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Kaplunov A. I., Yakovleva T. A.

TOWARDS THE ISSUE OF IMPROVEMENT OF LEGAL NORMS THAT REGULATE PROCEEDINGS ON CASES OF ADMINISTRATIVE OFFENCES IN FOREST MANAGEMENT

Kaplunov Andrei Ivanovich,
Doctor of law, Professor of the Department of administrative law at St. Petersburg University of the MIA of Russia, Professor;

Yakovleva Tat'yana Afanas'evna,
c.j.s. (PhD of jurisprudence), Associate professor of the Department of civil law and process at North-Eastern Federal University.

The features of proceedings on an administrative offence committed in the field of forest management are considered in the article. Here are noted problematic issues of institution of proceedings on an administrative offense in forest management, including the lack of proper normative legal regulation. Attention is focused on the lack of correlation of the legal norms of administrative-tort legislation with the provisions of the Forest Code of the Russian Federation. The Russian Federation is substantiated as an injured subject in cases on administrative offences in the field of forest management.

Keywords: forest management/use, administrative offences in the field of forest management, state forest supervision, location of an offence, proceedings on a case on administrative offence, measures to ensure proceedings on a case.

Russia is the largest forest state. Forests occupy 779 million hectares, accounting for almost half of Russia territory, and about one-quarter of the world's forest resources. Forest resources have a significant impact on the economy of more than 40 subjects of the Russian Federation, in which forest industry products ranges from 10 to 50% of the overall volume of industrial products. It should be noted that about 94 per cent of the forests grow on the lands of forestry fund.

Statistical data of state bodies exercising state supervision of forest (forest service) show an increase in administrative violations in the field of forest use.

If in 2008-2009 in the first place were violations of fire safety in forests (48-50% of the total number of administrative offences of forest legislation), the second place – illegal felling of trees (26-34%), then in 2010-2011 in the first place – improper use of forests (37%), violations of fire safety in forests amounted 31%, illegal felling of trees – 12%.

In connection with this, the issues of bringing persons to administrative responsibility for administrative offences in the area of forest use are especially relevant.

Realization of administrative responsibility for offences in the sphere of forest management is largely depended on skilled and competent actions of authorized officials at the stage of instituting legal proceedings on administrative offences of this category.

The stage of instituting proceedings on an administrative offence in the sphere of forest management is a set of procedural activities aimed at:

1) the identification of circumstances of the offence;

2) collecting evidences on the case;

3) the procedural implementation of the fact of administrative offence committing.

The stage under consideration creates conditions for an objective, timely and comprehensive case review and application of coercive measures to the offender. It should be noted that in the legal literature the stage of initiation proceedings is divided into four phases:

1) taking decision on the start of proceedings on a case and procedural implementation of such decision;

2) determining of the actual circumstances of a committed administrative offense (including by means of administrative investigation);

3) recording the fact of committing an administrative offense in a procedural document (drawing up a protocol on administrative offence, sentencing verdict to impose punishment);

4) submission of case materials for consideration according to jurisdiction [8, 120; 7, 470; 6, 423].

State forest inspector is an official that has the right to institute proceedings on administrative offences in the field of forest management, its administrative and procedural status is defined by the norms of the Code on Administrative Offences of the RF (CAO RF), article 96 of the Forest Code of the RF [2] and etc.

At the stage of taking decision to initiate proceedings on a case and procedural implementation of this decision, according to part 1 article 28.1 of the Code on Administrative Offences of the RF, the arguments of the institution of proceedings on administrative offences in the field of forest management are:

- direct detection by the officials authorized to draw up protocols on administrative offenses any sufficient data indicating the actual occurrence of an administrative offence;
- materials containing data indicating the actual occurrence of an administrative offence that are received from law enforcement agencies, as well as other state bodies, local self-government bodies and public associations;
- reports and statements of physical and legal entities, as well as reports in the media containing the data that indicate the actual occurrence of an administrative offence (part 1 of article 28.1 of the Code on Administrative Offences of the RF).

The peculiarity of the institution of proceedings on an administrative offence in the field of forest management is determined by the place of the offense – it is forest plot of forestry fund far away from populated areas. So, more often the reason for the institution of proceedings on cases in this category is the direct detection by a state forest inspector during the implementation of state forest supervision and (or) patrolling forests of sufficient evidences indicating the existence of an administrative offense.

