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**PROBLEMS OF REALIZATION PERMISSIVE WAY
OF ADMINISTRATIVE-LEGAL REGULATION**

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Here is noted that the permissive way is costly enough, its implementation requires creation a system of authorized bodies specialized in areas, sectors and levels. The author argues that there is an interest of state bureaucracy in the conservation, development and extension of the permissive way of regulating to an increasing number of relationships. Negative assessment is given in the article regarding attempts to establish a permissive procedure of the performing certain activities bypassing licensing legislation.

The author notes that the list of activities subject to licensing is formally reduced, but essentially seeks to expand.

The conclusion is done that contradictory legislative regulation of permissive relations is due to the lack of a single subject of development state policy.

Keywords: administrative-legal regulation, administrative-legal regulation mechanism, permissive way of administrative-legal regulation, licensing of separate types of activity.

S. S. Alekseev – the founder of the theory of legal regulation mechanism, author of a monographic study on the major methods involved in this mechanism [18] draws a parallel between, on the one hand, the three main forms of law implementation – execution, compliance, usage, and, on the other hand, the three main legal means or ways of legal regulation – positive bindings, prohibitions and permits, in the sense that the execution matches to positive enforcements, the prohibitions – to compliance, and the usage – to permits [19, 352].

The scientist rightly points out that the division of law into branches depends on the combination of regulation methods. So, in sectorial methods, where dominates centralized regulation relating to public law, binding and prohibition prevail, in sectorial methods expressing dispositive principle, permit prevails [19, 353].

At the same time, in modern conditions, the most sought-after in the mechanism of administrative-legal regulation are not clear bindings and prohibitions, but relative prohibitions, to overcome which an entity must obtain permit from an authorized public authority. It is accompanied by bindings, which arise for a person's that has obtained permit, and absolute prohibitions to act without the permit. At that, the subject of law in permitting order applies for a permit, at its discretion, if it wants to exercise its relative (conditional, due to certain restrictions) right [23, 108-109; 20, 22].

Permissive way of administrative-legal regulation is applied in cases where there is a conflict of interest, which is described in part 3 article 55 of the Constitution of the Russian Federation and lays in the fact that in the exercise of the right of one person there is a threat to the rights of others, both individuals and their organizations, the whole society and the state. This conflict is eliminated through the establishment of requirements to the procedure of performance, commission actions necessary for the exercising of such right, as well as to the very person, its physical, mental, professional and moral qualities. Hence the most important legal feature of permits – aim that lies in ensuring safety.

Receiving a permit, subject of law qualitatively changes its legal personality, acquiring additional rights and, in some cases, corresponding to them responsibilities. However, the commission of required for obtaining a permit actions is not promoted, and not commission – is not punished. Refusal of receiving a permit does not entail any consequences, conditional right does not arise in the refuser's legal personality, and it is not affected at all. So, for the emergence of a citizen's right to drive a car, it must undergo a medical examination, submit an application to the State Road Traffic Safety Inspection, pass an examination on the knowledge of rules and driving skills, pass the procedure of obtaining a certifying document

- driver's-license [14]. A citizen, who has not received a driver's license, does not have right to drive.

Permit has a lot of advantages in relation to other ways of legal regulation, as it allows differentiating the degree of difficulty of the conditions for obtaining a permit, depending on the degree of social danger of permitted activities. So, to do business provide for minimum restrictions that can be easily overcome almost by any citizen [2]. On the other hand, to obtain a license for operation of chemically dangerous or inflammable production facilities an applicant must meet a series of complex conditions, undergo a rigorous and lengthy vetting process, and subsequently maintain the state of safe operation of these facilities [15, 16]. Subsequent continuous monitoring by authorized supervisory bodies can provide a safe exercise of right by an interested person and to balance the interests of this person and others.

At the same time, permissive way is very expensive. Its implementation requires the creation of a system of authorized bodies specializing in areas (public order, environment, fire safety), industries (transportation, manufacturing, construction, service, trade, defense), levels (federal, regional, local); the forming of legal basis of permitting activity, including the development and approval of requirements to permitted activities and to persons who receive permits; the creation of information infrastructure; the management of state information systems, monitoring cases for each person that receive permits; the implementation of administrative supervision over implementation of permitted activity; and the applying measures of administrative and sometimes criminal coercion. It should also be borne in mind that the permissive way of regulation in its content lies in establishment of administrative barriers to business, which in the end leads to a decrease in GDP. Another significant negative satellite of permitting activity is corruption.

