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ABOUT SOME ISSUES OF ADMINISTRATIVE RESPONSIBILITY FOR CONSUMPTION (DRINKING) OF ETHYL ALCOHOL, ALCOHOLIC AND ALCOHOL-CONTAINING PRODUCTS IN PUBLIC PLACES: ESSENCE AND REASONS

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Accent is given to the problems of legal regulation of the consumption of beer and beverages made from it. The author gives a critical retrospective analysis of the law norms that provide for administrative responsibility for the consumption of ethyl alcohol, alcoholic and alcohol containing products, identifies problems of enforcement and proposes a solution to these problems.

Keywords: administrative fine, latency, administrative punishments, proceeding on cases of administrative offences, alcoholic production, administrative responsibility.

Consumption (drinking) of alcoholic beverages in public places has a negative impact on law and order in the country, as well as undermines the spiritual and moral foundations of society. Not surprisingly that the rules of conduct in public places provide for a ban on consumption (drinking) of these products while in such places under threat of imposition of administrative sanctions.

Given these circumstances, as well as a high level of administrative offenses associated with the consumption of alcoholic beverages in public places, study of the issue of administrative responsibility for consumption (drinking) alcoholic beverages in these places and its causes now becomes especially important.

Understanding of the essence of the problem and its causes implies a detailed analysis of the changes in the Russian legislation, which have been taken in recent years to improve the legal basis for restricting consumption (drinking) of alcoholic beverages in the country. After all, often the problem is due to the errors and omissions committed in the development of normative legal acts.

Already in the analysis of the Russian legislation our attention is drawn by the fact that initially the regulatory issues and establishment of legal responsibility for the consumption of alcoholic beverages in public places were regulated by the Code on Administrative Offences of the RF (hereinafter CAO RF). At that, the given normative legal act provided for administrative responsibility only for drinking alcohol and alcohol-containing products. Meanwhile, beer and drinks that are based on it (hereinafter - beer) were not attributed to any of the listed products.

Lack of legal influence measures that could be applied to persons drinking beer in public places has contributed to a massive shift of citizens to consumption of the said beverage. As a result of the state of law and order in the country, as well as the level of society morality deteriorated.

Deterioration of situation concerning consumption of alcoholic beverages among the Russian population, especially mass addiction of minors and youth to consume beer, could not stay out of attention from the state.

Federal Law No. 11-FL "On the Limitations of Retail Sale and Consumption (drinking) Beer and Beverages Manufactured on its Base" was adopted March 07, 2005 (hereinafter referred to as the Federal Law No. 11-FL from March 07, 2005) [7]. This Federal Law become the first normative legal act in the history of our country, which imposed a ban on consumption (drinking) beer in public places, and demonstrated the change in government policy towards solving the problems associated with excessive consumption of alcoholic beverages by population of the country, and not the removal from it.

However, despite the importance of the adoption of the Federal Law No. 11-FL from March 07, 2005, the latter not only failed to improve the situation, associated with the consumption of beer, particularly by minors, but also entailed difficulties in the implementation of its legal enforcement.

Firstly, initially the legislator had not provided for amendments in CAO RF in respect of the adoption of the Federal Law. This led to the fact that nearly a year persons, who violated the prohibitions established by the Federal Law No. 11-FL from March 07, 2005, remained unpunished.

Secondly, the Federal Law No. 11-FL from March 07, 2005 provided for a very limited list of public places where consumption (drinking) of beer was not allowed.

These are:

1) children's, educational and medical organizations;

2) all types of public transport (transport of common use) of urban and suburban communication;

3) organizations of culture (except for organizations or places of public catering situated therein, including without formation of a juridical person), physical-training-and-health-improving and sports facilities.

Noted circumstances led to the situation when changes concerning introduction of administrative responsibility for drinking beer in public places, which were added in CAO RF at the end of 2005 [4], proved to be quite controversial and ambiguous.

