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MAN LIKE AN ANIMATED INSTRUMENT OF AN ADMINISTRATIVE OFFENCE

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Drawing an analogy with multiple subjects of crimes in criminal law here is proposed to highlight individuals who have the status of "animated instrument" of an administrative offense among the participants (subjects) of administrative offenses. The author provides examples of administrative offences where "animated instrument" of an administrative offense takes place. Here is given a different view, in the context of "animated instrument", on the norms of the main part of the Code on Administrative Offences of the RF, which exclude bringing offenders to administrative responsibility.

Keywords: administrative offence, subjects of administrative responsibility, instrument of an administrative offence, administrative responsibility.

One of the most interesting questions of the objective side of an administrative offense is provisions characterizing the instruments of this misconduct. They can be divided into two broad types: 1) animated instruments 2) inanimate instruments. They significantly differ from each other as different in its content. Moreover, the animated instruments of an offense fall into two subtypes too. In the first subtype a man is considered as an "instrument", and in the second – animals.

In this article, we will focus our attention only on "an animated instrument of administrative offence", which is people. Unfortunately, this aspect has not yet received proper development of scholars in administrative law, the theory of administrative responsibility and administrative practice. Therefore we will try to fill this gap of knowledge by offering our vision of the investigated part of the problem.

The instrument of an administrative offense may be a person who has taken an active part in the offense, without which there would not be a composition of the said misconduct, but who, for various reasons, is not a subject of administrative responsibility. The fact is that there is an article 33 in the Criminal Code of the RF, which provides for criminal responsibility of accomplices in a crime: perpetrator, organizer, instigators and accessory of a crime. There are no such accomplice in the legislation on administrative offences, although in a number of articles of the Code on Administrative Offences of the RF (CAO RF) exists persons, with help of which particular administrative offences are committed by. Moreover, these individuals can be referred neither to the subjects of an administrative offence nor to the victims.

Due to the lack in administrative law of theoretical work on the issue, let's turn to some provisions of criminal law relating to animated "instruments of a crime" to avoid the start of our research from scratch. Here are excerpts of leading scholars in criminal law who gave some attention to the above issue. For example, A. V. Naumov noted that "any person who incites a deranged or a minor, below the age of criminal responsibility, to commit a crime, should be deemed not as instigator, but as direct perpetrator. In this case, a teenager or an insane one acts as sort of an instrument or means of committing a crime and does not take responsibility for commitment of a socially dangerous deed" [8, 90].

In a commentary A. V. Pushkin wrote that "the perpetrator of a crime is just such a person, which can be held criminally responsible. That is why as the perpetrators of a crime are also recognized those persons who knowingly use to implement criminal purpose those who, by law, cannot be held criminally liable. In the theory of criminal law this kind of execution is called as *mediocre performing (mediate infliction).* First of all, the law binds mediocre performing with use in commission

of an offence insane ones or minors, i.e. persons that essentially act as "animated instruments" of a crime" [9, 91].

As can be seen from the said provisions, there is a significant difference between the attitude of criminal and administrative law to the issue. There is no development of the theory of implication in administrative law, as it is done in criminal law, but we can be more interested in the situation when "actual harm to an object is inflicted jointly by the subject of crime and persons lacking features of the subject" [6, 35, 5; 124-125; 4, 15; 11, 46-48], which should be recognized as animated "instruments of committing administrative offences".

In addition, in a criminal case can be an unlimited number of subjects of the offense provided by various types of accomplices, whose legal status is relatively clearly defined in the Criminal Code of the RF. In contrast, there is always only one subject of an administrative offense in an administrative case, and the remaining participants of an administrative misconduct are not specified in the plane of complicity, but have different legal statuses, including the status of an animated "instrument of an administrative offense". These provisions are only indirectly regulated in the CAO RF, being in an embryonic legislative state. With that, even the content of these "instruments" in criminal and administrative law are significantly different from each other, as evidenced by the theory and practice. Moreover, in contrast to criminal law, CAO RF in addition establishes administrative responsibility of legal persons.

