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THE TOPICAL ISSUES OF LEGAL REGULATION OF THE PRINCIPLES OF PROCEEDINGS ON ADMINISTRATIVE OFFENCES

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The author considers the implementation of fundamental principles of law in the norms of administrative and tort legislation. Here is noted the problems of compliance with these principles in mind of their incomplete regulation in administrative and tort legislation. The article provides author's list of principles of proceedings on administrative offences and substantiation of their enshrining in the Code on Administrative Offences of the Russian Federation.

Keywords: proceedings on administrative offences, principles of legal regulation, principle of legality, principle of publicity, principle of the presumption of innocence, principle of promptness, principle of the right to defense, principle of equality of everyone before the law, principle of national language, adversarial principle, principle of objectivity and impartiality.

In a State governed by the rule of law the principles of legal regulation of these or those social relations are of particular importance. Proceedings on cases of administrative offences, which have a number of fundamental principles, are not an exception. However, at present there is an incomplete legal regulation of these principles. This, in turn, gives rise to the problem of their non-compliance.

The origins of the considered problem, in our view, lie in the absence of a legal definition of the very proceedings on cases of administrative offences. Without entering into a scientific debate regarding this category, by proceedings on cases of administrative offences within this article we will recognize a set of procedural actions aimed at consideration and resolving of particular cases of administrative offenses and at enforcement of a taken decision.

In addition, the main normative-legal document that contains administrative and procedural norms – Code on Administrative Offences of the Russian Federation (hereinafter CAO RF) – does not include the full list of principles of proceedings on administrative offences. This leads to the appearance in the science of administrative-procedural law of set of various principles, as well as their ambiguous interpretation.

In this context, we focus on the analysis of legal regulation and the practice of application of some basic principles of proceedings on cases of administrative offences.

Principle of legality. Being a constitutional and pervading the whole system of social relations that occur in various legal fields, this principle is rightly occupies a central place in all classifications. Briefly, but concisely D. V. Tetkin defined the principle of legality "legality – is such a state of public and state life, which protects an individual from arbitrary power, a lot of people – from anarchy, society as a whole – from violence, the state – from disorganization" [7, 10].

The relevance of the principle of legality for proceedings on cases of administrative offences is due primarily to the authoritative nature of administrative responsibility, which sometimes restricts human rights and freedoms.

The principle of legality is not directly mentioned in the Constitution of the RF, however, it follows from the essence of articles 4, 15, 19, 27, 34, 57 and others. So, part 2 article 4 establishes that the Russian Constitution and Federal Laws have supremacy throughout the Russian Federation. And part 2 article 15 obliges public authorities, local self-government bodies, officials, citizens and their associations to comply with the Constitution of the Russian Federation and laws.

The Constitution contains a number of such wordings, where compliance with the law definitely comes first. For example, in part 1 article 27 the legality of stay within the territory of the Russian Federation is established as a condition of exercising the right to move freely and choose the place of stay and residence.

In CAO RF this principle is reflected in article 1.6, according to which a person held administratively responsible may not be subject to an administrative penalty and to measures for ensuring proceedings in respect of a case concerning

an administrative offence otherwise than for the reasons and in the procedure established by law, exclusively within the competence of a relevant body or official. Loose interpretation of the powers of state bodies and officials is not allowed.

In this regard, it is important to comply with not only the rules of the jurisdiction of cases on administrative offences, but also of the territorial jurisdiction. So, the Russian Supreme Court overturned the verdict of inferior courts, handed down with respect to P. on the case of administrative offence under part 1 article 12.8 CAO RF [2]. Case materials show that P. drove a vehicle while intoxicated. By decision of a justice of peace P. was found guilty. The case was considered at the place of residence of P., however, case materials do not contain a petition of P. on consideration the case at the place of residence. Therefore, the case had to be considered at the place of the administrative offence. In violation of articles 1.6, 29.1, 29.5 and other of CAO RF, the case was considered in violation of the rules of territorial jurisdiction, which resulted in violation of the order of bringing P. to administrative responsibility. "According to the legal position set out in the rulings of the Constitutional Court of the Russian Federation No. 623-O-P from 03.07.2007 and No. 144-O-P from 15.01.2009, a decision taken in violation of jurisdiction rules cannot be regarded as correct, since in contradiction to part 1 article 47 and part 3 article 56 of the Constitution of the Russian Federation it is taken by the court, which is not authorized by law for the consideration of the case, what is an essential (fundamental) violation affecting the outcome of the case and distorting the very essence of justice" [3].