In particular, article 20.20 of CAO RF, in its original wording, prior to the adoption of the Federal Law No. 156 from December 05, 2005 "On Amendments to the Code on Administrative Offences of the Russian Federation" consisted of two parts. Each of the parts of the said article established administrative responsibility for consumption in public places of a particular type of psychoactive substance (alcohol or alcohol-containing products or narcotic drug or psychotropic substance). At that, part 1 of article 20.20 of CAO RF provided for administrative responsibility for drinking alcohol and alcohol products, regardless the amount of volume of ethanol content in the volume of finished product on the streets, stadiums, squares, parks, in public transport, other public places.

After adoption of the Federal Law No. 156 from December 05, "On Amendments to the Code on Administrative Offences of the Russian Federation" article 20.20 of CAO RF became consist of three parts, two of which established administrative responsibility for consumption (drinking) alcoholic beverages in public places.

So, part 1 article 20.20 of CAO RF began to provide for administrative responsibility for drinking of beer and drinks manufactured on its base and also of alcoholic and spirituous products containing ethyl alcohol less than 12 per cent of the volume of finished products at children's, educational and medical organizations, on all types of public transport (transport of common use) of urban and suburban communication, at organizations of culture (except for organizations or places of public catering situated therein, including without formation of a juridical person), physical-training-and-health-improving and sports facilities.

Part 2 article 20.20 of CAO RF – for drinking of alcoholic and spirituous products containing ethyl alcohol 12 or more per cent of the volume of finished products in streets, at stadiums, in public gardens, parks, in a transport vehicle of common

use, at other public places (including those indicated in part 1 of this article), except for organizations of trade and public catering in which it is permitted to sell alcoholic products for consumption on the premises.

As you can see, the legislator differentiated administrative responsibility for consumption (drinking) of alcoholic beverages depending on the percentage of ethyl alcohol in the total volume of the finished alcoholic drink, which was consumed by an administrative delinquent, and on the place of its consumption.

Article 20.22 of CAO RF was an exception, which, as before, after making amendments became to provide for the responsibility of parents and other legal representatives for drinking alcoholic beverages and alcohol-containing products regardless of their kind in any public places by minors who had not attained the age of sixteen.

Such an approach of the legislator to the design of legal norms establishing administrative responsibility for consumption (drinking) of alcoholic beverages in public places has led to additional complications in their application by employees of internal affairs bodies.

First, by virtue of article 1.5 of CAO RF the obligation to prove person's guilt of an incriminated administrative offence, as well as the existence of the very fact of offence, is responsibility of the body, official, which is carrying out administrative and jurisdictional proceedings [3]. In this regard, the indication in dispositions of parts 1and 2 article 20.20 of CAO RF of ethyl alcohol percentage in finished alcohol and alcohol-containing products resulted in the situation when employee of internal affairs bodies, who had revealed a wrongful deed, in which were seen signs of administrative offence, for correct offence classification was obliged to determine not only the type of alcoholic beverage and alcohol-containing products, but also the volume of ethyl alcohol in these products.

Legislator did not pay attention to the way in which these circumstances must be proven (an examination, visual inspection of labels of alcoholic beverage or other), and which procedural actions for collection, fixation of evidence should be taken (for example, whether it was enough of witness survey with indicating in the explaining of what bottle administrative delinquent was holding, what ethyl alcohol percentage of an alcoholic beverage was indicated on the label or it was needed to seizure and transfer the alcoholic beverage bottle for examination to determine the content and so on).

Drawing attention to these circumstances is not accidental. If we analyze the sanctions of part 1 and 2 article 20.20 of CAO RF in the current edition, we can see that the consumption of alcohol and alcohol-containing products with alcohol

content of 12% or more of the volume of the finished product in the public places entails a more increased administrative responsibility, that is, an administrative fine ranging from 500 to 700 rubles against the administrative fine of 100 to 300 rubles for the consumption of alcoholic beverages and alcohol-containing products containing ethyl alcohol less than 12 % of the volume of the finished product.