In the above quote we find interesting one very important question, about the difference between "an animated instrument of an administrative offense" and the actual subject of the same offence. These differences can be summarized in the following terms: first of all, it is the above "instruments" do not have certain features of the subject of an offence, without which corpus delicti would be absent. In various offenses and they have different content. Let's stop first at the age. In part 1 article 2.3 of the CAO RF is enshrined that "a person who has attained the age of sixteen years old by the moment of committing an administrative offence shall be administratively liable".

Therefore, persons who have not attained the age of 16 may not be the subject of an administrative offence, and act within the framework of this event in the role of "an animated instrument of an administrative offense". These provisions are clearly realized in article 20.22 of the CAO RF, where is enshrined that "appearance of minors of an age of less than 16 years in a state of alcoholic intoxication, as well as their drinking alcohol and alcohol-containing products, their consumption of drugs and psychotropic substances without doctor's prescription,

or other stupefying substances in streets, stadiums, in public gardens, parks, in a public transport vehicle and in other public places – shall entail the imposition of an administrative fine on parents or on other legal representatives of the minors in the amount of from 300 to 500 RUR".

Another important factor characterizing an animated instrument of an administrative offense is that the person acting as the "instrument" must be insane at the time of commission of an administrative offence. Then begins to act the rule provided for in article 2.8 of the CAO RF, where is enshrined that "natural person who, when committing wrongful actions (inaction), was insane, that is, could not comprehend the actual nature and wrongfulness of its actions (inaction), or could not direct them as a result of a chronic mental disorder, or a temporary mental disorder, or imbecility, or any other mental disease, is not subject to administrative responsibility".

Thus, if in the event of an administrative offense a wrongful act is actually committed by an irresponsible person, it cannot be regarded as a legitimate and independent subject of responsibility regarding this administrative offense. In our view, it should be considered only as an animated instrument of an offense, because the absence of such a feature as sanity excludes this person from the number of subjects of administrative responsibility. Moreover, in the said event of an administrative offence must be visible rationally and objectively provable relationship between the real subject of responsibility and its animated instrument of committing an administrative misconduct.

In other cases of administrative responsibility, the signs of restrictions for "a state or municipal employee (former state or municipal employee)" are taken into account when taking them to work. In this case, it is a violation of restrictions that entail administrative responsibility enshrined by article 19.29 of the CAO RF for "bringing to work or performing works or provision of services under a civil contract, in the cases stipulated by federal laws, of a state or municipal employee (or former state or municipal employee) who replaces (replaced) a post included in the list established by normative legal acts of the Russian Federation, in violation of requirements of the Federal Law "On Combating Corruption" [1].

This administrative offence can be committed only through mandatory assistance of such animate "instrument of an administrative offence" as "a state or municipal employee (former state or municipal employee) who was hired illegally. Consequently, a person without signs of the subject of the considered administrative offence must compulsorily and in turn have the following special features: 1) to be a current state or municipal employee or former state or municipal

employee; 2) it should be subjected to the restrictions provided for by article 12 of the Federal law "On Combating Corruption", which are also enshrined in a special list of posts [2].

Consequently, restrictions or bans of a public official have created a special system of signs, which, in turn, form a separate type of offenses where there is animated instrument of an administrative offense. However, all that still does not mean that other offenses will be developing under the same scenario, and only with the same prohibitions and restrictions for the respective accomplices of an administrative offense. Actually, there is a wide variety of many combinations and sequences characterizing animated instruments of an administrative misconduct in administrative practice.

Proof of this can be the next example of the CAO RF. One of the types of animated "instruments of committing an administrative offenses" is unidentified persons who were in contact with HIV-infected or infected with a sexually transmitted disease, as well as persons who had contact with the mentioned persons, creating the risk of contracting these diseases", which are called "the sources of contamination" in the legislation on administrative offences of the Russian Federation (article 6.1 of the CAO RF). In this case, "patient", who is the subject of an administrative offence, must not be confused with "the source of infection" that acts as an animated instrument of the administrative offence.

