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TWO CODIFICATION ISSUES OF ADMINISTRATIVE AND TORT LEGISLATION

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Sets before the principal issues to be solved in the further improvement of the administrative and tort legislation of Russia, including those relating to the problem of delimitation of administrative and tort law and administrative and jurisdictional procedure (separate codification of substantive and procedural norms of administrative responsibility). Here is substantiated the formation of de jure and de facto independent branch of law – administrative and tort law.

Key words: administrative responsibility, administrative and tort legislation, administrative and tort law, codification of administrative and tort legislation.

Administrative offences have been and remain the most common types of wrongful misconduct. The scope of administrative delinquency, the diversity of its manifestations and inflicted harm determine the need to counter administrative offences, reduce the threshold of its danger to legally protected interests. For this purpose the State is improving the legislation on administrative responsibility. Has already been performed its second codification, the Code on Administrative Offences of the Russian Federation from 2001 replaced the first-born – the Code on Administrative Offences of the RSFSR of 1984. For ten years of its operation have been adopted more than one hundred and forty federal laws that significantly changed each section of the Code. But, I think, the local amendment possibilities have been exhausted. At present, there is a task to exercise the third codification of administrative and tort legislation on the base of new realities and analysis of application the current CAO RF. Its solution assumes further elaboration of the fundamental

issues of legal regulation of administrative responsibility, sectorial identifying of administrative and tort norms, the role of administrative and legal restrictions in the modern Russian legal system, etc. This scientific base is important to define the concept of a new administrative and tort legislation, establishing appropriate normative models. In this connection, it seems necessary to draw attention to the conceptual issues related to the future codification of administrative and tort legislation, assess the existing doctrinal developments and rulemaking experience.

These issues need to be considered with the system approach. The importance of this approach is the following. Law in general is a complex system that combines many subsystems of different levels. Of all their diversity should highlight such subsystems as a branch of law, legal families, and protective (tort) branches of law. Note also that the structure of law, its component subsystems, their relations do not remain the same, as well as social relations regulated by legal norms. The dynamics of these relations determines the emergence of new legal communities (as was the case with the norms on administrative responsibility, which previously were a part of the administrative law). To address rulemaking tasks of codification level it is necessary to find out sectorial affiliation of appropriate body of laws, its place in the overall structure of the Russian legislation, connection with other legal communities (legal families, branches, etc.). Using the systematic approach we will try to justify our vision of these problems.

First, about sectorial affiliation of norms of administrative responsibility. This aggregate is a separate branch of the Russian law – administrative and tort law. This conclusion has been substantiated by us earlier [9, 7], so it is advisable only to recall the main key positions.

The basis of the sectorial identification of legal norms is a systematic approach. Branches of law streamline regulation of autonomous groups of social relations, ensure in respect to them a certain legal regime of legal regulation [1, 162]. They act as load-bearing structures in the mechanism of legal regulation, make it meaningful and task-oriented. Sectorial identification of norms allows to determine the main components of the legal system, isolate the corresponding blocks of the current legislation, facilitate its application and legal classification of cases, the search for and interpretation of legal instructions. Separateness of norms on administrative responsibility is based on the recognized by the theory of law independence criteria of branch of law. This aggregate has its own subject, method of legal regulation, has its own separate normative base.

Decisive for the formation of a corresponding branch of law is an existence of its subject of legal regulation.

Moreover the subject – it is a main non legal reason for the isolating of branch of law [1, 170]. Law just reflects some public needs. Availability of administrative delinquency as a serious destructive system necessitates a protective response of the State, which is primarily expressed in the establishment of legal responsibility for administrative offenses. Relations arising in respect of these offenses are nothing but administrative responsibility relations, which got the name in literature as "administrative and tort relations" [2, 3], which gave the name of the relevant field of law. It should be emphasized that the legal fact giving rise to their emergence, change and termination is a committing of an administrative offense. And each of these legal facts is extremely detailed in the norms of the Special part of the CAO RF and laws on administrative offences of the subjects of the Russian Federation, and the determining in the actions of a person signs of a particular offense is a fundamental obligation of the subjects of administrative jurisdiction. Thus, the subject of the considered branch of law is administrative and tort relations, within which is exercised administrative responsibility. These relations in content and orientation are closer to the criminal-law relations. This is evidenced by the similarity of the basic institutes of administrative-tort law and criminal law, the presence of a large number of related elements of administrative offences and crimes in the Special Sections of the CAO and the Criminal Code of the RF (about a hundred of corpus delictis). Such extensive common field of protection through the norms of administrative-tort and criminal law is an objective reality, which leads to the conclusion that the administrative- tort law is an integral part of the family of protective (tort) Russian law. This conclusion is important for coming together the content of the CAO RF (more precisely Administrative-tort Code of the RF) and the Criminal Code of the RF, elaboration the optimal model of their integration.

The considered branch of law is also characterized by the inherent in it special method of legal regulation, that is, an aggregate of legal techniques of impact on public relations. Branch method depends primarily on the combination of prohibitive, obliging and permissible methods of legal regulation [1, 178]. For administrative-tort law the first one is dominant. It is a prohibition through imperative determination by the legislator of dangerous to society deeds, and the threat of the application administrative penalties in cases of their committing defines the essence of method of regulating the administrative-tort law.

