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Shilyuk T. O.

TOWARDS THE ISSUE OF ADMINISTRATIVE OFFENCES IN HEALTH[1]

Shilyuk Tat'yana Olegovna,
c.j.s. (PhD in law), lecturer in administrative law at Moscow State Legal Academy named after O. E. Kutafin,
aspirantmgya@gmail.com

It is pointed out that articles containing administrative offences in health are scattered in various chapters of the Code on Administrative offences of the RF. The author emphasizes the existence of the problem of distinguishing frivolity from bona fide ignorance in the performance by medical employees their duties.

Here is criticized the list of penalties for administrative violations in the field of health protection and offered its expansion through deprivation of a special right.

Keywords: administrative offences, administrative offence in health, social relations in the field of health protection, subjects of offences in the field of health, administrative penalties.

An administrative offense in health within the meaning of article 2.1. of the Code on Administrative Offences of the RF (hereinafter CAO RF) can be regarded as a unlawful, guilty action or inaction of a physical person or legal entity, for which the law provides for administrative responsibility, infringing on public relations related to the implementation of activities in the field of health. An offence in health has juridical signs, which include wrongfulness, danger to society, guiltiness, punishability.

Chapter 6 CAO RF "Administrative Offences Endangering the Health and Sanitary-and Epidemiological Well-Being of the Population and Endangering Public Morals" enshrined the following compositions of administrative offenses

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encroaching on the health, sanitary and epidemiological welfare of the population and public morals:

- concealment of a source of HIV infection or a venereal disease and of contacts entailing on infection hazard;
- engagement in unlawful private medical practice, or in private pharmaceutical activities, or in folk-medicine (healing);
- violation of the law in the area of securing the sanitary-and-epidemiological well-being of the population
- failure to meet the sanitary-and-epidemiological requirements concerning the use of living quarters and public premises, of buildings and structures, as well as the operation of transport;
- failure to meet the sanitary-and-epidemiological requirements concerning drinking water;
- failure to meet the sanitary-and-epidemiological requirements concerning the organization of public catering;
- failure to meet the sanitary-and-epidemiological requirements concerning leisure and health activities for children, their upbringing and training.

These offences also include offences relating to illegal trafficking and consumption of narcotic drugs, psychotropic substances or their analogues; drawing minors into the consumption of alcoholic drinks, beer or stupefying substances; engagement in prostitution and deriving income from engagement in prostitution, where this income is connected with another person's engagement in prostitution; unlawful advertising of drugs, psychotropic substances, or precursors thereof; violation the rules of turnover of tools or equipment used in the manufacture of narcotic drugs or psychotropic substances; violation of the legislation of the Russian Federation on the protection of children from information harmful to their health and (or) development; violation of the requirements of the legislation on physical culture and sports on the prevention of doping in sport and combating against it.

The objects of the discussed offences are social relations in the field of health care and provision of sanitary-epidemiological welfare of the population, as well as public morals.

Objective aspect is characterized both by an action and inaction. Practice shows that it is an unlawful omission of health workers is the reason of a great part of adverse consequences. In this regard, the Criminal Code of the Russian Federation provides for such offense as failure to provide care to a patient if this has led by negligence to the infliction of moderate bodily injury or death of a patient or to

the infliction of serious harm to health. However, CAO RF does not contain this norm, what is an omission by the legislator.

The subjects of offenses in the field of health, sanitary and epidemiological welfare of the population and public morals are citizens, officials, legal entities as well as individuals engaged in entrepreneurial activities without forming a legal entity. However, in the case of certain offences, for example, violations of sanitary-epidemiological requirements for leisure conditions and health activities of children, their upbringing and training (article 6.7. CAO RF), it can be assumed that the subject will be also the Director of a fostering or educational institution, and part 2 article 6.10. CAO RF identified a special subject – parents or other legal representatives of minors, as well as persons responsible for training and upbringing of minors.

The subjective aspect of administrative offenses encroaching on the health, sanitary and epidemiological welfare of the population and public morals is characterized by guilt both in the form of intent and negligence. For example, concealment by a person, infected by HIV or a venereal disease, of the source of the infection, as well as of those, who have had contacts with the said person and create the risk of infecting these diseases (article 6.1. CAO RF), can only be made intentionally; and, at violation of sanitary-epidemiological requirements for leisure conditions and health activities of children, their upbringing and training (article 6.7. CAO RF) both intent and negligence are possible. The issue of guilt in bringing medical personnel to responsibility is of great importance because of the possibility of "medical error". The very term of "medical error" is not provided for by the current Russian legislation, and it is not recognized as a circumstance precluding legal responsibility. However, in practice, it is not so easy to distinguish the flippancy from bona fide ignorance of medical personnel in the discharge of their duties, that is why health workers themselves must be aware of those legal criteria for qualifying of a particular action or inaction as guilty.

Analysis of the legislation on administrative offenses has also identified the following problem: articles containing compositions of administrative violations in the field of health are scattered in various chapters of CAO RF. So, despite the fact that a special chapter is chapter 6 CAO RF "Administrative Offences Endangering the Health and Sanitary-and Epidemiological Well-Being of the Population and Endangering Public Morals", the mentioned offences also can be found in other chapters. A striking example is article 13.14. "Disclosing Information of Limited Accessibility", where the legislator has equated the responsibility for the disclosure of medical secrets to responsibility for the disclosure of limited access information.

The complexity of combining these offences in one chapter is due to the complexity of their object, however, the creation at the federal level of an independent chapter with administrative offenses, which encroach upon the relations in health, seems to be possible.