With the direct detection of sufficient data indicating the occurrence of an administrative offense, an official authorized to draw up protocols on administrative offenses at the place of detection of the offense conducts preliminary proceedings with the person who has committed (is committing) the wrongful act. As part of the preliminary proceedings, this official shall take the necessary measures to stop the offense, while applying the necessary measures of administrative restraint (requires discontinuation of the offense, applies physical force, special means). Then, having made certain of the availability of statutory signs of an administrative offense and that there are no circumstances that exclude proceedings on an administrative offense (article 24.5 CAO RF), on the basis of the available information it makes the decision to initiate the proceedings on an administrative offense and to draw up the protocol on an administrative offence. And when such a decision has been taken, after that it applies measures providing proceedings on the case, including delivery.

Peculiarity of offenses in the sphere of forest management is a place, in which they occur, – forest plot, forestry fund, which are located at a distance from

settlements. Not everybody who going to go in forest take with them identity documents. There are many cases where an offender in order to evade responsibility represent itself as another citizen, so procedural documents should be drafted on the basis of identification documents of the person who has committed an administrative offense. In the absence of identity documents, the person may be brought not only to a body of internal affairs (police), but also to the premise of the local self-government of a rural settlement for drafting up a protocol on administrative offence (article 27.2 CAO RF). A similar power is provided for by paragraph 14.1 part 3 article 96 of the Forest Code of the Russian Federation (further FC RF), but it provides the ability to deliver offenders only in "law enforcement agencies". But, is not always easy to find them in the countryside and in small by population settlements.

Verification of identity documents is a measure of administrative and procedural coercion. The need for application of this measure follows from the provisions laid down in article 26.1 of the Code on Administrative Offences of the RF, according to which the subject of clarification is a person who has committed illegal actions (inactions) (part 2), circumstances mitigating and aggravating administrative responsibility (part 4) and etc. However, the Russian legislator did not referred the verification of identification documents to a number of measures to ensure proceedings on cases of administrative offenses, despite the fact that one of the purposes of the application of these measures is the establishment of offender's identity [9, 341].

Do state forest inspectors have the right to check identity documents? How can they determine the identity of an offender? None of the regulatory legal acts gives an answer to the raised questions.

In our view, we need:

1) Consolidation in the CAO RF, as a measure to ensure proceedings on an administrative offense, of verifying identity documents by officers authorized to draw up protocols on administrative offenses in presence of reasons for initiating proceedings on an administrative offence;

2) Consolidation in article 96 of the FC RF the right of a state forest inspector to request the establishment of offender's identity at internal affairs agencies (police), local self-government.

At the stage of finding the actual circumstances of a committed administrative offense, an official that exercises state forest supervision has the right to apply the following measures to ensure proceedings on a case of an administrative offense under chapter 27 of the CAO RF:

1) delivery (article 27.2);

2) examination of personal things and vehicle, which a physical person has with itself (article 27.7);

3) inspection of premises and territories, as well as of things and documents situated therein, which are owned by a legal entity (article 27.8);

4) inspection of a transport vehicle (article 27.9);

5) seizure of things and documents (article 27.10);

6) assessment of the value of confiscated things and of other valuables(article 27.11);

7) arrest of goods, transport vehicles and other items (article 27.14);

These measures are linked by a common procedural orientation; all of them serve the purpose of obtaining information that can be used as a basis for the conclusion on a case of an administrative offense. Their application is intended to provide administrative process any information of evidential significance; they are means of finding and securing evidences. Application of measures to ensure proceedings on administrative offenses provided for by articles 27.8-27.10, 27.14 of the CAO RF requires witnesses, what causes difficulty at the time of detection an administrative offense in forest.

Let us consider the order of institution of a case on an administrative offense under article 8.26 of the CAO RF "Unauthorized use of forests, improper use of forests for agriculture, destruction of forest resources".

In part 2 "Unauthorized harvesting and collection, as well as the destruction of moss, forest litter and other non-timber forest resources" and part 3 "Placing beehives and apiaries, as well as harvesting of forest resources suitable for human consumption (eatable forest resources) and the collection of medicinal plants in lands where forests are located, in places where it is prohibited or through prohibited methods or devices, or in excess of the prescribed amount or with violation of time terms, as well as the collection, harvesting and selling of these resources in respect of which it is forbidden" of this article provide for the following administrative penalties: administrative fines with confiscation of an instrument of administrative offense and products of illegal exploitation of nature, or without such.

For imposing confiscation of the instruments of committing an administrative offense state forest inspector must gather evidence on the use of instruments of committing an administrative offense and illegally harvested forest products. To gather evidences it is necessary to apply such measures of ensuring proceedings on administrative offences as examination of personal things, which are owned to

a physical person, to prove the use of tools (scythes, "harvester" for picking berries, knives, axes, hives and etc.), if necessary, inspection of transport vehicle of any kind, seizure of objects, which were the instruments of committing or the subjects of an administrative offense, which were found at the place of an administrative offense or when carrying out inspection of things and vehicle of a physical person, seizure of goods and other things, which were the instruments of committing or the subjects of an administrative offense. All these measures are to be carried out in the presence of two witnesses. Where to get two witnesses in forest? This problem is very acute.