Thus, we have three categories of unidentified persons – sources of infection, acting in the role of "instruments of committing administrative offences" under article 6.1 of the CAO RF: first, it is unknown persons who have been in contact with HIV-infected patients; second, persons infected with venereal disease who have been in contact with the above patients; third, other persons who have had contacts with the mentioned persons and creating the risk of infection listed diseases, i.e. those people who have come into contact with "our" sick before or after the events of the offence, what is deliberately being remained silent by this subject.

It is likely that these unidentified persons will never be revealed to be brought to administrative responsibility, but really and actually with their "assistance" particular administrative offenses have been committed, responsibility for the commission of which is provided for by article 6.1 of the CAO RF. They should therefore be regarded only as animated "instruments of committing administrative offences" regarding this misconduct. If recompense prevails and these "unidentified persons" are detected, then they will be presented in the framework of already other elements of an offense as the subjects of administrative responsibility.

Therefore, regarding an appropriate administrative case they will just remain merely "instruments of committing administrative offences".

Consequently, delimiting sign between the real subject of responsibility and its instrument of committing an offense will be the legal fact that the patient brought to administrative responsibility really exists, is known and available to law enforcement agencies, and the other three categories of "unidentified persons" are not defined, known or available for them. Therefore, these "sources of infection" that have taken real participation in the commission of illegal deeds in the considered event of an administrative offense can only act in the role of animated instruments of committing the administrative offense.

To the following animated "instruments of committing administrative offenses" can be referred a person engaged in illegal activity organized by the subject of administrative responsibility. Although the above "instrument" commits a wrongful act, but it cannot be held liable under the considered article, as the hypothesis of this article does not contain a deed committed by the respective "instrument". An example of this is article 6.12 of the CAO RF, which provides for administrative responsibility for "deriving income from engagement in prostitution, where this income is connected with another person's engagement in prostitution". The mentioned in this hypothesis "other person" can be referred to an animate instrument of committing an offence.

It is believed that in this "business" it is also reasonably to bring to responsibility men who are the clients of prostitutes. In this case, they can be seen as "animated instruments of committing administrative offenses" too. In France, they made an attempt to introduce criminal responsibility for such "clients", which has been operating in Sweden for several years [3, 11]. In some countries disciplinary responsibility is applied to the above "instruments". For example, three agents were fired after a sex scandal during the "Summit of the Americas" in Colombia, when "United States special service officers were trying to use the services of prostitutes" [10, 10].

The main sign that characterizes this "instrument" is that this "other person" has to engage in prostitution organized exactly by the mentioned above subject of administrative responsibility (a pimp), which is brought to responsibility under article 6.12 of the CAO RF. The relations between them should be really visible and rationally proven by law enforcer. Otherwise, the administrative case will fail and the offender will remain unpunished.

Thus, the delimiting sign between the subject of responsibility and the instrument of this administrative misconduct will be the fact that a pimp organizes

prostitution, and the "other person" actually engaged in prostitution, performs it. Actions of the "other person" are incompatible with the objective side of the misconduct provided for by article 6.12 of the CAO RF. Thus, the difference of the committed wrongful deeds acts as a separator for the signs of the subject of responsibility and its animated instrument of an administrative offense. In respect of "another person", legislation establishes administrative responsibility for it, but only already under article 6.11 of the CAO RF for "engagement in prostitution".

However, in this logical chain, there is one more unpunished subject that with interest represents the demand for such services. We are talking about the consumer who is ready to pay any money to prostitutes, only to implement their intimate interests, and this, in turn, provokes, as a rule, women of easy virtue to the temptation of perverse earnings. There is no doubt that this consumer also acts here in the role of a kind of an animate instrument of committing an administrative offence".

