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GUILTINESS OF A LEGAL ENTITY AS A NECESSARY SIGN OF ADMINISTRATIVE OFFENCE

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Administrative suspension of activity is a justified and necessary measure, but its place, in the structure of the Code on Administrative Offences of the RF, must be conditioned by carried out tasks to prevent offences. Article 2.1 of the CAO RF defining an administrative offence as a guilty deed, requires determining of this sign in a corpus delicti. Existing judicial practice of application the specified penalty indicates that the necessary guiltiness sign is not subject to mandatory determination in imposing the administrative suspension of activities.

Keywords: guilt, administrative offence, legal entity, preventive measure, prevention of an offence.

In accordance with article 3.1 and 3.12 of the Code on Administrative Offences of the RF the object for the application of a penalty in the form of administrative suspension of activity, in addition to general objectives – compliance with the rule of law and ensuring the lawful conduct of citizens and legal persons, the general and special crime prevention (general and private prevention), is "providing sanitary-epidemiological, anthropogenic, environmental, fire, and other types of public security" [2, 50].

Administrative suspension of activities is applied to prevent the harm that can come from a revealed administrative offense, that is, as a measure of administrative prevention. In addition, by administrative suspension of activity "in the case

of an administrative offense in the sphere of trafficking in narcotic drugs, psychotropic substances and their precursors, in countering the legalization (laundering) of proceeds from crime and financing of terrorism..." (Part 1 of article 3.12 CAO RF) is achieved the objective of termination a revealed administrative offense. In these cases, a temporary ban and administrative suspension of activity are applied as a measure of administrative suppression [6].

Designated purpose of administrative suspension of activity goes beyond the scope of the purposes of administrative punishment. These measures of administrative coercion, given their direct designated purpose, should be attributed in some cases to prevention, in others to suppression as a legal form of state coercion, but not to punishment or measures of procedural ensuring.

Argument in favor of this statement is the following fact – a penalty is a coercive measure, the response of the state to an offense. A necessary condition of sentencing is guiltiness of committing an unlawful act. One of the conditions of applying administrative suspension of activity is the presence of a "threat to the life or health of people, threat of the occurrence of epidemic, epizootic, infestation (contamination) of quarantineable objects by quarantine objects, occurrence of a radiation accident or man-made disaster, causing significant damage to the quality of environment" (Part 1 article 3.12 CAO RF).

In a situation of no fault of a legal entity in the presence of threat to the above objects in contradiction enters subjective aspect – guilt of a person brought to administrative responsibility, and public interest that can be affected. Not the determination of legal entity's guilt, but the presence of threat to legally protected objects is a major factor in deciding on the application of administrative suspension of activity. I. V. Maksimov answers this question as follows: "Application of administrative suspension of activity without taking into account guilt, but only because of the need to prevent negative circumstances of administrative-wrongful deed distorts the essence of coercion involving application the measures of administrative responsibility ..." [4, 433].

Before us is a formal contradiction between the two norms of the Code (about guilt as a necessary element of an administrative offense and the conditions of imposing administrative suspension of activity). Moreover, in practice, the collision is often resolved in favor of the second norm.

O. N. Sherstoboev sees the settlement of the problem in the change of administrative-tort legislation norms governing the responsibility of legal persons, which should be divided into two groups: financed by the state and (or) municipal budget; financed from its own funds. Guilt of each group should be understood in the

light of their organizational and legal specificities. Responsibility for violation rules because of underfunding should be imposed on officials of bodies (if there is any guilt in their actions), and in some cases on the very bodies that exercise administration in a specified area [7].

This opinion is shared by G. I. Kalinin, "the application of the suspension of activity ignores the specificity of the way of financing legal entities" [3]. Lack of money, necessary to meet the standards and rules, of an organization, fully funded by the state or local budget, if it is directly led to the emergence of an administrative offense, lets to talk about the absence of the subjective side of the offense.

Thus, in the application of the administrative suspension of activity to municipal institutions in the field of education, such as nursery schools and schools, is not solved the problem of bringing to administrative responsibility of a guilty person, whose decisions caused violations of legislation, namely the person who signed the decree to open the newly created institution, which does not meet the requirements, or a person that defines the funding of the institution that involves a correspondence of the institutions to established requirements. This viewpoint is presented by R. A. Bruner, who in the determination of a legal entity's guilt follows the principle of subjective imputation, according to which "the guilt of a legal entity of an administrative offense is determined by the guilt of its officials" [1, 9].

The lack of economic independence of an organization receiving funds from the state or municipal budget cannot justify admission of guilt. When deciding on a case, the court must with certainty establish the guilt of a legal entity. According to part 2 of article 2.1 of the CAO RF the guilt of a legal entity can be proved only by the determination that it had the ability to comply with rules and norms, violation of which considers administrative responsibility, but this person did not take all possible measures to comply with them.

According to part 2 of article 32.12 of the CAO RF when administrative suspension of activity shall not be allowed the application of measures that may lead to irreversible consequences for the production process, as well as for the operation and security of critical infrastructure. These limits are designed primarily to ensure the continuous operation of socially important enterprises and institutions. In particular, it is impossible to stop the activity of fuel and energy complex or an organization responsible for urban passenger transport without prejudice to the population [5].

Shortening the period of administrative suspension of activity is associated with the termination of an offense – elimination of the circumstances that led to the sentencing. However, the purpose of punishment is not the cessation of a wrongful

conduct, but retribution for it; hence, the possibility of early termination of administrative suspension of activity, in the case of elimination of the circumstances that gave rise to its imposition, once again proves not so much punitive as preventive and preclusive nature of the impact of this measure on the subject of an offense. As indicated by I. V. Maksimov «this demonstrates the functional orientation of the measure and characterizes administrative suspension of activity not as a punitive measure, but as a «preclusive injunction» [4, 440].

Under such conditions, administrative responsibility becomes a universal legal instrument for resolving a variety of law enforcement tasks due to inclusion to the number of administrative penalties the measures of influence that are not inherently measures of responsibility.

Attention is drawn to the normative requirement of article 3.3 of the CAO RF, which states that administrative suspension of activity can be used only as the main administrative punishment. This, in turn, means, that whatever an administrative offense committed by an organization, court cannot impose a penalty in the form of administrative suspension of activity along with other major administrative penalties (fines or disqualification, etc.).

Summarizing the above, the following should be noted – administrative suspension of activity is a justified and necessary measure. However, its place in the structure of the Code is due to the performed tasks in the form of offenses suppression. The current position of the legislator is explainable – inclusion of administrative suspension of activity to the sanctions of articles helps eliminate the possibility of abuse, in addition, application of this punishment is guaranteed by judicial control. However, this approach contradicts the content of article 2.1 of the CAO RF that defines administrative offense as a guilty deed. Existing court practice of application this form of punishment evidences, that a necessary sign of guilt is not subject to obligatory determination when imposing of administrative suspension of activity.

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