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**NORMATIVE LEGAL PROTECTION OF PUBLIC MORALITY IN RUSSIAN  
ADMINISTRATIVE LAW**

Normative legal protection of public morality in Russian administrative law

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Basing on the analysis of the legislation here is stated that to protect public morals legislator uses two main tools: the transfer of the most important social relations governed by moral norms to the category of legal relations (morality norms are implemented by the legislator in legal system and become law norms); and the establishment of legal prohibitions and sanctions for their violation.

The author emphasizes the disunity of federal legislation, that establishment of prohibitions, restrictions and duties is fragmentary carried out, that none of the federal law provides a legal definition of the concept of "morality", which significantly expands the discretion of a law enforcement official, creates conditions for corruption.

**Keywords:** morality, public morals, legal protection of public morals.

Public morality – a human value, which has a public value. Therefore, it is no accident that norms aimed at regulating social relations in various areas of public life have to do with public morality.

At the same time, the very category of “public morality” and more general in respect to it the category of “morality” as social, philosophical concepts do not have a clear and unambiguous definition. Close to morality the philosophical category of “moral” is widely known. These categories are often used as synonyms [33, 429]. However, most scientists point to a fundamental difference between them. Kant and his followers considered moral as human internal beliefs (“moral law”), and morality – as the practical implementation of these beliefs, actions (or inaction) based on them (“moral action”) [30, 183].

For Hegel, the most important feature of moral principles was their reliance on their own, independent thinking of a man about right and wrong. Moral norms, in his view, were of over individual nature, were part of collective consciousness, and focused on the external content of human actions [29, 36].

One of the most difficult problems of philosophy is the problem of the objectivity of moral and ethical norms. Norms designed to regulate, to form person's internal beliefs, reflecting in its mind, acquire very subjective nature, refract in the mind under influence of personal attitudes, education, effects of the environment. At the same time, the norms of morality, as regulators that operate independently of the will and desires of people, are the imperatives, and this is their objectivity. The objectivity of moral norms, in our opinion, is most pronounced in Kant's categorical imperatives: “Act only according to that maxim, guided by which you can at the same time to wish that it should become a universal law” [30, 260.270]. Indeed, if a person choosing this or that action assesses its consequences, and applying them on itself it wants such actions in respect of it from other people – it will act only in accordance with moral principles, that is, ethically. In other words, do not do to others what you do not want to be inflicted to you.

Thus, morality is protected by moral norms that establish requirements for human behavior, define public relations. However, taking into account the public importance of certain moral norms, protecting social values, there is a need for a more effective means of protection. Such, of course, are legal means.

Analysis of the legislation allows conclusion that to protect public morality legislator uses two main tools. First, he transfers the most significant public relations governed by moral norms to the category of legal relations, and approves the relevant legal norms. Secondly, he establishes legal prohibitions and penalties for their violation (administrative and criminal responsibility).

S. V. Tasakov argues that the notion of “morality” is used in administrative and criminal legislation [32]. Relatively circumscribed picture of public morality and its administrative and legal protection found in the special literature.

So, O. A. Dizer, exploring legislation of the Russian Federation in the field of public morality, does not go beyond chapter 6 of the Code on Administrative Offences of the RF and focuses on offenses of sexual nature [28]. Some authors talk about the offences (or crimes) related to drug trafficking [31]. As if morality governs exclusively the sexual sphere of public life. We cannot agree with such a limited point of view. The term of “morality” is widespread in the Russian legislation. And there are objective reasons. The fact is that the category of “moral” is strongly correlated with the category of “justice”. Injustice is immoral, unethical. But justice is the goal of law. That is, the goals of morality and law as social regulators, by and large, are the same. Therefore, often moral norms are implemented by the legislator in legal system and became the rules of law.

In the Russian legislation the term of “public morality” appears in 22 federal laws, and the term of “morality” – in 42 federal laws.