Public administration optimization requires reducing costs, reducing administrative barriers and excluding corruption factors. The main ways of solving these problems are already visible in the Russian law: the replacement of permissive way by self-regulation, declaring, compulsory civil liability insurance, the establishment of a notification procedure for implementation certain types of activities.

At the same time the need to respond to changing external conditions, the increasing complexity of social relations, the development of techniques and technologies stimulate the development of permitting system. Takes place the interest of state bureaucracy in the preserving, development and dissemination of permissive way of regulation for a wider range of relations. As a consequence, there is the establishment of excessive, sometimes unreal conditions of receiving a permit;

the establishment of the permissive way of implementation activities by subordinate acts; the evasion from assessment of implications of a particular type of permissions on the dynamics of development of regulated relations; the deviation from the goal, and applying of permissive way in order to facilitate supervision activity.

For example, the Law of the Moscow region No. 268/2005-03 from December 27, 2005 (as amended on 23.03.2012) "On the Organization of Public Transportation Services in the Moscow Region" [21] introduces a permit to work on a route (certificate of permit to work on a route) for the transport of passengers and goods by regular transport routes. The legislation of the Altai Republic provides for permits for catching stray animals; for management of non-residential premises that are in state ownership of the Republic or municipal property; for placing pavilions, kiosks, signage, signs, fences, metal garages, cellars and other temporary structures, open parking for road transport in the territories of public use [8]. Bashkir legislation – permit to conduct transplantation of embryos and artificial insemination [10]; for industrial harvesting of growing wild medicinal raw materials [11]; for transportation, forwarding and sale of bees and apiculture products [9].

Separate permitting regimes of exercising civil rights and freedoms, not related to business activities, acquire legal foundation only now, although they have been existing for decades. Permitting procedure of exercising the right to drive vehicles (cars and motorcycles) got its legislative formulation only after the adoption of the Federal Law No. 196-FL from December 10, 1995 "On Road Safety" [1], although the need for obtaining a special right had been provided for since the first years of Soviet power. Permitting regime of exercising hunting rights became consistent with the Constitution of the Russian Federation after the adoption of the Federal Law No. 209-FL from July 24, 2009 "On Hunting and Preserving of Hunting Resources and on Amendments to Certain Legislative Acts of the Russian Federation" [5].

Up to the present moment, the permitting regime of waterborne traffic with using by citizens of small vessels is based on the approved by the order of the Ministry of Emergency Situations of Russia No. 498 from June 29, 2005 "Rules for certification of ship driver to the right to control small vessels supervised by the State Inspectorate for Small Vessels of the Ministry of the Russian Federation for Civil Defense, Emergencies and Disaster Control" [17]. Also issuance of permits for control of tractors and self-propelled machines is provided for by the Rules of admission to the control of self-propelled machines and issuing of tractor-driver's certificates approved by the Decision of the Government of the Russian Federation No. 796 from July 12, 1999 [13].

As for the goal-setting, here the situation is also far from well.

In accordance with part 1 article 2 of the Federal Law No. 99-FL from May 04, 2011 “On Licensing Certain Types of Activities” [7] licensing of certain types of activities is carried out in order to prevent prejudice to the rights, legitimate interests, life or health of people, the environment, cultural heritage (monuments of history and culture) of the Russian Federation, the defense and security of the state, the possibility of infliction of which is related to the implementation by legal entities and individual entrepreneurs of certain types of activities. Implementation of licensing of certain types of activity for other purposes is not allowed.

There is also no doubt that permitting regimes in the field of transport are set for the protection of life, health and property of citizens, protection of their rights and legitimate interests, as well as protection of the interests of society and the state by preventing accidents, reducing the severity of their consequences. Assignment of quotas for production of water bio-resources in accordance with the Federal Law № 166-FL from December 20, 2004 “On Fisheries and Preserving of Water Bio-resources” [3] is set in order to preserve the populations of aquatic bio-resources, to meet the needs of citizens.

On the other hand, the state registration of motor vehicles, according to the preamble of decision of the Government of the Russian Federation No. 938 from August 12, 1994 “On State Registration of Motor Vehicles and other Self-propelled Machinery in the territory of the Russian Federation”, which, in fact, represents the “legislation of the Russian Federation” on state registration, establishes that the registration of vehicles is carried out in order to ensure the completeness of their account [12].

