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TOWARDS THE ISSUE OF CONCEPTUAL APPARATUS OF ADMINISTRATIVE LAW

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The article analyzes the current problems of conceptual apparatus of administrative law, considers the ratio of concepts and definitions, and discloses the peculiarities of legal doctrines and state doctrines that form the doctrinal and conceptual foundations of state policy in various spheres of society. The author notes that in the absence of a legal interpretation of the concepts of "ensuring of public safety and public order" and "support in ensuring public safety and public order" any actions of authorized subjects listed in paragraph 6 part 1 article 12 of the Law "On Police", in part 3 article 5 of the Law "On meetings ...", if desired, can be interpreted either as proper or as improper performance of their duties.

Here is pointed to the possibility of emergence law-enforcement problems due to the inaccuracy of applying these or those legal structures in the text of a normative act.

Keywords: concepts, definitions, doctrines, public administration, administrative law.

"Mathematicians think by numbers, and lawyers by concepts"
Gottfried Wilhelm Leibniz

Conceptual apparatus of jurisprudence, which is considered as a system of categories, concepts and definitions used in legal science and practice, is not only a tool of knowledge of certain legal phenomena [22, 18-28], but also a means of forming texts of normative-legal acts of various hierarchical levels – from the Constitution of the Russian Federation to job description and Internal regulations of, for example, correctional [8] or municipal educational [24] institutions.

In recent years, due to the development of interdisciplinary research, the interest in the problems of formation of legal term systems – organized set of words or phrases, verbal constructions that are exact designation of certain concepts used in the language of jurisprudence and its branches, has increased [28, 67-71; 22, 18-28]. Realizing the importance of studying the linguistic problems of terminology, we think it is necessary to note that from the point of view of solving emerging problems in the language of administrative-legal science and legislation is important not so much as clarification how, for example, a term is different from a concept, and what does definition reflect – the meaning of the term or the scope of the concept [29, 63], as outlining in administrative-legal science and legislation scientific legal abstractions – concepts, definitions, which need clarification and elaboration.

In this connection, I would like to present a number of assertions, without claiming to their incontestability and exhaustive coverage of the designated issue.

1. Legal concepts are scientific beliefs that arise in the process of understanding by the subject of scientific creativity of the image of the world in general, the role and place of legal theory and practice. A brief specification of this or that legal concept, revealing meaningful, significant qualitative features of a "hidden" behind it phenomenon or object, is a definition.

Against the general backdrop of a correct proposition that "all legal concepts can be considered as a concretizations and rationalization of the idea of law" [19, 167], we find erroneous statement that "... each of them reflects some accident of law..." [19, 167], i.e. random, insubstantial in contrast with the substantial or significant. Of course, legal concepts are not equivalent in terms of reflecting essential characteristics of law, because they have not equivalent roles in the construction of explanatory models and theoretical conceptualizations in understanding, interpretation and implementation of law. However, the majority of legal concepts reflect exactly substantival characteristic of law, what is evidenced, for example, by legal

concepts such as liberty, property, legal capacity, capacity of delict, responsibility, punishment, etc., which form the legal framework of the legal system as a whole, its branches and institutes.

According to the situation, where in the science of law or legislation use the concepts and definitions, they may be of scientific (doctrinal) and legislative (legal) nature, besides there are a significant number of doctrinal concepts and definitions that are not legally enshrined in almost all branches of law, for example, the concept of "law enforcement activity" is widely used in the scientific literature, but its legal definition does not exist.

2. Among a huge number of phenomena of social reality, consolidated in legal theory and legislation in the form of concepts and definitions, majority, according to V. I. Kruss, by their etymology are "legally sterile", that is, borrowed from the thesaurus of natural and engineering sciences, therefore, they are "alien to legal discourse", representing quasi-legal definitions [18, 199].

We cannot agree with such presentation of a problem at least because the concepts and definitions included in the text of a normative legal act can be successful or not successful, accurate or inaccurate, but cannot be quasi-legal, as in this case, the whole legal act becomes quasi-legal, losing its normativity. In addition, there is not and cannot be initially an outlined circle of phenomena of social reality (if we are really talking about its pragmatist, and not the metaphysical sense), which "suggesting legalization" or not suggesting it, otherwise the process of legal regulation would cease to grow with the emergence of new forms of human activities associated, for example, with the getting, recording, storage, use and protection of information, including genomic, protection the public from radiation hazards, ensuring transport security, etc.