On the basis of the provisions of part 3 article 55 of the Constitution of the Russian Federation, allowing restriction of the rights and freedoms of man and citizen by federal law to the extent, to which this is necessary for the protection of morality, a number of federal laws have introduced such restrictions, and, as a rule, textually repeating the constitutional norm. Thus, part 2 of article 1 of the Civil Code of the Russian Federation No. 51-FL from November 30, 1994 allows “on the basis of a Federal law” the restriction of civil rights in order to protect morality [1]; the restriction (also by federal law) the rights of citizens to exercise local self-government for the protection of morality is allowed by article 3 of the Federal Act No. 131-FL from October 06, 2003 “On the General Principles of Organization Local Self-Government in the Russian Federation” [18]; the possibility of restriction of housing rights is provided for by part 3 article 1 of the Housing Code of the Russian Federation No. 188-FL from 29.12.2004 [2], and the restriction of citizens’ rights in a family is provided for by part 4 article 1 of the Family Code of the Russian Federation No. 223-FL from December 29, 1995 [3].

In addition, the possibility of restriction the rights of citizens is provided for by Federal Law No. 149-FL from July 27, 2006 “On Information, Information Technologies and Protection of Information” (restriction of access to information) [21], Federal Law No. 125-FL from August 22, 1996 “On Higher and Postgraduate Professional Education” (right to education) [9], No.125-FL from September 26, 1997 “On Freedom of Conscience and Religious Associations” (the right to freedom of conscience and freedom of religion) [10], No.3-FL from January 08, 1998 “On Narcotic Drugs and Psychotropic Substances” [11].

Foreign citizens and stateless persons may be subject to restriction of rights.

Such a possibility is provided for by article 25.10 of the Federal Law No. 114-FL from August 15, 1996 "On the Procedure for Leaving and Entering the Russian Federation" [8].

Federal laws that set restrictions on the exercise of certain activities form a separate block of legislative acts. For example, the Federal Law No. 244-FL from 29 December 2006 "On the State Regulation of the Organization and Conduct of Gambling and on Making Amendments to some Legislative Acts of the Russian Federation" stipulates the legal basis for state regulation and imposes restrictions on the implementation of activities for the organization and conduct of gambling in the territory of the Russian Federation in order to protect morality (article 1) [23].

The establishment of prohibitions and restrictions in order to protect morality is quite common. For example, article 23 of the Federal Law No. 82-FL from May 19, 1995 "On Public Associations" calls as grounds for refusal of registration of a public association the choice by the founders the name of this public association that offends morality [6] (a similar provision is contained in article 23.1 of the Federal Law No. 7-FL from January 12, 1996 "On Noncommercial Organizations" [7]). In order to protect morality the accreditation of the branch of a foreign legal entity can be denied (see article 21 of the Federal Law No. 160-FL from July 09, 1999 "On Foreign Investments in the Russian Federation" [14], article 22.1 of the Federal Law No. 129-FL from August 08, 2001 "On State Registration of Legal Entities and Individual Entrepreneurs" [15]). Article 13 of the Principles of customs legislations of the CIS states-participants provides for a ban on the import to the territory of a State and export from the territory of a State certain goods and vehicles for reasons of the protection of public morality.

Articles 331, 351.1 of the Labor Code of the Russian Federation from December 30, 2001 No. 197-FL (as amended on 18.07.2011) [4], Article 17 of the Federal Law No. 436-FL from December 29, 2010 "On the Protection of Children from Information Harmful to their Health and Development" [25], article 127 of the Family Code of the RF restrict the admission of certain categories of persons (with current or spent criminal record, have been or are subjected to criminal persecution (except for persons, in respect of which criminal persecution was terminated on rehabilitative grounds) for crimes against life and health, freedom, honor and dignity of an individual (for except unlawful confinement in a psychiatric hospital, slander and insults), sexual inviolability and sexual freedom of an individual, against family and minors, public health and public morals) to work with children.

There are federal laws which provide for the implementation of public functions or creation of state agencies to protect morality. So, in accordance with part 1

of article 4 of the Federal Law No. 109-FL from July 18, 2006 "On Migration Registration of Foreign Citizens and Stateless Persons in the Russian Federation" migration registration is exercised for the protection of morality by way of countering illegal migration [20]. In accordance with part 1 article 5, and part 3 article 14 of the Federal Law No. 124-FL from July 24, 1998 "On Basic Guarantees of Children's Rights in the Russian Federation" the powers of public authorities on the implementation of ensuring the rights of children include the choice of priority actions for the protection of its morality, expert analysis of table, computer and other games, toys and gaming facilities for children [12]. In accordance with article 8 of the Basics of customs legislations of the CIS states-participants from February 10, 1995 [27] and article 12 of the Federal Law No. 311-FL from November 27, 2010 "On Customs Regulation in the Russian Federation" [24], customs authorities contribute to the implementation of the measures for the protection of public morality.