In connection with this, in law-enforcement practice of internal affairs bodies could take place a situation where an administrative delinquent required examination of an alcoholic beverage or alcohol products to determine the percentage of ethanol in the product or subsequently appealed against the decision on imposition in respect of it of an administrative punishment.

This was especially true in cases where the label of an alcoholic beverage or alcohol-containing products indicated that the ethanol content is 11.95 or 12.01% of the volume of the product. It's no secret that the content of ethanol in the finished alcohol or alcohol-containing products can fluctuate up or down. As a result, the actions of persons could appear as the composition of an administrative offense under either the first part or the second part of article 20.20 of CAO RF, as well as the absence of the event of administrative offense.

An example of this is the situation with administrative offences under article 12.8 of CAO RF (Driving a Transport Vehicle by a Driver in a State of Alcoholic Intoxication, or Allowing a Person in a State of Alcoholic Intoxication to Drive a Transport Vehicle), where the existence of absolute ethanol in expiratory air or biological matrix is of especial importance [3].

So, the excess of the benchmark of the presence of absolute ethanol in expiratory air or biological matrix by 0.01 constitutes an administrative offense under article 12.8 of CAO RF and for an administrative delinquent may result in very serious legal consequences – depending on the situation – imposition of an administrative penalty of driving license suspension for a period of from 1.5 to 3 years with imposition of an administrative fine or administrative detention up to 15 days.

However, it should be noted that the procedure for the determination of a state of intoxication, as opposed to the determination of the amount of the volume of ethyl alcohol in alcoholic beverages or alcohol-containing products, has quite a clear legal regulation, including by technical means.

Obviously, such a technical-legal step of the legislator created the conditions for evasion of administrative responsibility by administrative delinquent. Because, if in case of considering complaint of administrative delinquent against the decision on imposition of an administrative penalty the judge, authorized

body or official came to the conclusion that body, official had not collected sufficient evidence, it could lead to cancellation of the decision.

This is directly indicated in paragraph 3 part 1 article 30.7 of CAO RF, in accordance with which, upon consideration of appeal against the decision on a case concerning administrative offense, an authorized person may decide to cancel the decision and to terminate the proceedings on the case, including unproven circumstances on the basis of which the decision had been taken.

Second, legal establishment of the Federal Law No. 11-FL from March 07, 2005 prohibiting the consumption of beer by minors, regardless of their age, in any public places [3, part 1 of article 3], remained beyond the attention of the legislator.

One glance at these legal provisions is enough to see that a complete ban on the consumption of beer in all public places was established only in relation to minors under the age of sixteen, article 20.22 of CAO RF.

For the remaining minors (aged 16-17 years) this ban was just partially realized. At that, this affected not only beer, but also alcoholic and alcohol-containing products – part 1 article 20.20 of CAO RF.

As we have already noted, the Federal Law No. 11-FL from March 07, 2005 stipulated a very limited list of places where beer consumption was not allowed, precisely this was reflected in the disposition of part 1 article. 20.20 of CAO RF. The latter led to the fact that minors between 16-17 years can quietly drink beer, as well as alcohol and alcohol-containing products containing ethyl alcohol less than 12 per cent of the finished product in any place not-specified in the disposition of this legal norm.

All this actually brought to nought the purposes of the Federal Law No. 11-FL from March 07, 2005 – protection of health and morals of people, first of all minors, and did not contributed to the improvement of law and order in public places.

The considered circumstances were not taken into account in the further modernization of legal norms aimed to regulation relations in the sphere of turnover and consumption of alcoholic beverages and alcohol-containing products.