Thus, being the main principle of the functioning of bodies of state power and local self-government, the principle of legality is getting particular importance in administrative and jurisdictional area.

Principle of publicity. This principle is enshrined in article 24.3 of CAO RF under the name "Public hearing of cases concerning administrative offences". Principle of publicity also has a constitutional basis, however, there can be highlighted its features within proceedings on cases of administrative offences.

Because of the principle of publicity cases of administrative offenses under general rule are subject to public hearing. The exception is when an administrative offense, provided for by chapter 12 of CAO RF, has been identified and recorded using automatically operating special technical equipment, which have features of photographing and filming, videotaping, or means of photographing and filming, video recording.

In these cases provide for other procedure for instituting and hearing a case. CAO RF states that in this case the protocol of an administrative offence is not

drawn up, and the decision on a case of an administrative offense shall be taken without participation of the person against whom institute the case on administrative offence and implemented in the manner prescribed by article 29.10 of CAO RF.

Other exceptions to the principle of publicity are if, first, a public hearing of cases on administrative offences may lead to disclosure of state, military, commercial or other secrets protected by law, and, secondly, in cases where it is necessary for safety of persons participating in the proceedings on a case of an administrative offense, their families, their loved ones, and for protection the honor and dignity of these persons.

The law regulates the procedure of recording of consideration of a case on an administrative offence. For example, persons involved in the proceedings on a case of an administrative offense, and the citizens who present at the public hearing concerning an administrative offense shall have the right in writing, as well as by means of audio record to record the course of the proceedings of a case on an administrative offense. Photography, video, broadcast of the public hearing of a case on an administrative offence on radio and television are allowed with the permission of judge or official, who reviews this case of administrative offence.

Principle of presumption of innocence. As a constitutional principle in proceedings on cases of administrative offences the principle acquires new meaning.

So, under general rule, a person brought to administrative responsibility shall be presumed innocent until its guilt is proven in accordance with law. The burden of proof in this case is on the accuser, and the brought to administrative responsibility person is not required to prove its innocence, though it has that right. In case when doubts about the guilt of the person have not been eliminated in the course of proceedings, the decision shall be taken in favor of this person. In other words, any doubt is interpreted in favor of the person brought to administrative responsibility. This conclusion is confirmed by the provisions of the Ruling of the Plenum of the Supreme Court of the Russian Federation [1].

On the other hand, with the development of science and technology, the introduction of information technologies into new spheres of public administration, the situation in respect to the principle of presumption of innocence has changed. After the introduction into control and supervisory activity of Traffic Police of special technical equipment, you can accurately determine the vehicle brand and number plate of the car, whose driver has violated traffic rules. The rule that a person, who has been called to administrative responsibility, is not obliged to prove its innocence does not apply to such cases.

In note to article 1.5 of CAO RF enshrine that the provision of part 3 of this article shall not apply to administrative offences provided for in chapter 12 of CAO RF, if they have been recorded by automatically operating special technical equipment, which have features of photographing and filming, videotaping, or means of photographing and filming, video recording.

But here comes the problem of the following nature. In the case of transfer the right to control vehicle to another person, for example, by power of attorney, the administrative responsibility for offenses in the field of road traffic that is identified by technical means, operating in automatic mode, is imposed on the owner, and not the driver that actually drove the car at the time. In this case, the owner of the car bears the burden of proving its innocence.

Additional workload on administrative jurisdiction bodies is created by cases arising between the Traffic Police and special services, such as ambulance, Fire Department and others.

