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PROBLEMS OF FORMATION THE INSTITUTE OF ADMINISTRATIVE RESPONSIBILITY OF PUBLIC CIVIL SERVANTS

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The aspects related to the "diligence" of the Russian legislature in the issue of normative enshrining of administrative responsibility of public civil servants are considered in the article. The author alleges the lack of legal problems for formation the institute of administrative responsibility of public civil servants.

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The existing institute of public civil service has long defined the main subject of legal relations arising both within public civil service and in public administration of the life of Russian society – an official of public civil service or otherwise – public civil servant. Administrative law, in our opinion, clearly enough outlines the administrative and legal status of this subject of legal relations. However, in part of legal responsibility, public civil servant, as a subject of administrative responsibility, is literally "squeezed" by the legislator into the category of official, which is much broader in relation to public civil servant [4]. This, in our opinion, is not only unjustified, but inflicts certain damage to legal science and real public relations, since the degree of responsibility of different subjects, which are combined by

the legislator into the category of official, should be differentiated depending on the occupied status of a real subject enclosed in this category. Timely reaction to the dynamics of social processes, complexity and specificity of legal relations, enormity of the tasks, which are carried out by the State, must find expression in the relevant legislative work, rather than in "cosmetic" solutions, such as expansion the range of real subjects of responsibility of the category of official in order to address the issues of bringing to administrative responsibility of both collective and individual subjects of law, both public and private subjects. Legislator's attempt to solve the issues of administrative responsibility of public civil servants within the framework of the sub-institute of administrative responsibility of official will not lead to anything good.

It is no secret that the changes taking place in society life entail structural conversions in the whole system of the Russian law. And previously said assertion of E. A. Kirimova [5, 149] about the processes of breaking firm views, stereotypes, and approaches to solving social problems, which take place in law, is quite relevant at the present time. It seems to us, it's time to reassess the goals and objectives of administrative responsibility, establish a new classification of its subjects, with the transfer of emphasis in administrative-tort legislation to the responsibility of public figures. For any unlawful actions, which violate the rights and freedoms of citizens and are committed by public civil servants, these employees should be brought not only to disciplinary, but also criminal, and as a mitigated option administrative responsibility. And, as we believe, the mechanism of responsibility shall be such that any citizen whose interests have been violated could initiate prosecution of an official. Administrative responsibility of public civil servants should have their tasks: the protection of public relations, which are formed during the execution of powers of public authorities, from unlawful, contrary to the public interest conduct of public civil servants; the creation of a mechanism guaranteeing the observance of rights of citizens; education of public civil servants in the spirit of compliance with the legislation, subordinate acts and regulations and thus prevention of administrative offenses. The shift of emphasis from criminal to administrative responsibility shall contribute to the prevention of more serious offences by public civil servants.

Stating the importance of establishing the institution of administrative responsibility of public civil servants, we understand that new legal institutes are not allocated artificially and objectively formed, and this objectiveness has already taken place in the Russian reality. Existing legislation already contains some constituting harmonious groups and legal norms, which subordinate to the internal patterns of administrative law, regarding the subject of administrative responsibility –

public civil servant. Therefore, all that is left to do by the legislator is to fill the subjective factor with certain content, forming a specific legal institute, choosing ways of regulating the selected public relations.

Realizing that legal norm is not only a product of socio-economic conditions of Russian society, but also the result of conscious human activity, dependence of law as a phenomenon from the subject acts as the criterion of subjectivity. Hence the answer to the question – why is the legislator not always aware of the needs of social development, and why does not it adequately reflect these needs in law norms – it stays, we believe, just partly on the legal plane. The facts of adoption the normative legal acts, which insufficiently meet the objective needs of social development and, ultimately, cause their rejection in society, may well be a consequence of the expressing of certain interests of the legislator, which develop from the personal motives of the members of deputy corps and persons engaged in the preparation of draft laws.

Realizing how important the meaning of ***will*** and ***legal thinking*** of the legislator that are expressed in legal drafting methodology and legal method, which enshrines through law norms, in means and ways of regulation of these or those social relations, we do not cease to be wondered about the fragmented regulation of adopted laws in the field of public relations. After carrying out analysis of the legislation on juridical responsibility of public civil servants, we can identify "craving" of the legislator for disciplinary and criminal responsibility and, one might say, ignoring of administrative responsibility.