3. The variety of spheres of human life and concepts reflecting this diversity, as traditionally used in jurisprudence or involved in its conceptual apparatus through a selection due to the importance of these concepts for legal regulation or the need of shifting legal researches in other fields of scientific knowledge, lead to expansion of the practice of using sectorial, special, specific professional terminology in researches and legislation. This becomes a serious problem in terms of understanding and precision of the phrases and definitions included in the texts of normative acts.

"Borrowing" of the concepts and their adaptation to the subject of legal regulation are common to all branches of law, but the leader is obviously administrative law, the rules of which provide normalization of the functioning of almost all spheres of state and society. This creates an objective need to operate a large

number of general legal, special and specific professional concepts that reflect the essence of a variety of objects, phenomena and processes that fall within the scope of administrative-legal regulation.

It is difficult to give even an approximate list of concepts that 'have "come" to administrative law from the other branches of law, from political science and sociology, conflictology and medicine, geography and informatics, management theory and the theory of security, military affairs and economy, and that have "received registration" in legislative acts, including the Code on Administrative Offences of the RF (for example, the notions of "HIV" and "venereal disease" in article 6.1; "pesticides" in article 8.3; "internal sea waters", "territorial sea", "continental shelf" in articles 8.17, 8.18, 8.19; "fire safety" in article 8.32; "extra-budgetary fund" in article 15.10, "bookkeeping and submitting statements of accounts" in article 15.11, etc.), or in a thematic legislation (for example, the notion of "weapon", "firearm", "cold steel", "Propellant weapon", "pneumatic weapon") [4].

As you can see, the specificity of administrative-legal regulation that covers various aspects of human life often requires lawmakers to not only use special terms and concepts, but also to explain their meaning in the text of a normative legal act. In this connection, the claim that "definitions... in the legislation are unnecessary" is doubtful [30, 34]. Defects of legal definitions, many of which, such as associated with transport security, "cause confusion in the scientific community" [15, 6], are not grounds for excluding them from the texts of normative legal acts. Just do not forget that "definition – it's a kind of scientific invention, which we should searched for, prove and advocate its acceptance" [30, 35]. This means that the appearing of definitions in legislative acts must be preceded by their theoretical designing, and existing notions, if necessary, must be subject to critical scientific analysis to identify and close gaps, inconsistencies and inaccuracies.

So, article of 1 the pre-existing Water Code of the RF contained excessive in their obviousness definitions of the notion of "water" ("a chemical compound of hydrogen and oxygen, which exists in solid, liquid and gaseous states") and "waters" ("all water in water bodies") [1]. The new Water Code [2] does not contain these definitions, a number of not very successful definitions (for example, "water body") have been significantly improved, and the total number of definitions has been reduced from 31 to 19. A different situation arises with the law "On Fire Safety": after being modified more than 30 times, it has kept intact the trivial and therefore excessive definition of fire – "an uncontrolled conflagration, inflicting material losses and causing harm to the citizens' health and life, and to the interests of society and of the state" (article 1) [3].

Excessive definitions are also harmful as their absence where this is necessary. Federal Law "On Police" [6] is one of the samples of the legislator's "stinginess" in terms of determining the most important concepts related to the implementation of police powers, as well as to the definition of the police itself and its "generosity" in terms of saturation of the text with estimating concepts. Of the variety of definitions of the police proposed by the scientific community the legislator chose the most amorphous and vague, having set in part 1 of article 4 of the law, that the police is a part of a unified centralized system of the federal body of executive power in the sphere of internal affairs, depriving it organizational independence and the status of an executive authority. In violation of the principles of management organization and distribution of personal responsibility, the duty of the police management is simultaneously given to various actors: both to the head of a body of internal affairs, and to the heads of the police (part 3 article 4).

Having defined the main directions of the police activities, the legislator, in the absence of qualitative doctrinal definitions, has not introduced legal definition of such concept as "administration of justice in public places" (paragraph 6, part 1 article 2), has not specified the range of persons wanted by the police (paragraph 4 part 1 article 2), without explaining the essence of some concepts has put on the police the duties " to participate in ..." providing the regime of military situation and emergency (paragraph 29 part 1 article 12), providing aviation security (paragraph 33 part 1 article 12), "to provide assistance..." health authorities (paragraph 35 part 1, 1 article 12), state and municipal authorities, deputies... (paragraph 36 part 1 article. 12).