So, July 18, 2011, was adopted the Federal Law No. 218-FL "On Amending the Federal Law "On State Regulation of Production and Turnover of Ethyl Alcohol and Alcohol-containing Products" and some Legislative Acts of the Russian Federation and Annulment of the Federal Law "On the Limitations of Retail Sales and Consumption (drinking) of Beer and Drinks Manufactured on its Base" (hereinafter – Federal Law No. 218-FL from July 18, 2011) [6]. After adoption of this Federal Law the Federal Law No. 171-FL from November 22, 1995 "On State Regulation of Production and Turnover of Ethyl Alcohol, Alcoholic and Alcohol-containing Products

and on Limitations of Consumption (drinking) of Alcoholic Products (hereinafter – Federal Law No. 171-FL from November 22, 1995) became the basic normative legal act establishing requirements for retail sales and limitation of consumption (drinking) of alcoholic products [6, paragraph 3 article 1, paragraph 1 article 4].

Federal Law No. 218-FL introduced significant amendments in the Federal Law No. 171-FL from November 22, 1995.

First, defined the requirements for retail sales and consumption (drinking) of alcohol products. In particular , enshrined a ban on consumption (drinking) of alcohol products in places such as: courtyards, porches, staircase landings, elevators of dwelling houses, children's playgrounds, recreational zones (within the boundaries of the territories occupied by urban forests, squares, parks, public gardens, ponds, lakes, reservoirs, beaches, within the boundaries of other areas used and intended for recreation, tourism, physical culture and sports), stopping points of all types of public transport (transport of common use) of urban and suburban communication (including stations of metro), gas stations, wholesale and retail markets, railway stations, airports, and other places of mass gathering of citizens, locations of sources of increased danger and territories adjacent thereto, non-stationary objects of trade [6, paragraph 3 article 1, paragraph 1, article 4].

Secondly, in July 01, 2012 equated beer and beverages manufactured on its base to alcoholic products, as a result of which the list of places where not allowed the consumption of this product was expanded.

At that, however, no changes had occurred in the articles 20.20-20.22 of CAO RF in connection with noted innovations in administrative legislation, as a result of which the aforementioned legal norms came into conflict with the requirements of the Federal Law No. 171-FL from November 22, 1995. For example, in the title of articles 20.20 and 20.22 of CAO RF the words "beer and beverages manufactured on its base" are used equally with the words "alcohol products", and part 1 of article 20.20 of CAO RF still provides for strictly defined list of places where not allowed consumption of beer and beverages manufactured on its base, which is much narrower than the list of places where prohibited consumption (drinking) of any alcohol products and that got enshrined in the Federal Law No. 171-FL from November 22, 1995.

Thus, as in the case of adoption the Federal Law No. 11-FL from March 07, 2005, situation repeated as when while the development of a new legal establishment the issue of determining the measures of legal responsibility in case of their violation was not considered.

Currently, in the State Duma in the third reading stays the draft Federal Law № 129690-6 "On Amendments to Certain Legislative Acts of the Russian Federation in Connection with the Enhancement of Criminal and Administrative Responsibility for Violations in the Sphere of Production and Turnover of Ethyl Alcohol and Alcohol Products" [10], which two and a half years since the adoption of the Federal Law No. 218-FL from July 18, 2011 provides for amendments to article 20.20 and 20.22 of CAO RF. However, the changes proposed by the legislator just partially solve the problems in establishing administrative responsibility for the consumption of alcoholic beverages in public places and are not without drawbacks.

When analyzing the mentioned draft our attention is drawn to the change in construction of articles 20.20 and 20.22 of CAO RF.

So, the title of article 20.20 of CAO RF is set out in the following form: "Consumption (drinking) of Alcoholic Products in Prohibited Places or Consumption of Narcotic Drugs or Psychotropic Substances in Public Places".

Accordingly, parts 1 and 2 article 20.20 of CAO RF are read as follows:

"1. Consumption (drinking) of alcoholic products in places prohibited by federal law, –

shall entail the imposition of an administrative fine in the amount of from five hundred to one thousand five hundred rubles.