Recognizing the powerful impact of the institute of administrative responsibility on the management of economic processes, regulation of economic units activity, the refusal of the legislator from using the full power of this institute in the field of public administration and public civil service looks strange, especially given the huge number of subjects of law – public civil servants and the number of daily taking place legal relations with participation of public civil servants.

Public relations between public civil servants and other subjects of law are objectively formed, but the way, in which they are formed, largely depends on the subjective factor – the degree of awareness by the legislator of the need for (limits and quality) of their legal regulation, compliance with and protection of the interests and rights of both public civil servants and private subjects of law, which undoubtedly must be reflected in law norms.

There is no doubt that the process of the formation of legal institutes is quite lengthy, it has many aspects and goes through trial and error. However, we do not agree with such situation, when in the presence of the sufficiently developed

institute of public civil service, in the presence of the special subject of administrative law – public civil servant, administrative-legal status of which is sufficiently defined in the framework of one branch, the legislator "loses interest" to the regulation in the same branch of law of juridical responsibility of public civil servant for service administrative offenses.

Problems with the formation of the institute of administrative responsibility of public civil servants lie, in our opinion, in the norms-definitions of this institute, including ones determining public civil servant as a subject of administrative responsibility (otherwise the legislator would not expand the concept of official in the Code on Administrative Offences of the RF (hereinafter CAO RF)[1]).

We believe that the goal of the institute of administrative responsibility of public civil servants should be defined by the necessity of government coercion to those employees, whose needs are in contradiction with the norms that ensure normal functioning of public civil service, society and the State. The law enforcement essence of the considered by us institute of administrative responsibility of public civil servants should be manifested in the fact that the legislator enshrines protective legal prescriptions in the institutional form, and in case of violation the requirements of a particular article (committing of a particular administrative offense) a whole relevant law enforcement institute comes into action.

Unfortunately, the current law of the Russian Federation actually establishes immunity not only of public civil servants, but also employees of all public organizations from claims of citizens, in relation to which they have committed illegal, inexpedient actions. As pointed out by Professor D. N. Bakhrakh, "The maximum that victims can make is to achieve cancellation of the illegal act. Citizens neither have the right to bring to responsibility, nor even to raise the question about the possibility of bringing a civil servant to criminal or administrative or disciplinary or material or civil responsibility. This servant may be brought to any of these types of juridical responsibility only by another servant. And citizen has the right only to submit administrative complaints against the impunity of those who have violated its rights" [2].

The current administrative legislation rarely involves participation of interested persons (citizens and representatives of legal persons) in proceedings on cases concerning administrative offences of public civil servants. Bodies of administrative jurisdiction in general negatively treat towards citizens' participation in administrative prosecution of guilty officials of public civil service. And only the status of victim allows private subjects of law to participate in the proceedings on the cases of administrative offences of public civil servants.

The main reason of the imperfection of administrative-tort legislation we see in the lack of will of legislative bodies to cancel their own legal immunity, and that civil society is not much resented, they preserve exception of administrative responsibility for other categories of public servants.

In our view, the problems of formation the institute of administrative responsibility of public civil servants lay in the plane of the mental perception of deputy corps the responsibility of public persons as an occasionally permissible exception in massively applied administrative responsibility of individuals. Russian legislator simply does not accept "seditious" thought about the possibility of administrative responsibility for service offences of public civil servants in addition to disciplinary responsibility, and here it has the support of some legal scholars, who erect disciplinary responsibility in the absolute of countering service torts.

It seems to us, that the limiting factor of development the institute of administrative responsibility of public civil servants is also reluctance to allow uncontrolled, from the part of administrative authorities, combat of individuals against corruption manifestations of public civil servants at the framework of courts of general jurisdiction that exercise judicial control over the lawfulness of activities of executive authorities and their officials. Legislator seems to have forgotten that administrative responsibility allows not to expand criminal repressions, and to provide the ability to apply non-departmental order of bringing to responsibility with simplified (compared to the criminal process) proceedings, but with the procedural guarantees for public civil servant.

