

Zinkov E. G.

PECULARITIES OF ADMINISTRATIVE RESPONSIBILITY FOR CERTAIN
TYPES OF ADMINISTRATIVE OFFENCES IN CONDITIONS OF
FORMATION A CONSTITUTIONAL STATE AND ITS LEGAL SPACE IN
RUSSIA

*Zinkov Evgenii
Gennad'evich,
Doctor of philosophy, Professor
of the Department of humani-
tarian and social-economic dis-
ciplines at the North Caucasus
branch of Federal State Budget-
ary Educational Institution of
Higher Professional Education
"Russian Academy of Justice",
Krasnodar.*

In the context of the constitutional provisions on Russia as about a democratic state, the article considers the problematic aspects of citizens' administrative responsibility for violation the procedure of official use of state symbols of the Russian Federation: the State flag of the Russian Federation, the State Emblem of the Russian Federation or the national anthem of the Russian Federation.

Keywords: administrative responsibility, administrative offences, state symbols, Russian State flag, Russian State Emblem, Russian national anthem.

As part of the ongoing scientific analysis devoted to the previously considered topic, humanization and modernization of the Russian justice system, it seems possible today to turn to the peculiarity of administrative responsibility for certain types of administrative offenses as an actual problem. In particular, in this perspective, we see not appropriate exercising of the Federal Constitutional Law No. 2-FCL from 25.12.2000 "On the State Emblem of the Russian Federation". It is caused primarily by the fact that this issue needs for serious scientific analysis, for the reason that the judicial practice of almost all courts of the Russian Federation is replete with decisions that are based on the materials that are of collisional nature. We believe that the enforcement of the Federal Constitutional Law of No. 2-FCL from 25.12.2000 "On the State Emblem of the Russian Federation" [2] contradicts the spirit of the law itself.

To proceed directly to the scientific analysis of the given problem we should address the reader to the historical and legal reference on the State Emblem of the Russian Federation, which talks about the metaphysical-legal meaning of state symbols of Russia in the old days. Appeal to the previously published scientific material gives us an opportunity to re-create in full the essence of the problem of the declared and considered issue. All this is confirmed by the fact that according to the results of an opinion poll of the fund "Public opinion", was found the bent of respondents to the pre-revolutionary perception of meaning of the state symbols of Russia.

Within the framework of the mentioned ongoing All-Russian survey of urban and rural residents in 100 settlements of 44 regions, territories and republics of the Russian Federation, where the statistical error does not exceed 3.6%, 1500 respondents were interviewed in each subject of the Russian Federation. The study was conducted during the period from January 12, 2002 till August 28, 2004, using the survey method - interview at place of residence.

It turned out that the "state emblem is strongly associated with the pre-revolutionary Russia and the revolution ("life under Tsar", "all the tsars of the Romanovs' family, the history of Russia", "autocracy", "February Revolution", "capture of the Zimni", "its (the emblem) overthrow at the time of the revolution of 1917"), [7] as well as the fact that 79% of citizens confidently answered the question "what is depicted on the state emblem of the Russian Federation" [7].

In a scientific article by Mikhail Medvedev "Georgiy Pobedonosets: a holy of icons and hero of a state emblem" on the official website of the Heraldry Council under the President of the Russian Federation said that the name Georgiy means "farmer", and that he deaden a monster by the power of prayer, what conditionally expressed the idea of spiritual victory [5]. When considering the story line we must clearly present the image of the very dragon. Because in one case this is a snake of the underworld Yusha appearing before us depicted as a wingless reptile without legs. Whereas in the other case this is an image that has nothing to do with the previous one, appears before us as a pangolin, which already has legs and wings. And the spear of the rider pokes only the tongue of the pangolin and is not directed to other parts of the body. These differences should be necessarily taken into account in further scientific analysis.