It should also be said about the acts of federal legislation to ensure the protection of morality. For example, the Federal Law No. 127-FL from October 26, 2002 "On Insolvency (Bankruptcy)" establishes that the federal state unitary enterprises and joint stock companies, the shares of which are federal property and are engaged in the manufacture of goods (works, services), which are of strategic importance for the protection of morality, are strategic [17]. Special procedure for the privatization of state and municipal property of strategic enterprises and joint-stock companies is established by the federal law No. 178-FL from December 21, 2001 "On Privatization of State and Municipal Property" [16] (See also article 15 of the Federal Law No. 39-FL from February 25, 1999 "On Investment Activity in the Russian Federation Implemented in the Form of Capital Investment» [13], article 4 of the Federal Law No. 160-FL from July 09, 1999 "On Foreign Investments in the Russian Federation" [14] ).

Federal laws No. 152-FL from July 27, 2006 "On Personal Data" [22] and No. 98-FL from July 29, 2004 "On Commercial Secrets" [19] establish a special information and legal regimes (cross-border transfer of personal data, trade secrets), objectives of which include protection of morality. Federal Law No. 7-FL from January 12, 1996 "On Non-commercial Organizations" in order to protect morality establishes the control over the activities of non-commercial organizations [7], and the Federal Law No. 178-FL from December 21, 2001 "On Privatization of State and Municipal Property" introduces the mode of "golden share" in order to protect morality in the field of open joint-stock companies [16].

In order to protect morality federal laws may establish duties of the subjects of law. For example, part 2 article 9 of the Federal Law No. 152-FL of July 27, 2006

“On Personal Data” establishes the obligation of certain persons to provide their personal data to process them [22].

Jurisdictional norms take a special place in the Russian legislation. Among them there are norms that guarantee the protection of morality (for example, the rule of the review of the legal cases held in closed session was established by the Federal Constitutional Law No. 1-FCL from July 21, 1994 [5]); determine the legal consequences of acts committed with intent opposing the basics of morality (for example, article 169 of the Civil Code of the Russian Federation on the invalidity of transactions), including administrative and criminal responsibility; require cessation of the activities of organizations (See article 14 of the Federal Law No. 125-FL from September 26, 1997 [10]); provide for the establishment by the court restriction of the rights of citizens and the establishment of “administrative supervision” (see article 3 of the Federal Law No. 64-FL from April 06, 2011 [26]).

The analysis of provisions aimed at protecting morality of the considered by us acts of federal legislation indicates, first of all, of their disunity, fragmentary establishment of prohibitions, restrictions, and duties. And, more important, that none of the federal laws provides a legal definition of the concept of “morality”, what significantly expands the discretion of a law enforcer, creates conditions for corruption. As an example, let’s consider the rule contained in part 1 of article 127 of the Family Code of the RF, which establishes the signs that prevent citizens to be adoptive parents.

In the presented norm as independent values stated:

- life;
- health;
- freedom;
- the honor and dignity of a person;
- the sexual inviolability and sexual freedom of an individual;
- family and minors;
- the health of population;
- public morality;
- public security.

Taking into account that in special literature under illegal encroachments on public morality, as a rule, understand the encroachment on inviolability and sexual freedom of an individual, and the health of population (infection of sexually transmitted diseases), family values, including the education of minors, the content of each of these concepts to clarify and separate one concept from contiguous does not seem to be possible.