Analysis of the current administrative delinquency allows noting of the lack of adequacy of the state response to its magnitude, type of object composition, integration with crime. Despite the fact that in program documents of the top political leadership of the country the public civil service has been sharply criticized for its inefficiency, bureaucracy and corruption, closed nature, inability to engage in dialogue with civil society, solution of the problem does not go further than criticism and elaboration of general directions to fight with these shortcomings. As we see it, this situation is affected by the fear of getting reverse effect from management impact on corruption manifestations.

For decades it is defined, that harm inflicted on an individual or a legal entity as a result of unlawful actions (inaction) of state and local self-government bodies or of their officials, including as a result of the issuance of an act of a state or self-government body inconsistent with the law or any other legal act, shall be subject to redress at the expense of the state treasury of the Russian Federation, the respective subject of the Russian Federation or the respective municipal body (article 1069 of

the Civil Code of the RF). And though compensation by the state for harm inflicted by unlawful actions (or inaction) of public authorities, local self-government bodies and their officials does not eliminate the obligation of the latter to bear legal responsibility in accordance with a sectorial legislation, civil society knows few examples of bringing guilty officials to responsibility.

In our view, regardless of the occupied status of a person, who has committed a violation of the order established by the state power, must undergo some deprivations and restrictions.

Today there is no doubt in the scientific community about the need for introduction the institute of administrative responsibility of public civil servants. All the problems of consolidating the administrative responsibility in CAO RF [1], in our view, are due to the lack of any approaches of the Russian legislator (as well as agencies with law-making initiative) to the determination of a generic object of administrative offence of public civil servant, as well as specific compositions of administrative offences. However, in the CIS countries, the legislator has long determined the compositions of administrative offences of officials of public administration bodies [3].

Despite the fact that administrative offences of public civil servants can be of formal and material compositions, in order to already protect civil servants from abusing the rights of other persons initiating prosecution for violations, we consider it necessary to establish standards of responsibility for torts that have not only material compositions, but also for violation of the prohibitions and prescriptions formalized by federal laws. The fact of offense, without reference to adverse consequences, in our opinion, should not be in all cases sufficient to bring public civil servant to administrative responsibility. Perhaps the mentioned by us circumstances are perceived by the legislator as a hidden potential of individuals' counteraction to the realization of the legitimate powers of executive power, which is also a constraining factor to institutionalization of administrative responsibility of public civil servants.

However, as we see it, administrative responsibility of public civil servants is predetermined by the need for introducing non-departmental mechanism of officials' personal responsibility in case of violation of the law, delaying cases, errors, which cost money and nerves to the managed by them subjects of legal relations. It is also necessary to bring administrative legislation in line with the requirements of personal administrative responsibility of public civil servants for their decisions that have resulted in harm to interested persons and the state. Examples of this kind of harm are numerous and obvious.

Impossibility of drawing up a compact and capacious definition of administrative responsibility satisfying all interested persons should be accepted as inevitable, since , first, the wealth of the Russian language that describes one and the same phenomenon in different words, and secondly, because the subjective perception of administrative responsibility by scientists is associated with the presence among the researchers of this type of juridical responsibility of their view points on administrative responsibility , and each of the researchers notes in the definition of administrative responsibility those of its properties that it considers major. As we see it, only a deeply-rooted statutory definition after a long period of time will be able to reduce the intensity of disputes regarding the question of whose definition does more accurately describe administrative responsibility. However, in our opinion, the proposed definition of administrative responsibility would allow the legislator to remove uncertainty about the formation of the institute of administrative responsibility of civil servants, overcoming problems through the normative determination of the degree of negative attitude of the state to the wrongful conduct of participants of public-law relations:

Administrative responsibility is a socio-legal category that characterizes a certain degree of negative attitude of the state to the wrongful conduct of participants of public-law relations, which is expressed in the imposition towards an offender of enshrined by special law sanctions applied in the prescribed manner by authorized bodies and officials in order to protect public relations in the sphere of public administration and punish the offender.

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