Paragraph 6 part 1 article 12 of the Law "On Police" provides for the responsibility of the police in conjunction with the organizers of public events to ensure public order and safety of citizens, or to provide assistance in these matters to the organizers of mass events. This seemingly innocuous legal construction, actually contains the technical and legal trap: in the absence of a legal interpretation of the concepts of "ensuring public safety and public order" and "providing assistance in ensuring public safety and public order" any actions of authorized subjects listed in paragraph 6 part 1 article 12 of the Law "On Police", in part 3 article 5 of the Law "On meetings ...", if desired, can be interpreted either as proper or as improper performance of their duties.

Law-enforcement problems may arise due to inaccurate use of these or other legal constructions in the text of a normative act. For example, in accordance with paragraph 3 part 4 article 5 of the Federal Law "On meetings, rallies, demonstrations, processions and pickets" [5], public event organizers must "provide, within

its competence, public order and security of citizens...". Legal uncertainty of this requirement is obvious, since no one normative act reveals the concept of "competence in the field of ensuring public order" of such organizers of public events as, for example, a citizen of the Russian Federation, political party, other public associations and religious associations, their regional branches and other structural units listed in part 1 article 5 of the Law "On meetings...".

Another problem – the use of estimating concepts, which are abundant in the Code on Administrative Offences of the RF, for example, the "harmful consequences" (article 2.2); "gross or systematic violation of the procedure of use this right" (part 1 of article 3.8); "materials that can harm the honor, dignity and business reputation" (article 5.13), "intoxicating substances" (article 6.10, part 2. 20.20, article 20.22), "other floatage" (article 16.8), "public places" (article 20.1), "other public places" (articles 20.20, 20.21, 20.22), "immediate proximity" (part 3 article 20.2), "proper notification" (part 2 article 25.1, part 3 article 25.2, part 3 article 25.4), "negative influence" (part 4 article 25.1) "immediately" (part 1 article 28.5, part 2 article 28.7, part 2 and 4 article 28.8, part 1 article 29.11, part 1 article 30.8, article 31.1, part 1 article 32.8, part 1 article 32.11, part 1 article 32.11), etc.

4. Doctrinal beliefs on the law are represented by the various forms of external expression: concepts, doctrines, theories reflecting the process and the result of the nomination and justification of scientific ideas, opinions, hypotheses and beliefs about the essence of law, its interrelation with other phenomena of the world around us. These forms, in their general semantic meaning, are very close to each other, because with this or that degree of completeness and fundamentality with help of various cognitive means (principles, concepts, structures and terms) and logically-epistemological procedures (analysis and synthesis, abduction and deduction) form abstract (intellective) model of positive law.

This model is a doctrine of law – a generic concept that covers all the totality of legal and scientific interpretations and beliefs about positive law, within the framework of which develop and justify legal and cognitive forms of learning of law and legal phenomena, principles, concepts, terms, structures, methods, means and techniques of understanding and interpretation of positive law: its sources, system, structure, operation and application, violation and restoration.

Doctrinal factor of law-making in general and administrative law in particular – is a complex process of mutual movement to each other of scientific thought and the will of legislator that influence on transformation, transition of doctrinal beliefs in legal definitions and vice versa. This "joining bridge between legal doctrine and positive law" [22, 22] is actively being built, as evidenced by the increased

interest of legal scholars to the conceptual build of their science, to understanding the prospects for the consolidation of doctrinal beliefs about the law and their legal interpretations in normative legal acts [12 ; 27; 26, 92-97; 21, 5-41; 14, 112-117]. However, the end of the "building" is far away.

On the one hand, there are no matching interpretations of such fundamental concepts as "executive authority", "public administration", "administrative justice", "administrative legal proceedings", "administrative responsibility" and "administrative procedure" in the administrative-legal science, also there are no formed scientific views about the essence of control and supervision in activities of public administration, the essence, content and subjects of law enforcement activity, specific signs of law enforcement service and many other concepts, on the basis of which forms and develops administrative law as a science, branch of legislation and training discipline. On the other hand, many proposals of the scientific community on the issues of administrative reform, formation of administrative courts, improving the current legislation for the most part remain unclaimed.

It is rather hard to change the attitude of the legislator to the science, especially when different not relevant to science factors often hide behind the failure to accept these or those scientific ideas. It is easier to raise the quality of scientific research.

Taking into account that doctrine is one of the driving forces of the rising from generation to generation diachronic process of accumulation and assimilation of social and regulatory information, improvement the quality of research is connected with the elimination of a certain gap in the continuity of administrative and legal knowledge. So, issues such as "citizen and management apparatus", "public participation in public administration" that were being actively researched in past years [20] "evaporated" from the science of administrative law. This is all the more strange that exactly in Russia in the XIX century formulated the idea of the participation of citizens in public administration [11], formed the concept of "active citizenship" of A. I. Elistratov [16].