## References:

1. Civil Code of the RF from November 30, 1994, No. 51-FL (edition of 06.04.2011) [Grazhdanskii kodeks RF ot 30 noyabrya 1994 g. № 51-FZ (red. ot 06.04.2011)]. *SZ RF – Collection of Laws of the Russian Federation*, 1994, no. 32, article 3301.
2. Housing Code of the RF from December 29, 2004, No. 188-FL (edition of 04.06.2011) [Zhilishchnyi kodeks RF ot 29.12.2004 № 188-FZ (red. ot 04.06.2011)]. *SZ RF – Collection of Laws of the Russian Federation*, 2005, no. 1 (part 1), article 14.
3. Family Code of the RF from December 29, 1995, No. 223-FL (edition of 04.05.2011) [Semeinyi kodeks RF ot 29 dekabrya 1995 g. № 223-FZ (red. ot 04.05.2011)]. *SZ RF – Collection of Laws of the Russian Federation*, 1996, no. 1, article 16.
4. Labor Code of the RF from December 30, 2001, No. 197-FL (edition of 18.07.2011) [Trudovoi kodeks RF ot 30 dekabrya 2001 g. № 197-FZ (red. ot 18.07.2011)]. *SZ RF – Collection of Laws of the Russian Federation*, 2002, no. 1 (part 1), article 3.
5. Federal constitutional law No. 1-FCL from July 21, 1994 “On Constitutional Court of the Russian Federation” (edition of 28.12.2010) [Federal’nyi konstitutsionnyi zakon ot 21 iyulya 1994 g. № 1-FKZ «O Konstitutsionnom Sude Rossiiskoi Federatsii» (red. ot 28.12.2010)]. *SZ RF – Collection of Laws of the Russian Federation*, 1994, no. 13, article 1447.
6. Federal law No. 82-FL from May 19, 1995 “On Public Associations” (edition of 01.07.2011) [Federal’nyi zakon ot 19 maya 1995 g. № 82-FZ «Ob obshchestvennykh ob’edineniyakh» (red. ot 01.07.2011)]. *SZ RF – Collection of Laws of the Russian Federation*, 1995, no. 21, article 1930.
7. Federal law No. 7-FL from January 12, 1996 “On Non-profit Organizations” (edition of 18.07.2011) [Federal’nyi zakon ot 12 yanvarya 1996 g. № 7-FZ «O nekommercheskikh organizatsiyakh» (red. ot 18.07.2011)]. *SZ RF – Collection of Laws of the Russian Federation*, 1996, no. 3, article 145.
8. Federal law No. 114-FL from August 15, 1996 “On the Procedure of Departure from and Entry into the Russian Federation” (edition of 21.04.2011) [Federal’nyi zakon ot 15 avgusta 1996 g. № 114-FZ «O poryadke vyezda iz Rossiiskoi Federatsii i v’ezda v Rossiiskuyu Federatsiyu» (red. ot 21.04.2011)]. *SZ RF – Collection of Laws of the Russian Federation*, 1996, no. 34, article 4029.
9. Federal law No. 125-FL from August 22, 1996 “On Higher and Postgraduate Education” (edition of 16.06.2011) [Federal’nyi zakon ot 22 avgusta

1996 g. № 125-FZ «O vysshem i poslevuzovskom professional'nom obrazovanii» (red. ot 16.06.2011)]. *SZ RF – Collection of Laws of the Russian Federation*, 1996, no. 35, article 4135.

10. Federal law No. 125-FL from September 26, 1997 “On Freedom of Conscience and Religious Associations” (edition of 01.07.2011) [Federal'nyi zakon ot 26 sentyabrya 1997 g. № 125-FZ «O svobode sovesti i o religioznykh ob"edineniyakh» (red. ot 01.07.2011)]. *SZ RF – Collection of Laws of the Russian Federation*, 1997, no. 39, article 4465.

11. Federal law No. 3-FL from January 08, 1998 “On Narcotic Drugs and Psychotropic Substances” (edition of 06.04.2011) [Federal'nyi zakon ot 8 yanvarya 1998 g. № 3-FZ «O narkoticheskikh sredstvakh i psikhotropnykh veshchestvakh» (red. ot 06.04.2011)]. *SZ RF – Collection of Laws of the Russian Federation*, 1998, no. 2, article 219.