As follows from article 1 of the law of Moscow region No. 268/2005-OZ from December 27, 2005 (as amended on 23.03.2012) “On the Organization of Public Transportation Services in the Moscow Region”, its objectives are:

- 1) meeting people’s needs for transport services that meet safety requirements;
- 2) establishment of legal and economic foundations of transport services;
- 3) maintenance of transport service market functioning;
- 4) ensuring the unity of concepts and the system of legal regulation in the sphere of passenger transport.

Permitting regime of organization and activities of retail markets, established by the laws of the subjects of the Russian Federation in accordance with the requirements of part 3 article 4 of the Federal Law No. 271-FL from December 30, 2006 “On Retail Markets and on Amendments to the Labor Code of the Russian

Federation" [4], in this regard, seems the most striking specimen of ignoring of not only the RF Constitution, but also of elementary logic.

The following procedure is introduced:

1) subject of the Russian Federation shall develop and approve the plan for the organization of markets taking into account the needs of municipal formations.

The plan provides for the location of alleged markets, their number and types;

2) local self-government body approves the procedure of organization of market in its territory in accordance with the approved plan;

3) a legal entity that owns real estate that is located in the territory, within which the alleged market is expected to be organized, receives in local self-government body a permit to the right of organization the market.

Attention is drawn by the legal structure "permit to the right", instead of "permit to organize".

Local self-government body may refuse to provide a "permit to the right" to the applicant, please note, who already owns real estate located in the territory, which a subject of the Russian Federation allocated for the organization on it a market (I wonder, has it happened by accident - lucky?). And what to do if the owner of the real estate located in this territory is using them for other purposes and is not going to organize a market in there?

Permit is granted for a period not exceeding 5 years (let's note that a license is perpetual, but here - up to 5 years). Permit may be suspended for a period of administrative suspension of activity of a market management company. In addition, permit may be cancelled. Here we see a clear divergence of objectives and means of regulation. The plan of markets' organization includes a particular retail market on the base of the need to provide the population of municipal formations located within the territory of this subject of the Russian Federation these or other goods. So, the key condition is the needs of population. But in the issuance of "permit to the right" and in its cancellation the key condition already is not taken into account. So, what is the purpose of the permitting regime of organization and activity of retail markets? It seems that the purpose of regulation is regulation itself. How appropriate to set a permitting procedure for organization of markets? How this affects the quality and completeness of satisfying the needs of population for goods and products? May the permitting procedure restrict competition? Has increased whether the quality of services, the quality of goods and products sold in permitted markets? There are no data.

Efforts to set permitting procedure of exercising certain types of activities ignoring the legislation on licensing deserve extremely negative assessment.

For example, article 9 of the Federal Law No. 69-FL from April 21, 2011 (as amended on 23.04.2012) "On Amendments to Certain Legislative Acts of the Russian Federation" [6] introduced permitting procedure for the carriage of passengers and baggage in passenger taxi. In accordance with paragraph 24 part 1 article 12 of the Federal Law No. 99-FL from May 04, 2011 (as amended on 04.03.2013) "On Licensing Certain Types of Activities", only activities related to transportation of passengers by motor vehicles equipped to transport more than eight people are subject to licensing (except if this activity is carried out on the orders or to provide the needs of a legal entity or an individual entrepreneur) [7]. However, the permitting procedure of taxi transportations in its content does not differ from the licensing procedure. In addition, in accordance with part 2 article 8 of the Federal Law No. 294-FL from December 26, 2008 (as amended on 12.11.2012) "On the Protection of the Rights of Legal Entities and Individual Entrepreneurs in the Exercise of State Control (Supervision) and Municipal Control", provision services of transportation of passengers and luggage under orders by cars (with the exception of the implementation of such transportations on regular traffic routes, as well as for the own needs of legal entities and individual entrepreneurs) is implemented by giving a notice. Thus, the list of activities subject to licensing is formally being reduced and essentially is seeking to expand.

There is no any reliable information in part of assessing the impact of the chosen way of regulation of public relations on the situation in the relevant field and on the level of safety. Remains an open question how the safety of the carriage of goods by road has changed after the abolition of licensing of this activity type or how the establishment of notification procedure of beginning business activities has impacted on state of services.

It can be assumed that such a contradictory legislative regulation of permitting relations is due to the lack of a single subject of formulation of state policy, the fact that this activity is carried out by actors, which variously understand goals and tasks of legal regulation. If the Russian Ministry of Economic Development aims to create favorable conditions for business development, reduce administrative barriers, then Ministry of Transport of Russia and other sectorial subjects seek to, on the contrary, strengthen them in order to strengthen control and enhance opportunities of influence on the evolving situation.

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