State forest inspectors should be given a possibility of applying measures of ensuring proceedings on cases of administrative offences in order to provide comprehensive, complete, objective and timely clarification of all the circumstances of each case. To resolve the current situation in practice we offer to supplement article 27.8 of the CAO RF by part 2.1 to read as follows:

"In exceptional cases of revealing an administrative offense in the forestry fund, inspection of owned by a legal entity or individual entrepreneur premises, territories and located there things and documents may be done in the absence of witnesses, but with mandatory recording them by means of video recording. Materials received in carrying out an inspection with the use of videos should be attached to the corresponding protocol".

Articles 27.9, 27.10, 27.14 of the CAO RF must be supplemented by similar paragraphs.

Among all the control and supervisory powers of state forest inspectors, enshrined in article 96 of the FC RF, interesting are the following ones:

- the right to carry out in prescribed manner inspection of vehicles and detention if necessary (paragraph 9 part 3 article 96 FC RF);
- the right to detain in the woods citizens who violated the requirements of forest legislation, and to deliver these offenders to law enforcement agencies (paragraph 14.1 part 3 article 96 FC RF);
- the right to seizure instruments of offenses, vehicles and related documents of citizens who violate the requirements of forest legislation (paragraph 14.2 part 3 article 96 FC RF);

As can be seen from the study of regulatory sources, the procedure of vehicle detention by state forest inspectors in carrying out control and supervisory activity is not provided in normative acts. In accordance with the norms of the CAO RF, detention of a vehicle and prohibition of its operation as a measure to ensure proceedings on cases of administrative offenses is provided for only for

violations the rules of vehicle operation and driving of vehicle (article 27.13 of the CAO RF). State forest inspectors do not have the right of detention of a vehicle and prohibition of its operation as a measure to ensure proceedings on cases of administrative offenses.

The procedure of seizure of a vehicle from citizens who violate the requirements of forest legislation is also not settled. CAO RF provides for as a measure to ensure proceedings on cases of administrative offenses not "seizure of a vehicle", but "arrest of goods, transport vehicles and other things" (article 27.14).

In this regard, there is a need for harmonization of the norms of the FC RF and CAO RF among themselves in terms of consolidation of measures to ensure proceedings on cases of administrative offenses, such as "delivering" (paragraph 14.1 part 3 article 96 FC RF and article 27.2 CAO RF), "detention of transport vehicle" (paragraph 9 part 3 article 96 FC RF and article 27.13 CAO RF), "arrest of goods, vehicles and other things" (paragraph 14.2 part 3 article 96 FC RF and article 27.14 CAO RF).

At the stage of recording the fact of committing an administrative offense in a procedural document draw up a protocol on administrative offense.

Protocol on an administrative offence is drawn up immediately after identifying the administrative offence. In the event that requires additional clarification of case circumstances or data about an individual or a legal entity, in respect of which proceedings are being initiated, the protocol on administrative offence shall be prepared within two days from the detection of the administrative offense.

Protocol is to be signed by its originator and the person against who proceedings on a case of an administrative offense are being conducted (a representative of a legal entity).

A copy of the protocol is given to an individual in respect of who criminal proceedings on a case of an administrative offense have been initiated, as well to the victim (part 6 article 28.2 CAO RF). It is not clear who is the victim in proceedings on cases of administrative offences in the field of forest use; most likely – it is the owner of a forestry fund.

In accordance with the legislation on the natural resources of the Russian Federation, virtually all natural sites (forestry fund, especially protected natural territories, water bodies, underground resources, animal world) are publicly owned [5, article 4; 3, articles 1-2; 1, article 8; 4, articles 6, 12, 22, 25, 28, 31]. The natural environment and its resources located in the territory of Russia are the heritage of the Russian multinational people. Recognition, respect and protection of rights, including the right to healthy environment (article 42 of the RF Constitution), is

a duty of the State (article 2 of the RF Constitution), and the State must take measures to protect and maintain the environment and represent the interests of the people in cases on administrative offenses provided for in section 8 of the Code on Administrative Offences of the RF.

In our opinion, in proceedings on administrative violations in the field of environmental protection and environmental management, including forests use, the victim is the Russian Federation. Civil Code of the RF recognizes the Russian Federation and its subjects as a subject of civil law, and to it apply norms governing the participation of legal entities in relations regulated by civil legislation (part 2 article 124 of the Civil Code RF). Code on Administrative Offences of the RF does not settle the issue of recognition of the State of the Russian Federation in the role of a victim and who should represent its interests in proceedings on cases of administrative offences in the area of forests use.