12. Federal law No. 124-FL from July 24, 1998 “On Basic Guarantees of Children's Rights in the Russian Federation” (edition of 17.12.2009) [Federal'nyi zakon ot 24 iyulya 1998 g. № 124-FZ «Ob osnovnykh garantiyakh prav rebenka v Rossiiskoi Federatsii» (red. ot 17.12.2009)]. *SZ RF – Collection of Laws of the Russian Federation*, 1998, no. 31, article 3802.

13. Federal law No. 39-FL from February 25, 1999 “On Investment Activity in the Russian Federation Implemented in the Form of Capital Investments” (edition of 23.07.2010) [Federal'nyi zakon ot 25 fevralya 1999 g. № 39-FZ «Ob investitsionnoi deyatel'nosti v Rossiiskoi Federatsii, osushchestvlyаемoi v forme kapital'nykh vlozhenii» (red. ot 23.07.2010)]. *SZ RF – Collection of Laws of the Russian Federation*, 1999, no. 9, article 1096.

14. Federal law No. 160-FL from July 09, 1999 “On Foreign Investments in the Russian Federation” (edition of 29.04.2008) [Federal'nyi zakon ot 9 iyulya 1999 g. № 160-FZ «Ob inostrannykh investitsiyakh v Rossiiskoi Federatsii» (red. ot 29.04.2008)]. *SZ RF – Collection of Laws of the Russian Federation*, 1999, no. 28, article 3493.

15. Federal law No. 129-FL from August 08, 2001 “On State Registration of Legal Entities and Individual Entrepreneurs” (edition of 01.07.2011) [Federal'nyi zakon ot 8 avgusta 2001 g. № 129-FZ «O gosudarstvennoi registratsii yuridicheskikh lits i individual'nykh predprinimatelei» (red. ot 01.07.2011)]. *SZ RF – Collection of Laws of the Russian Federation*, 2001, no. 33 (part 1), article 3431.

16. Federal law No. 178-FL from December 21, 2001 “On Privatization of State and Municipal Property” (edition of 18.07.2011) [Federal'nyi zakon ot 21



dekabrya 2001 g. № 178-FZ «O privatizatsii gosudarstvennogo i munitsipal'nogo imushchestva» (red. ot 18.07.2011)]. *SZ RF – Collection of Laws of the Russian Federation*, 2002, no. 4, article 251.

17. Federal law No. 127-FL from October 26, 2002 “On Insolvency (Bankruptcy)” (edition of 01.07.2011) [Federal'nyi zakon ot 26 oktyabrya 2002 g. № 127-FZ «O nesostoyatel'nosti (bankrotstve)» (red. ot 01.07.2011)]. *SZ RF – Collection of Laws of the Russian Federation*, 2002, no. 43, article 4190.

18. Federal law No. 131-FL from October 06, 2003 “On General Principles of Local Self-government in the Russian Federation” (edition of 18.07.2011) [Federal'nyi zakon ot 6 oktyabrya 2003 g. № 131-FZ «Ob obshchikh printsipakh organizatsii mestnogo samoupravleniya v Rossiiskoi Federatsii» (red. ot 18.07.2011)]. *SZ RF – Collection of Laws of the Russian Federation*, 2003, no. 40, article 3822.

19. Federal law No. 98-FL from July 29, 2004 “On Commercial Secret” (edition of 11.07.2011) [Federal'nyi zakon ot 29 iyulya 2004 g. № 98-FZ «O kommercheskoi taine» (red. ot 11.07.2011)]. *SZ RF – Collection of Laws of the Russian Federation*, 2004, no. 30, article 3283.

20. Federal law No. 109-FL from July 18, 2006 “On Migration Registration of Foreign Citizens and Stateless Persons in the Russian Federation” (edition of 01.07.2011) [Federal'nyi zakon ot 18 iyulya 2006 g. № 109-FZ «O migratsionnom uchete inostrannykh grazhdan i lits bez grazhdanstva v Rossiiskoi Federatsii» (red. ot 01.07.2011)]. *SZ RF – Collection of Laws of the Russian Federation*, 2006, no. 30, article 3285.

21. Federal law No. 149-FL from July 27, 2006 “On Information, Informational Technologies and Protection of Information” (edition of 06.04.2011) [Federal'nyi zakon ot 27 iyulya 2006 g. № 149-FZ «Ob informatsii, informatsionnykh tekhnologiyakh i o zashchite informatsii» (red. ot 06.04.2011)]. *SZ RF – Collection of Laws of the Russian Federation*, 2006, no. 31 (part 1), article 3448.