That is why it is needed to raise one more problem – correlation of rule-making competence in the field of legislation on administrative offences of the Russian Federation and the subjects of the Russian Federation in the field of health care. Review of the legislation on administrative offences of the subjects of the Russian Federation has led to the conclusion that the regions are actively involved in the process of establishing of administrative responsibility, including in the area of health care. Almost all the regions have already adopted either their own codes (for example, the Code of the City of Moscow on Administrative Offences No. 45 from November 21, 2007) or separate laws (such as the Law of the Ryazan region No. 182-RL from December 04, 2008 "On Administrative Offences").

However, the practice of regulation of administrative responsibility formed in the regions of the Russian Federation cannot help but causes a critical assessment, since the trends of regional rule-making activity indicate the establishment of administrative responsibility in the regions of the Russian Federation in most cases for violations of federal norms and regulations, and as a consequence, their non-compliance with the requirements of article 1.3. CAO RF on the delineation of competence [4, 34]. This trend has also appeared in the field of health. An example is article 11.9 of the Law of the Oryol region No. 304-RL from February 04, 2003 "On Responsibility for Administrative Offences" [3] – "Toleration to the Consumption of Narcotic Drugs or Psychotropic Substances", the literal interpretation of which means "allowing of non-medical consumption of narcotic drugs or psychotropic substances by citizens in premises of cafes, bars, restaurants, discos and other entertainment establishments from the side of their proprietors or owners". Given that the legislation on narcotic drugs, psychotropic substances and their precursors consists only from federal laws and any matters arising in the course of their turnover may be regulated solely at the federal level, it can be said that the subjects of the Russian Federation have not the right to impose administrative responsibility for offenses in the field of turnover of narcotic drugs and psychotropic substances, and the only legally established administrative responsibility for such violations should recognize the responsibility envisaged by CAO RF [2].

Separately, it is also should be noted that the subjects of the Russian Federation also do not have the right to establish administrative responsibility for violation of the rules and restrictions enshrined by the federal laws in cases where CAO

RF does not envisage responsibility for their non-compliance, that fact has drawn the attention of the Constitutional Court of the Russian Federation [1]. As noted by M. S. Studenikina, it "would open a limitless ability to discrete powers of constituent entities of the Russian Federation to "correct" the federal legislation at their discretion" [6, 542].

We have to agree with the statement of B. V. Rossinskii that the subjects of the Russian Federation do not need to have their own laws on administrative responsibility, because it is difficult to find a "regional specificity" in this field of public relations [5, 25].

It seems that federal legislation can solve this problem of mismatch in regional laws on administrative offenses through the establishment of administrative responsibility in the field of health only at the federal level, what would guarantee the fulfillment of the main objective of the legislation on administrative offenses – protection of the rights and legitimate interests of citizens, including in the considered sphere.

Finally, attention should be also paid to the penalties for committing administrative offences in the field of health, sanitary and epidemiological welfare of the population and public morals. In accordance with the general objectives of administrative punishment (article 3.1.), the aim of an administrative penalty in the considered area is to prevent the commission of further offenses by both the offender and other persons. Warning, administrative fine, administrative detention, administrative suspension of activities are provided for as the sanctions for these offences.

However, such a list of punishments for committing administrative offences in the area of health is not optimal. It seems appropriate as an additional punishment to establish deprivation of a special right, what will suit the content of an appropriate offense and become an effective measure of responsibility. According to CAO RF, its essence is that for a certain period a person is forbidden to use a right that has been previously given to it. This type of punishment may be imposed only by a judge for a term of one month to three years. Deprivation of a special right may be established for such an offense as illegal engagement in private medical practice, private pharmaceutical activity or folk medicine (healing), for the commission of which currently provide for an administrative fine.

We emphasize that the Criminal Code provides for the imposing of such punishment as deprivation of the right to occupy certain positions or engage in certain activities for the following offenses: compulsion to remove human organs or tissues for transplantation; infection with HIV because of improper performance of professional duties; illegal performance of abortions if it has entailed, by negligence,

the death of victim or the infliction of grave injury to her health; failure to render aid to a sick person if this has entailed, by negligence, the death of the person or the infliction of grave injury to its health. When these crimes occur, deprivation of the right to occupy certain positions or engage in certain activities is imposed as an additional penalty upon the occurrence of an appropriate nature of the consequences. Negative factor is that criminal responsibility as the most austere kind of legal responsibility is the most effective, in fact, the only truly frightening factor. To change this situation we should strengthen administrative responsibility established for deeds containing a lesser degree of danger to society than crime. This will allow, already on the stage of committing an administrative offence, prevention of the development of a situation that may lead to more grave consequences.

In summary, we can state the following:

Despite the presence in the Special Part of CAO RF of a special chapter that establish responsibility for offenses in the field of health, sanitary and epidemiological welfare of the population and public morals, it does not include a complete list of such offenses that have been reflected in the other chapters of the Code on Administrative Offences of the Russian Federation. At that, such responsibility should be established only at the federal level, since administrative responsibility is always associated with the intrusion into the sphere of private life of citizens and assumes restriction of their rights and freedoms. And, taking into account article 55 of the Constitution of the Russian Federation, which establishes that the rights and freedoms of man and citizen may be limited by the federal law only to such an extent, to which it is necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defense of the country and security of the State, the statement on the need for solely federal legislative regulation of the institute of administrative responsibility cannot be called an exaggeration.

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