Administrative and tort law has not only its own subject and method of legal regulation, but also the relevant organization of the normative material. In the process development of law, its structural subdivisions do not remain unchanged. The formation of a branch of law is strongly influenced by the level of maturity, the way

of enshrining a separate group of norms. A quantum jump in the organization of norms on administrative responsibility in the form of the Union republics' codes on administrative offenses in 1984-1985 on the merits completed the normative formation of administrative- tort law. It should be emphasized that the CAO RF of 2001 demonstrates a new level of organization of administrative responsibility norms, reflects the need for jurisdictional protection of public relations of modern Russia, which has settled down to a course of building a democratic state. The current CAO RF contains not only the norms of administrative responsibility, but also the principles cementing the unity of all the norms of administrative-tort law (the principle of presumption of innocence, equality before the law, etc.). Namely such a high degree of organization of these norms allows drawing a conclusion about the independence, "sovereignty" of this branch of Russian law.

Thus, administrative-tort law is an independent branch of the Russian law, carrying out a substantive regulation of administrative responsibility. To determine the direction of future codification works is important, what will be their main vector. Will remain the current mixed codification of substantive and procedural norms of administrative responsibility, or work the way out the idea of their separate codification? These norms determine what actions constitute administrative offenses and administrative penalties for their commission. Administrative-tort law is a means of countering administrative delinquency and enters the family of protective (tort) Russian law. Precisely this conceptual position should, in our opinion, be reflected in a future draft of Administrative-tort Code. Of course, should be preserved the continuity with the current legislation on administrative responsibility (norms of the first two sections of the CAO RF). But that does not mean their cosmetics revision. We need a serious analytical work, thorough revision of the existing substantive norms, study of the practice of judges and other subjects of administrative jurisdiction. In this case, special attention should be paid to the relevancy of administrative-law restrictions, which determines the conversion of an actual behavior to the legal structure of an "administrative offense". Such a conversion of a social to legal was named as administrative delictolization [8, 41-45]. Administrative delictolization is a tool by which the state implements its policy to counter administrative delinquency, normatively determining, what deeds are related to administrative offences. However, administrative delictolization should be implemented with taking into account the two-tier structure of the current administrative-tort legislation. In recent years it has become less of duplication of the CAO RF norms in the laws of the subjects of the Russian Federation, but become a problem of unbundling of allied structures of administrative offences

in the federal and regional legislation (for example, improper use of budget resources, the responsibility for which is stipulated in article 15.14. of the CAO RF, and appropriate articles of laws of the subjects of the Russian Federation). Therefore, it is important in such cases, clearly identify the distinguishing marks of such structures. One solution to this problem would be preparing the model laws on administrative responsibility of the subjects of the Russian Federation.

Second, about the procedural regulation of administrative responsibility. Recall that the current CAO RF is based on the joint codification of substantive and procedural norms of administrative offenses. In our opinion, this normative solution is not the best. Recall that strictly speaking the subject of the administrative-tort law is the relations of the legal responsibility for administrative offenses. This conclusion is based on the fact that the application of substantive norms on responsibility is exercised within the appropriate type of legal process. Such assumes maintenance of substantive norms on legal responsibility (civil-law, criminal, administrative). It is this role is the basis of the pair structuring of the current tort legislation (the appropriate part of the Civil Code – the Code of Civil Procedure of the Russian Federation, of the Criminal Code – the Criminal Procedural Code of the Russian Federation), which should also be extended to the norms on administrative responsibility. Proceeding from the requirements of the systemacity of the Russian tort legislation, it can be argued that the form of implementation of the administrative-tort law is an administrative-jurisdictional process (administrative-tort process).

Conclusion on the division of administrative-tort law and administrative-jurisdictional process assumes the expediency of separate codification of substantive and procedural norms on administrative responsibility. Deepened study of the problems of administrative responsibility should be based on the theoretical concept of administrative-tort law and the recognition of administrative-jurisdictional process as an independent type of legal process. Joint codification of substantive and procedural norms on administrative responsibility in a single normative act, as it has been done in the CAO RF, is not the best variant of the organization of its normative basis. One of the priorities in our opinion should be the development of two separate codes of Russian Federation: Administrative-tort code regulating material relations for this type of legal responsibility; Administrative-tort Procedural Code regulating procedural relations of the administrative responsibility implementation. This idea has not only found support in the scientific literature, but also realized in the author's projects of the mentioned Codes of the Republic of Kazakhstan [6], in the adoption of the Procedural Executive Code on Administrative Offences of the Republic of Belarus[4, 5], in legislations of other countries.

In the future Administrative-tort Procedural Code of the RF should be reflected the current procedural norms on administrative responsibility. However, in it should be clearly defined the functions of administrative-tort process (administrative prosecution and protection of rights of proceedings participants), proceedings participants, stages, evidences, etc.

Such a normative solution would meet the requirements of systemacity of the Russian tort legislation, promote a more clear normative regulation of administrative responsibility.

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