Given the above stated in the text, it can be argued that the citizens of the Russian Federation are not indifferent to this symbol of state power, they are proud of their state emblem, reverently honor it and feel the warmest and the tenderest feelings for it, associating it with personal experiences. However, on this basis between

the State and citizens has occurred a socio-political conflict. Today, this socio-political conflict of the State and citizens has gradually turned into a legal confrontation, generating a legal conflict. Where the legal conflict looks like the problem of selecting the subject of law on the issue of functional features of legal consciousness and interpretation during the process of rights enforcement with taking into account the execution of law-enforcement of repressive or restorative practice in that its part where there rises a question by what to be guided in the first place – by the boundaries of spatial relations or by boundaries of spatial limits of the force of law arising in the public relations of society, and therewith also of the state with its legal system and the system of law in general.

For this reason the solution to the issue of administrative responsibility for non-appropriate exercising of the Federal Constitutional Law № 2-FCL from 25.12.2000 “On the State Emblem of the Russian Federation” is seen not in the area of legal regulation, but in the “degree of social indignation” of citizens, which takes into account the socio-political expression of the will of a subject of law.

In order to confirm or refute this opinion on the matter should be conducted comparative-legal analysis of the parties involved in executive activity on the application of administrative responsibility for violation of the official use of state symbols of the Russian Federation in accordance with article 17.10 of the Code on Administrative Offences of the RF (hereinafter CAO RF).

So, the Heraldry Council under the President of the Russian Federation, approved by the Decree of the President of the Russian Federation no. 856 from 29.06.1999, is concerned about the numerous dissemination of information concerning the use of the State Emblem of the Russian Federation for the personal seals and letterheads by the citizens of the Russian Federation [6].

This concern is being relevant in the part where is an acute problem in respect of officials and legal persons using the state emblem in violation of the official procedure. However, with regards to the citizens who do not apply to these categories of persons, it does not sound uniquely compelling. Due to the fact that in the first section of chapter 1 “The Fundamentals of the Constitutional System” of the Constitution of the Russian Federation [1] in part 1 article 1 is proclaimed that “The Russian Federation – Russia is a democratic federal law-bound State with a republican form of government” and in accordance with part 1 article 3 “The bearer of sovereignty and the only source of power in the Russian Federation shall be its multinational people”, for this reason, citizens of the Russian Federation cannot be treated equally together with officials and legal entities regarding violation of the official procedure for the use of the State Emblem of the Russian Federation.

Since, part 2 article 3 of the Constitution of the Russian Federation tells us that “The people shall exercise their power directly, and also through the bodies of state power and local self-government”. This should include also part 1 article 32 of the Constitution of the Russian Federation, in accordance with which “Citizens of the Russian Federation shall have the right to participate in managing state affairs both directly and through their representatives”. Therefore you should pay attention to the fact that in part 4 article 3 of the Constitution of the Russian Federation stated that “No one may usurp power in the Russian Federation. Seizure of power or usurping state authority shall be prosecuted by federal law”. Also it is well known that article 2 of the Constitution specifies that “Man, its rights and freedoms are the supreme value. The recognition, observance and protection of the rights and freedoms of man and citizen shall be the obligation of the State” [1]. For these reasons, there are no arguments to explicitly raise the issue of bringing to administrative responsibility of citizens of the Russian Federation who do not have the status of an official or legal person under article 17.10 of CAO RF for non-compliance with the Federal Constitutional Law No. 2 from 25.12.2000 – FCL “On the State Emblem of the Russian Federation”.

This should also be added with the fact that constitutional norms in the legal hierarchy occupy the supreme position and federal laws and regulations may not contrary to the Constitution of the Russian Federation. On the basis of this, the courts in legal proceedings must, in the first place, be completely guided by the Constitution of the Russian Federation.

Due to the fact that according to article 18 of the Constitution, rights and freedoms of man and citizen have direct force. As well as define the meaning, content and application of laws, activities of legislative and executive authorities, local self-government and are also provided by the Russian Justice. And in accordance with part 1 article 15 of the Constitution of the Russian Federation, the Constitution has supreme legal force, direct effect and shall be applied throughout the territory of the Russian Federation as an act of direct action.

“Decrees and orders of the President of the Russian Federation as the head of the State shall be applied by the courts when resolving specific court cases, if they do not contradict the Constitution of the Russian Federation and the federal laws (part 3 article 90 of the Constitution of the Russian Federation)” [4].