22. Federal law No. 152-FL from July 27, 2006 “On Personal Data” (edition of 04.06.2011) [Federal'nyi zakon ot 27 iyulya 2006 g. № 152-FZ «O personal'nykh dannykh» (red. ot 04.06.2011)]. *SZ RF – Collection of Laws of the Russian Federation*, 2006, no. 31 (part 1), article 3451.

23. Federal law No. 244-FL from December 29, 2006 “On the State Regulation of Activities Associated with Organization of and Carrying on Gambling and on Amending Individual Legislative Acts of the Russian Federation” (edition of 03.11.2010) [Federal'nyi zakon ot 29 dekabrya 2006 g. № 244-FZ «O gosudarstvennom regulirovanii deyatel'nosti po organizatsii i provedeniyu azartnykh igr i o vnesenii izmenenii v nekotorye zakonodatel'nye akty Rossiiskoi Federatsii»

(red. ot 03.11.2010)]. *SZ RF – Collection of Laws of the Russian Federation*, 2007, no. 1 (part 1), article 7.

24. Federal law No. 311-FL from November 27, 2010 “On Customs Regulation in the Russian Federation” [Federal’nyi zakon ot 27 noyabrya 2010 g. № 311-FZ «O tamozhennom regulirovanii v Rossiiskoi Federatsii»]. *SZ RF – Collection of Laws of the Russian Federation*, 2010, no. 48, article 6252.

25. Federal law No. 436-FL from December 29, 2010 “On Protection of Children against Information that may be Harmful to their Health and Development” [Federal’nyi zakon ot 29 dekabrya 2010 g. № 436-FZ «O zashchite detei ot informatsii, prichinyayushchei vred ikh zdorov’yu i razvitiyu»]. *SZ RF – Collection of Laws of the Russian Federation*, 2011, no. 1, article 48.

26. Federal law No. 64-FL from April 06, 2011 “On Administrative Supervision of Persons Released from Prison” [Federal’nyi zakon ot 6 aprelya 2011 g. № 64-FZ «Ob administrativnom nadzore za litsami, osvobozhdennymi iz mest lisheniya svobody»]. *SZ RF – Collection of Laws of the Russian Federation*, 2011, no. 15, article 2037.

27. Decision of the Council of CIS Heads from 10.02.1995 “About the Basis of Customs Legislations of the States-participants of the Commonwealth of Independent States” [Reshenie Soveta glav gosudarstv SNG ot 10.02.1995 «Ob Osnovakh tamozhennykh zakonodatel’stv gosudarstv-uchastnikov Sodruzhestva Nezavisimyykh Gosudarstv»]. *Byulleten’ mezhdunarodnykh dogovorov – Bulletin of International Treaties*, 1995, no. 9.

28. Dizer O. A. Legislation of the Russian Federation in the Field of Public Morals [Zakonodatel’stvo Rossiiskoi Federatsii v oblasti obshchestvennoi npravstvennosti]. *Administrationoe i munitsipal’noe pravo – Administrative and municipal Law*, 2009, no. 7.

29. Gegel’. *Lectures on the History of Philosophy* [Lektsii po istorii filosofii]. Vol. 2, St. Petersburg: 1994.

30. Kant I. *Critique of Practical Reason* [Kritika prakticheskogo razuma]. St. Petersburg: 1995.

31. Kukharuk V. V. On the Responsibility for an Attack on Public Health and Public Morals [Ob otvetstvennosti za posyagatel’stvo na zdorov’e naseleniya i obshchestvennuyu npravstvennost’]. *Zhurnal rossiiskogo prava – Journal of Russian Law*, 2003, no. 5.

32. Tasakov S. V. Public Morals and its Role in Crisis Overcoming [Obshchestvennaya npravstvennost’ i ee rol’ v preodolenii krizisa]. *Rossiiskaya yustitsiya – Russian Justice*, 2009, no. 5.

33. *Encyclopedic Dictionary of Philosophy*. Moscow: 1989.