2. Consumption drugs and psychotropic substances without doctor's orders or consumption other stupefying substances in streets, stadiums, in public gardens, parks, in a public transport vehicle and in other public places, –

shall entail the imposition of an administrative fine in the amount of from four thousand to five thousand rubles or administrative detention for up to 15 days."

It is easy to see, first, that part 1 of article 20.20 of CAO RF does not provide for administrative responsibility for the consumption of ethyl alcohol and alcohol-containing products.

Secondly, the legislator instead of the term of "public place", as in the case of establishment of administrative responsibility for the consumption of narcotic drugs and psychotropic substances, in relation to the establishment of administrative responsibility for the consumption of alcoholic products uses a combination of the words "places prohibited by federal law".

The question arises: what is the difference between a public place and place prohibited by federal law?

To answer this let's refer to article 16 of the Federal Law No. 171-FL from November 22, 1995, namely to paragraph 3 of the article, which states: "Consumption

(drinking) of alcoholic products is not allowed in places specified in sub-paragraphs 2-7 paragraph 2 of this article, and in other public places, including in courtyards, in porches..." [2]. On the basis of a systemic interpretation of this legal establishment, a place prohibited by federal law – is a public place.

The legislator, thus, did not solve the problem associated with the definition of the concept of "public place", since this term is also used in the Federal Law No. 171-FL from November 22, 1995 without disclosing its essence [2].

Such technical-legal step of the legislator leads to complication of activity of enforcer during countering administrative offenses in the sphere of public order, because in the same place a deed of a citizen may be deemed illegal, and may be not. For example, consumption (drinking) by citizen of alcoholic product in a certain place can be qualified under part 1 article 20.20 of CAO RF, since it is mentioned in the list of places prohibited by federal law, and actions such as swearing or appearance in a state of intoxication cannot.

Third, the sizes of administrative fine for administrative offenses under both article 20.20 and article 20.21-20.22 of CAO RF have been substantially increased.

This approach of the legislator to solving the problem of alcohol consumption and committing of administrative offences in public places is far from perfect.

If you look at the actual execution of administrative punishment in the form of an administrative fine in cases of administrative offences, for example, under article 20.20 of CAO RF, your attention will be drawn by their rare imposition. So, imposition of administrative fines imposed by officials of internal affairs bodies under this category of cases in 2008 was 36.55% (219.227.000 rubles), in 2009 – 35.71% (235.454.000 rubles), in 2010 – 40.53% (253.446.000 rubles), in 2011 – 46.65% (236.846.000 rubles), in 2012 – 55.1% (238 240 000 rubles). It should be noted that the increase in percentage of imposition of administrative fines took place against the background of reducing the sum of imposed administrative fines. If in 2008 the sum of administrative fines imposed by internal affairs bodies amounted to 599 829 000 rubles, then in 2009 – 659 427 000 rubles, in 2010 – 625 306 000 rubles, in 2011 – 507 757 000 rubles, in 2012 – 432 367 000 rubles [8].

Thus, the increase in the size of administrative fine may contribute not to the improvement of law and order in public places, but creates a basis for increasing the latency of administrative offenses under article 20.20, 20.21 of CAO RF, because fixing of an event of administrative offense is actually put in direct dependence on the "solvency" of offender [9].

Changes have been also made to article 20.22 of CAO RF. From the position of the legislator it must be read as follows:

"Article 20.22. Staying of Minors in a State of Alcoholic Intoxication, as well as their Drinking of Alcoholic and Alcohol-Containing Products or Consumption of Drugs and Psychotropic Substances in Public Places

Staying of minors of an age of less than 16 years in a state of alcoholic intoxication, as well as their drinking of alcoholic and alcohol-containing products, or their consumption of drugs and psychotropic substances without doctor's orders, or other stupefying substances –

shall entail the imposition of an administrative fine on parents or on other legal representatives of the minors in the amount of from one thousand five hundred to two thousand rubles".