In our opinion, if the Russian legislation is really going to fight against this social evil, it should bring to responsibility the whole range of its subjects, but not just the individual functional participants of the above process – fallen women and their pimps. Foreign experience is interesting in that regard. For example, the Israeli Knesset in first reading approved the Bill on criminal responsibility for the use of prostitutes' services. The first violation of the law supposes obligatory visit of a special seminar, the second – imprisonment of up to six months" [7, 23].

Citizenship may be a sign, which separates the subject of administrative responsibility from the instrument of an administrative offense. For example, some articles of the CAO RF recognize a foreign citizen or a stateless person as an animated "instrument of an administrative offense". We are talking about part 1 article 18.15 of the CAO RF, which provides for administrative responsibility for "attraction to work in the Russian Federation of a foreign citizen or stateless person when this foreign citizen or stateless person does not have a work permit or a patent, if such permits or patent are required under federal law".

Consequently, an entrepreneur, attracting to paid work a foreign citizen or stateless person, with their help violates relevant prohibition provided by law, and thus becomes the subject of an administrative offense under part 1 of article 18.15 of the CAO RF. He implements illegal attracting to work of a foreign citizen or person without citizenship.

In a footnote to this article an explanation is given that "for the purpose of this article, admission in any form to perform work or provide services or other use of

the labor of a foreign citizen or stateless citizenship is meant under the attraction to work in the Russian Federation of a foreign citizen or stateless person. In the case of illegal attraction to work in the Russian Federation of two or more foreign citizen and (or) stateless persons, administrative responsibility defined in this article is incurred for violation of the rules of attracting to work in the Russian Federation of foreign citizens and stateless persons (including foreign workers) in respect of each separate foreign citizen or stateless person".

On the other hand, a foreign citizen or stateless person in respect of this administrative offence acts as an animate instrument of the misconduct, with assistance of which, and to a greater extent, the very wrongful act is implemented. Without its active work, in fact, there will not be the composition of an administrative offence, but the hypothesis of part 1 article 18.15 of the CAO RF does not provide for measures of responsibility for the said foreign citizen or person without citizenship. Thus, the actions of an entrepreneur who illegally attracts to work a foreign citizen or a person without citizenship and the actions of a foreign citizen or stateless person itself, which acts into the role of an animated instrument of a misconduct, cannot be considered equal regarding committed deeds and responsibility for them.

Summing up the analysis of such animated instrument of an administrative offense as a man, we can conclude that we have considered the above "instrument" as an optional sign, located within the boundaries of the objective side of an administrative offense, but obtains its legitimacy from a completely different element of the offense, from the subject of the offense, and which has failed to materialize as such due to the unique design of the hypothesis of law norm. Therefore, the person concerned can actually participate in an administrative offence only as an animated instrument of committing an administrative offense. Moreover, for its illicit conduct this animated instrument will never be imposed an administrative penalty within this particular misconduct.

Given examples allow us to derive common features of an animated "instrument of committing an administrative offense" in the form of man, which are as follows:

1) In a considered administrative offense must be involved, at least, two real participants of the offense. One of them is a subject of the misconduct, and the other is an animated instrument of committing the same offense.

2) Animated "instruments of committing administrative offenses" never match on the content of their wrongful conduct with a wrongful deed of the subject of the relevant offence.

3) The hypothesis of legal norm in administrative legislation never contains a wrongful act committed by an animate instrument of an administrative offense, except in cases related to the failure of such person to reach appropriate age, and mental incompetence.

4) Animated "instrument of committing an administrative offense", in essence, is a person who, for whatever reasons, cannot be held administratively liable in respect of, as a rule, exactly this offense, except in cases related to the failure of such person to reach appropriate age, and mental incompetence.

5) The formal grounds of inability to bring an animated "instrument of offense" to administrative responsibility, in our opinion, may be the following: first, minors' failure to reach sufficient age to bring them to administrative responsibility; second, mental incompetence of the subject of a misconduct; third, a real lack of understanding by the subject of responsibility of the fact that it performs a wrongful act at the behest of another person; fourth, there is an absence of responsibility for the actions implemented by an animated "instrument of committing an administrative offense" in this composition of offense, and etc.

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