The drivers of the mentioned special services, in certain circumstances, have the right to violate road rules. With the introduction of technical means of documenting violations they bear the burden of proof the existence of such circumstances.

Principle of promptness. This principle is disclosed, first of all, in timelines of proceedings from the stage of initiation to execution of the decision on a case. This definitely "allows reducing of the time between the moment of commission of an offence and its legal evaluation" [5].

So, for example, the protocol of inspection of place of an administrative offense is drawn up immediately after the detection of the administrative offense (part 2 article 28.1.1), the maximum period of drawing up a protocol on administrative offence, unless an administrative investigation is needed, is two days from the date of detection the administrative offence (article 28.5), the term of conducting an administrative investigation may not exceed one month as of the moment of instituting proceedings on a case concerning an administrative offence (article 28.7). In exceptional cases the said term may be extended, but no longer than 6 months.

The term of consideration of a case on an administrative offence is also fairly concise. So, by virtue of article 29.6 of CAO RF, a case concerning an administrative offence shall be considered within a fifteen-day term by a body or an official authorized to consider the case, and within two months by a judge. Extremely tight deadlines are set for consideration of certain categories of cases.

Terms of execution of decisions on a case are also short. For example, an administrative fine must be paid by the person brought to administrative responsibility, not later than thirty days from the date of entering into legal force of the decision

to impose the administrative fine. Postponement of execution of the decision may be granted for a period not exceeding one month, and installment of payment – up to three months.

Principle of the right to defense. This principle ensures realization of constitutional rights of a person brought to administrative responsibility. The principle of the right of defense is implemented through the possibility of providing evidence of your innocence or providing circumstances mitigating responsibility, the possibility to get acquainted with case materials, to file petitions and demurs, to use in proceedings the assistance of an attorney or other representative.

At that, these rights may be applied not only at the stage of case consideration, but also at the stage of its initiation. In this regard, the Higher Arbitration Court of the RF ordered that: "Procedural actions undertaken in the framework of administrative proceedings involve in their implementation participation of certain persons, to which the current legislation provides a certain amount of procedural rights – not only at the stage of consideration of an administrative case, but also at the stage of drawing up the protocol... Protocol is a basic procedural document that records the fact of an administrative offense and supporting evidences. The obligation of administrative body to notify legal and physical persons about the intention to draw up against them a protocol of an administrative offense and, therefore, the right of such persons to participate in its drawing are due to the value of this stage of the procedure of bringing to administrative responsibility, which as a rule settles the issue of initiation of proceedings on a case of an administrative offence with taking into account submitted explanation, evidences, objections and declared petitions"[4].

Unfortunately, in enforcement practice take place violations of that principle. Illustrative is a case of administrative offence against one legal person of the city of Samara. From the case file is seen that the Territorial Administration of the Federal Service for Financial and Budgetary Oversight in the Samara region, in violation of the right to defense, did not consider the application of the legal entity about postponing the drawing up a protocol on administrative offense, which was motivated by the lack of time to prepare for participation in the drawing of the protocol and also by the fact of location of the head outside of the Samara region. The protocol on administrative offense provided for by part 6 article 15.25 of CAO RF was drawn up in the absence of a representative of the legal entity. HAC RF agreed that these circumstances indicated significant violations of the procedure of bringing the legal entity to administrative responsibility, because administrative body after admission of the petition about postponement of the drawing up the protocol, according

to article 25.1 of CAO RF, was obliged to consider such a petition concerning reasonableness and basing on the results of consideration to take reasoned decision about its satisfaction or the abandonment without satisfaction.

The principle of the right to defense also applies to the victim, who shall be entitled to familiarize itself with all the materials of a case concerning an administrative offence, to give explanations, to present evidence, to file petitions and demurs, to use the legal assistance of a representative, to appeal against a decision on this case, and to enjoy other procedural rights in compliance with CAO RF (article 25.2 CAO RF).

