of administrative delinquency, the form of manifestation, content and orientation of illegal deeds influence the choice of the model of administrative responsibility at different periods of Russian society development... Administrative responsibility is a complex socio-legal phenomenon, the study of which allows us to determine the following characteristics:

- is a reflection of the needs of civil society in the protection of socially significant interests from administrative offences;
- is a legal expression of the administrative policy of the state;
- is one of the main means of combating administrative delinquency;
- in terms of content consists of establishing and application the measures of administrative punishment for wrongful deeds;
- is implemented in the form of democratic administrative and jurisdictional procedure" [11, 8-9].

Estimating the given characteristics of administrative responsibility, let me notice, that they are, in my opinion, rather an ideal aggregate, than a reflection of today's reality.

Essentially correct assertion, that administrative responsibility is a reflection of the need of civil society in the protection of socially significant interests from administrative offences, will only be valid when formed the civil society, when it is possible to understand what are its needs, to what extent the included in the CAO RF structures of administrative offences cover the whole range of socially significant interest not only from the position of the state, but also of the civil society.

We have yet to understand, what should mean "the legal expression of the administrative policy of the state", because the essence of the being conducted administrative policy is not always clear. But seems more evident the need of forming administrative and tort policy, as a scientifically-based category, about what repeatedly raises the question Professor A. P. Shergin. However, in this understanding there was no and still there is no an administrative and tort policy

The fact that the closest to me in its content position of A. S. Dugenets raises so many questions shows that administrative responsibility, being a dynamically developing socio-legal phenomenon, long will be in the spotlight of researchers. At least, I cannot say about myself that I can give a throughout satisfactory answer to the question of what is the administrative responsibility.

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