In accordance with part 3 article 25.2 of the CAO RF a case of administrative offence should be considered in presence of the victim. In the absence thereof the case may be only considered if there is evidence of the proper notification of the aggrieved party about the place and time of consideration of the case, or if the aggrieved party has not made a petition to postpone consideration of the case, or if such petition has been dismissed.

Protection of the rights and legitimate interests of a legal entity, which is a victim, is carried out by its legal representatives – the head, another person recognized by law or by the constituent documents as the body of the legal entity (article 25.4 CAO RF). It seems that in this case, the legal representative of the victim should be the head of the federal executive body, which exercises control over relevant natural resources, his deputies; heads of departments, their deputies; heads of territorial bodies, their deputies; heads of their departments and their deputies.

As rightly M. I. Maslennikov noted, a single mentioning of a victim in the protocol on administrative offence is not enough, the person concerned must be recognized as the victims by the decision of an official in the form of a ruling or decision [10, 84-90].

For recognition the Russian Federation, which is the owner of the natural sites, including forestry fund, which have been harmed as a result of the commission of offenses, as a victim in proceedings on cases of administrative offences in the field of environmental protection and environmental management, we offer:

Firstly, to supplement article 25.2 of the CAO RF by part 1.1 read as follows:

"1.1. The victim in cases of administrative violations in the field of environmental protection and environmental management is the Russian Federation";

Secondly, to supplement chapter 25 of the CAO RF by article 25.4.1 "Legal representatives of the Russian Federation" read as follows:

"1. Protection of rights and legal interests of the Russian Federation, which is a victim, has to be carried out by its legal representatives.

2. Legal representatives of the Russian Federation, in accordance with this Code, are the leader, as well as another person that is recognized, under the law or provision of a state executive authority of the Russian Federation, its territorial body authorized to implement state function of management, protection and use of appropriate natural sites. The powers of a legal representative of the Russian Federation have to be confirmed by the documents verifying its official position".

As a result of legal recognition the Russian Federation, which is the owner of natural sites, including forestry fund, as a victim in the proceedings on administrative cases in the considered field, decisions taken by relevant officials and judges will become legitimate.

Legal effect of a protocol on administrative offence lies in the fact that it captures the required information, characterizing objective and subjective signs of administrative offence. To it are attached the necessary evidences that prove the fact of committing an administrative offense, which allow officials authorized to consider the protocol on an administrative offence also to take a decision on the case.

In practice, a protocol of administrative offence in the field of forest management is the only procedural document at the stage of case initiation, which is: 1) the act of deciding about the initiation of proceedings on a case and procedural implementation of such decision; 2) the act of determination the actual circumstances of a committed administrative offence; 3) the act of recording the moment of committing an administrative offence; 4) the act that lets to complete the stage of case initiation; 5) the document containing all the necessary information of substantial probative value for consideration the case by a judge, body or official.

The last stage of initiation proceedings on a case of an administrative offence in the field of forest use is the transfer of the case for consideration by jurisdiction to an official authorized to consider the materials of cases on administrative offences in the field of forest use and to take a decision basing on them.

Protocol on administrative offence in the field of forest use shall be sent to an official authorized to consider cases on administrative offences within three days from the moment of drawing up the protocol on administrative violation.

Based on the above analysis of the features of institution proceedings on cases of administrative offences by state forest inspectors in the field of forest use, we can

formulate the following proposals to improve the procedural norms of the current administrative-tort legislation:

1. Enshrine in the CAO RF the right to inspect identification documents of the persons who have committed an administrative offense for officials authorized to draw up a protocol on administrative offence.

2. Harmonize among themselves the norms of the FC RF and CAO RF in terms of consolidation of measures to ensure proceedings on cases of administrative offenses, such as "delivering" (paragraph 14.1 part 3 article 96 FC RF and article 27.2 CAO RF), "detention of transport vehicle" (paragraph 9 part 3 article 96 FC RF and article 27.13 CAO RF), "arrest of goods, vehicles and other things" (paragraph 14.2 part 3 article 96 FC RF and article 27.14 CAO RF).

3. In exceptional cases of revealing an administrative offense in the territory of forestry fund, to provide authorized officials the right to inspect the owned by a legal entity or individual entrepreneur premises, territories and located there things and documents in the absence of witnesses, but with mandatory recording them by means of video recording.

4. Enshrine in the CAO RF the norm that the victim in cases of administrative offences in the field of environmental protection and environmental management, including forest use, is the Russian Federation.

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