Principle of equality of everyone before the law. The RF Constitution establishes: "Everyone is equal before the law", which means equality of rights and freedoms of man and citizen regardless of gender, race, nationality, language, origin, property and official status, place of residence, attitude to religion, convictions, affiliation to public associations, as well as other circumstances. Any forms of restriction of the rights of citizens on the grounds of social, racial, national, language or religious affiliation are prohibited" (article 19).

This principle also means the equality of all legal persons, regardless of location, organizational and legal forms, subordination, as well as other circumstances.

Due to the nature of proceedings on administrative offences, this principle should be understood as the equality of all before the law and subject of administrative jurisdiction who considers the case.

And yet, there is an exception in the provisions of this principle, which relates to the establishment of special conditions of application the measures to ensure proceedings and to bring to administrative responsibility officials who perform certain public functions (deputies, prosecutors, judges and other persons).

Principle of national language. CAO RF establishes the principle of national language (article 24.2). This principle means that proceedings in cases concerning administrative offenses shall be carried out in the Russian language, as the state language of the Russian Federation. There is an exception for the republics of the Russian Federation – judges, bodies, officials empowered to consider cases on administrative offences are granted the right to conduct proceedings on administrative offences in the state language of the Republic, on whose territory they are situated.

Another aspect of this principle is the right of persons participating in proceedings on a case concerning an administrative offence and having no command of the language, in which the proceedings on the case are carried out, to speak and to give explanations, to file petitions and demurs, and to make complaints in native

language or in any other language freely chosen by the said persons, as well as to use the services of a translator.

Adversarial principle. This principle is not enshrined in the CAO RF, but it follows from the essence of proceedings on cases of administrative offences, that is why scientists call it one of the most important.

For example, there is a note in the literature that "CAO RF does not contain provisions on the fact that consideration and resolution of cases on administrative offences is carried out on the basis of competitiveness, what, of course, should be seen as a gap. And yet we cannot ignore the fact that CAO RF provides the persons involved in a case a significant scope of rights to defend their position in consideration and resolution of an administrative case, what lets us talk about the presence of an adversarial principle in administrative and jurisdictional process".

Adversarial principle is inherent in all types of legal proceedings in Russia. It is expressed through the right of a person brought to administrative responsibility to get acquainted with a case file, submit evidence, file petitions, give explanations, appeal against the judgment on a case, and through the duty of bodies (or officials) authorized to consider cases on administrative offenses to accept for consideration and resolution these applications, petitions and complaints filed.

Adversarial principle also suggests the duty of relevant authorities to watch parties to made good use of rights granted to them and their duties in order to protect the interests protected by law [6, 39].

Principle of objectivity and impartiality. This principle guarantees full, comprehensive consideration of a case, and an objective assessment of all the evidences in the case. Despite the fact that evidences in a case are assessed by court (body or official) by inner conviction, the State guarantees their objectivity. And conclusions of a decision taken on a case of an administrative offense should be motivated and based on circumstances and facts identified in the course of case proceedings.

Moreover, a judge, member of a collegiate body, or official, which has received a case concerning an administrative offence, may not review this case, when this person:

1) is a relative of the individual, who is put on trial in connection with an administrative offence, of the victim, of a lawful representative of a natural person or a legal entity, of a defense counsel or of a representative;

2) is personally, directly or indirectly interested in the outcome of the case (article 29.2 CAO RF).

In the science also talk about the other principles of proceedings on cases of administrative offences, such as the principle of direct proceedings, two-step

principle, the principle of the free exercise of material and procedural rights by the parties to legal proceedings, the principle of comprehensive study of case circumstances, the principle of cost-efficiency, the principle of protection the interests of the state and an individual and others.

Thus, the issue of the principles of proceedings on cases of administrative offences is one of the most important, because the observance of principles in administrative and jurisdictional activities largely determines the compliance with basic human rights and freedoms.

In this regard, we consider it necessary to regulate at the legislative level the content of the principles of proceedings on cases of administrative offences through specific amending the Code on Administrative Offences of the RF.

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