Therefore, “if in consideration of a particular case the court finds out that an act of state or other body, which is subject to application, does not comply with the law, it by virtue of part 2 article 120 of the Constitution of the Russian Federation must take a decision in accordance with the law governing these legal relations.

Normative acts of any state or other body are subject to evaluation from the point of view of compliance with the law (normative decrees of the President of the Russian Federation, decisions of the Chambers of the Federal Assembly of the Russian Federation, decisions and orders of the Government of the Russian Federation, acts of the bodies of local self-government, orders and regulations of ministries and departments, heads of institutions, enterprises, organizations, etc.).

In the application of the law instead of the non-conforming it to act of state or other authority the court may make a special ruling (decision) and draw the attention of the body or official, who has issued such an act, to the need to bring it into compliance with the law or to cancel ..." [4].

Thus, part 4 article 125 of the Constitution of the Russian Federation ends the list and indicates that "The Constitution Court of the Russian Federation, upon complaints about violations of constitutional rights and freedoms of citizens and upon court requests shall check, according to the rules fixed by the federal law, the constitutionality of a law applied or subject to be applied in a concrete case".

However, the reviewed and analyzed by us normative material is not sufficient for the considered depth of the studied problem. This is indicated by the conclusions on the study of established practice of exercising the president's power to address to the Federal Assembly of the Russian Federation. The sense of which lies in the fact that there are no proper legal regulation of the implementation procedure in implementation of the proclaimed annual presidential messages, what leads to the need for constant search for the best ways and means of implementation of the very message without distorting the political and legal essence of this document.

The question is what to do in this situation? Should we go further on the path of strict regulation and tightening of repressive practices or get away from this kind of activity towards restorative justice approach and refuse to divide the norms of administrative-procedural law in the three completely independent codes, such as: Code of Civil Procedure of the Russian Federation, Arbitration Procedure Code of the Russian Federation and CAO RF, which do not provide in full the required level of protection of the rights of citizens and organizations, including the annual Message of the President of the Russian Federation from the arbitrariness of government agencies?

We think that it will be more correct to take a decision according to which should apply as soon as possible to the code of administrative court proceedings as to the guarantor of part 4 article 3 of the Constitution of the Russian Federation, which States that "No one may usurp power in the Russian Federation. Seizure of power or usurping state authority shall be prosecuted by federal law".

Thus, it is very problematic to state about clear-cut application of article 17.10 “Violation of the procedure of official use of the National Flag of the Russian Federation, the State Emblem of the Russian Federation or the National Anthem of the Russian Federation” of CAO RF [3] to the citizens of the Russian Federation who are not endowed with any powers of authority. And persons vested with powers of authority or not performing the Federal Constitutional Law No. 2-FCL from 25.12.2000 “On State Emblem of the Russian Federation” or any else law should be brought to administrative responsibility up to the suspension from position held.

In conclusion of our scientific article we take the liberty to refer to that part of article 7 of the Federal Constitutional Law No. 2-FCL, which refers to the cases of use of the State Emblem of the Russian Federation that are “defined by the President of the Russian Federation” [2], and on this basis to propose clear setting out of actions of “a silver rider on a silver horse” having a relationship with a “black dragon”, and more accurately pangolin. To coordinate all this with metaphysically-legal content and justifications set out in the draft of official comment of the State Emblem of the Russian Federation.

After that there will be legal basis for the application of administrative responsibility for improper exercising of the Federal Constitutional Law No. 2-FCL from 25.12.2000 “On the State emblem of the Russian Federation”. And until this we will be doomed to an administrative and legal collapse with the elements of political conflict between the State and its citizens.

It should be noted also that composition of an administrative offense and penalties must be clearly defined in the very law on administrative responsibility, thus avoiding the vague definition that takes place in the current Code on Administrative Offences (CAO RF) – in article 17.10 “Violation of the procedure of official use of the National Flag of the Russian Federation, the State Emblem of the Russian Federation or the National Anthem of the Russian Federation”.

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