Easy to see that, first, the proposed construction of article 20.22 of CAO RF establishes administrative responsibility of legal representatives of a minor for the staying, but not for the appearance of minor, who has not attained the age of sixteen, in a state of alcoholic intoxication.

Secondly, the consumption of ethyl alcohol by minors is outside the composition of an administrative offence under article 20.22 of CAO RF.

Third, administrative responsibility of legal representatives is established regardless of the location of the minor's actions listed in the disposition of the article, since the legislator has generally refused to use the term of "public place". This means that the staying of a minor in a state of intoxication or consumption (drinking) of alcoholic and alcohol-containing products in a dwelling room also constitutes an administrative offense under article 20.22 of CAO RF. But here we can meet difficulties in collecting evidence of staying a minor in a state of intoxication or consumption (drinking) of alcoholic and alcohol products, since article 25 of the Russian Constitution guarantees the inviolability of the home and states that no one can penetrate it against the will of its inhabitants, except in the cases established by federal law or by court order [1].

Police officers, whose competence to a greater extent refers to identifying administrative offenses under article 20.22 of CAO RF, proceeding from the provisions of article 15 of the Federal Law No. 3-FL from February 07, 2013 "On the Police", can enter into the dwelling only when the door is open and the minor is unconscious [8].

Noteworthy is the fact that the same actions of the minor in the dwelling at the age of 16-17 years do not form a composition of administrative offense under article 20.22 of CAO RF, since the disposition of the article contains a reference to the minor's age – before reaching the age of sixteen. However, actions of a minor aged 16-17 during consumption (drinking), in addition to ethanol, of alcohol-containing

products will not form any composition of administrative offence, because, as we have already considered, part 1 article 20.20 of CAO RF in new revision provides for administrative responsibility for consumption (drinking) of alcoholic products only.

This is due to omissions in amending the Federal Law No. 171-FL from November 22, 1995. In article 16 of this Federal Law the legislator have not disseminated requirements to the retail sale and consumption (drinking) of alcoholic products on ethyl alcohol and alcohol-containing products. Prohibition formulated in the first subparagraph of paragraph 3 of this article refers to consumption (drinking) in public places of alcoholic products only.

The same is also explained by non-use by the legislator in article 20.22 of CAO RF of the term of "public place". This is due to the fact that the second subparagraph of paragraph 3 article 16 of the Federal Law No. 171-FL from November 22, 1995 states only that: "Consumption (drinking) of alcoholic products by minors is not allowed."

Thus, this study demonstrates what problems in law enforcement can result from non-systemic approach, inappropriate assessment of subsequent effectiveness of measures proposed in the development of the mechanism of legal regulation of social relations in a certain area. The solving of the situation we see in taking the following measures:

1. Elaboration and consolidation of the concept of "public place" as a note to article 20.1 of CAO RF.

2. Introduction the following amendments to article 16 of the Federal Law No. 171-FL from November 22, 1995 "On State Regulation of Production and Turnover of Ethyl Alcohol, Alcoholic and Alcohol-containing Products and on Limitations of Consumption (drinking) of Alcoholic Products":

- title of the article should be read as follows:

"Article 16. Especial Requirements to Retail Sale and Consumption (drinking) of Ethyl Alcohol, Alcoholic and Alcohol-containing Products";

- in the first subparagraph of paragraph 3, the words "3. Consumption (drinking) of alcoholic products is not allowed" should be replaced by the words "3. Consumption (drinking) of ethyl alcohol, alcoholic and alcohol-containing products is not allowed";

- the second subparagraph of paragraph 3 should be read as follows:

"Consumption (drinking) of ethyl alcohol, alcoholic and alcohol-containing products by minors in any public places is not allowed".

3. Introduction of corresponding amendments to articles 20.20, 20.22 of CAO RF.

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