The continuity of scientific knowledge is not identical to the mechanical transfer to the present days all the ideas and theories that have emerged in the long history of development of modern administrative law. The fact, that its origins lie in the cameralistics and police law, does not mean that the modern administrative law should be positioned as a set of rules "determining the forms and procedures for police and fiscal activities of the state, enshrining the list of administrative offenses and establishing penalties for them" [25 , 10], reduced to the implementation of

legal regulation solely through peremptory methods "based on the security agencies of the state and on the measures of state coercion" [25, 11].

Scrupulous selection of the ideas, views, forms, and methods of legal regulation that ensure the positive development of administrative law, increasing the efficiency of public administration and the formation of an effective system of control over the activities of administrative bodies and their officials should become an alternative to such theoretical constructs.

5. There are also state doctrines, which are official policy documents (acts) that form the doctrinal and conceptual foundations of state policy in various spheres of society, along with legal doctrines as some abstract models of positive law that, according to L. I. Petrazhitskii, reflect "the right of accepted by science opinions" (communis doctorum opinion) [23, 463]. The situation with such documents (author's note. Currently, there are eight doctrines: Food Supply Security, Maritime Doctrine for the period up to 2020, Information Security Doctrine, the Doctrine of the Development of Russian Science, the National Doctrine of Education, Environmental Doctrine, the Doctrine of Secondary Medical and Pharmaceutical Education), which have recently been added with "concepts", "strategies", "basic directions of policy", "national projects", "programs" (presidential, federal, federal targeted, state, departmental targeted and special ones), can be hardly called otherwise as legal chaos, because against the background of increasing their number the level of requirements for the form, content, and functionality of these documents does not increase:

- they do not correlate to each other, and it is impossible to understand why, in one case accept doctrine, the other – concept, and the third – strategy.

- there is no generally accepted procedure of approval and entry into force of these documents: they can be endorsed or approved by a Decree of the President of the Russian Federation, or simply approved by him without issuing a special act; approved by a Order or Decision of the Government of the Russian Federation, endorsed by it, besides in the texts of a document and order (decision) may refer to the various forms of legal authorization;

- taken at the level of federal departments close in content documents may have differing names (concept, program) and be put into effect (approved, endorsed) by various acts (orders, decrees, decisions of boards).

It is almost impossible to count the exact number of such documents, functioning at different levels, from federal to municipal. Note, that there are five strategies adopted only by the Decree of the President of the Russian Federation ("On the National Strategy on Actions for Children for 2012-2017", "On the Strategy of

the State Ethnic Policy of the Russian Federation for the period up to 2025", "On Approval of the Strategy of the State Anti-Drug Policy of the Russian Federation up to 2020", "On the National Anti-corruption Strategy and the National Anti-corruption Plan for 2010-2011"," On the Strategy of National Security of the Russian Federation until 2020").

Noteworthy is the fact that the process of developing and approving strategic, program documents of the doctrinal level focused on ensuring national security does not involve Parliament, when, in fact, this is a legislative and representative body of state power.

At first glance, the above-mentioned nuances of creating doctrinal documents are not so significant and relate primarily to technical and legal aspects. In fact, this situation not only violates the rules of legislative technique, the procedures for preparing and approving acts of government, but also interferes with the normal functioning of public-law institutes of government, especially executive authority, forcing officials of the managerial apparatus to engage in preparing documents with names of "obscure etymology".

Recently, the existing types of "strategic-oriented" acts of "obscure etymology" have been enriched with so-called "road maps". As follows from a number of normative legal acts of the federal and regional level, "road map" is a plan for solving various problems, including in the field of public and municipal administration [7; 9; 10], economics and business [17, 24 - 34]. The question is: what for traditional algorithmic methods of administrative-legal control (strategic, current and long-term plans) to name by new terms without explaining their essence? May be for replacing real programs of actions by "protocols of intent"? Sometimes it seems that in the field of public administration, administrative-legal regulation, for various reasons, emerges a fashion for a particular term, concept or organizational-legal form that gives rise among the leaders of various authorities – from a Federal Ministry up to a municipal formation – for a hardly-suppressed urge to conform it.

We again repeat after Vladimir Putin's assessment of the programmes for the resettlement of dilapidated housing [13]: "What for to adopt such documents? To deceive ourselves and lead to ambiguousness?" Perhaps, in order to stop "deceive ourselves and lead to ambiguousness " it is advisable to establish a kind of moratorium on such passion for fashion that conceals the danger of substituting the inner content of administrative-legal regulation by external respectability of decisions.

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