Universal Decimal
Classification 342

Demin A. A.

CRITICISM OF LEGAL POLICY OF THE RUSSIAN FEDERATION IN THE SPHERE OF CORRELATION OF CIVIL AND ADMINISTRATIVE LAW

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The author refutes the constitutional formula, according to which administrative legislation refers to the joint jurisdiction of the Russian Federation and a subject of the Russian Federation, and civil legislation refers to the jurisdiction of the Russian Federation.

Keywords: subject of the Russian Federation, administrative law, civil law, subject matter of jurisdiction.

One of the methods to evaluate the legal policy of the Russian Federation in respect of administrative law is clarification of the correlation of civil and administrative law in the analysis of the RF Constitution of 1993.

Complaints about constant violations of human rights by administration are usual. They are even accompanied by statements of the authorities to leave the management of the economy. At the same time, human rights' violations could be committed through civil law norms, which are supposedly the most democratic. We assume possible to refer to civil-law violations of human rights the conclusion of such transactions as the issuance of loans by banks, which results in the loss of a citizen of its essential conditions of living, for example, seizure of debtor's dwelling (among these real-world examples: a debt for housing payment has led to triple murder in the south of Moscow [14]). Judicial practice reveals such methods of significant violations of citizen's rights, evasion of civil-law law, as an abuse of right, violation of the principle of good faith in civil transactions and others [10].

Discarding the conditional advantages of civil law over administrative one in terms of their level of democracy, it remains fundamental to solve the issue of constitutional consolidation of civil law as one related to federal jurisdiction

(paragraph "n" article 71 of the RF Constitution) and administrative consolidation as one related to the joint jurisdiction of the Federation and its subjects (paragraph "j" article 72 of the RF Constitution). The meaning of the content of the RF Constitution articles relating to the allocation of competence between the Federation and the subjects of the Federation has already been subjected to deep constitutional check [1], the results of which in respect of degree of certainty are not inferior to the RF Constitution. The issue of correlation of administrative and civil law in this aspect has not yet been considered.

The issue of allocation of competence of the Russian Federation and the subjects of the Russian Federation, for example, attribution of licensing whether to the field of civil law, or to the field of administrative law, often arises in judicial practice. Such incidents are confirmed, for example:

- by the Resolution of the Presidium of the Supreme Court of the RF No. 23pv04 from January 19, 2005 [2] and others, in which the main legal issue was determination the competence of the subjects of the Russian Federation: whether the licensing refers to civil law, then this law can be adopted only at the federal level, or it refers to the field of administrative legislation and it could be adopted at the level of the subject of the Russian Federation;
- by the Ruling of the Judicial Board on Civil Cases of the Supreme Court of the RF No. 7-G04-17 from January 19, 2005, which challenged the competence of the legislative body of the Ivanovo Region in part of establishing the right to draw up a protocol on administrative offence by officials of the police of public safety.

Because of the regularity of disputes concerning competence among the subjects of the Russian Federation and the diversity of their grounds it becomes clear that this contradictory judicial practice, in our view, reflects a system error or system feature of Russian law, i.e. a certain legal policy.

When the Supreme Court recognized that actions of Khabarovsk State Duma were unconstitutional because the adoption of the law of the Khabarovsk region on licensing of scrap metal collection referred to the federal sphere due to civil-law nature of such law, a legal question arose to clarify the criteria concerning attribution of such subject matter of legal regulation to one or another branch of law. We have proposed a system of methods of legal regulation, with help of which it is relatively easy to do. It is an administrative-legal method with vertical subordination links and civil-law method with horizontal links of equally appointed persons [5, 13-19]. Application of these methods to the above situation reveals contradictions, the solving of which bumps into decision to retain or amend the text of the Constitution of the Russian Federation of 1993.

We support the approach that public policy is carried out in the methodological "coordination of all the actors of legal policy implementation, including the State itself, in the exercising of unified activity based on the law" [12].

Civil law. The main slogan of "free market" is freedom of goods exchange transactions in the formula "commodity-money-commodity". In most cases it is a civil law. And the RF Constitution of 1993 (paragraph "n", article 71) attributes it to federal jurisdiction, that is, it is centralized. It is possible to justify such its evaluation as a national necessity of administrative-command system to impose the principles of free market, what requires federal order of formation of civil legislation. But at the same time, it is clear that civil law as a private law can take into account private and local peculiarities of commodity turnover, peculiarities of the rules of fairs and trades, peculiarities of the status of transactions parties and their procedures. And obviously should be governed just by local law, by law of the subjects of the Russian Federation. But also in this case the centralized regulation of civil-law legal relations is an indication that civil law is completely not such a private. When civil-law relations affect the interests of third parties or the society at large, it should be clearly recognized as a public law [6, 178-186]. And such status of civil-law transactions is found almost everywhere: both in store, and in canteen, and in library, and in entrepreneurship.

Administrative law. Administration is an essential characteristic of organized society. RF Constitution of 1993 (paragraph j article 72) attributes administrative legislation to the joint jurisdiction of the Russian Federation and subject of the Federation, that is, at some uncertain form it is decentralized. It is so decentralized that it is not always clear who is authorized, what is the mechanism of exercising the joint competence of two subjects of law – the Federation and the subject of the Federation.

At the same time, the "vertical power structure" is not a random whim of the President of the Russian Federation V. V. Putin. Power in the State is objectively vertical. In the modern Russian Federation this vertical is undermined both by the federative structure of the country and by the erosion of power by various types of self-governance of population.

In our view, this approach to the allocation of state power manifests itself in the structuring of the public service in the RF, where the public service is already defined as a service not only and not so much to the State (RF, or even the subject of the RF), but even to individuals in the state "elite" (paragraph 1 article 3 of the Federal Law No. 79-FL from 27.07.2004 "On the Public Civil Service of the Russian Federation"). We call this approach not federalization, but feudalization [8, 37-38],

in which the borders of the subjects of the Russian Federation that were formed by artificially established in the USSR domestic national-territorial division, in the future, when the collapse of the USSR, influenced on the claims of national governments of former Soviet republics and republics comprising the Russian Federation.

About the same characteristic of disruptive tool to the unity of the State should be given to the RF Constitution of 1993 in respect of public service organization. What for, for example, have been the Federal Public Service and the public service of republics, subjects of the Russian Federation established? Such scheme does not add smoothness to the functioning of the state apparatus, at the same time it not just creates a hardly working structure of public authorities due to the lack of legal vertical, scatters a unified state power, but, in fact, also prepares the state apparatus of the subjects of the RF for independent existence, i.e., prepares the collapse of the country into its components.

Historical example of disruptive nature of such a scheme of state apparatus is noted by V. G. Vishnyakov – when Boris Yeltsin was preparing the demise of the Soviet Union and exit of the RSFSR out of its composition, preparation had begun also from the own law of the RSFSR on public service, as opposed to the law on the public service of the USSR. He writes: "Power-hungry pragmatic Russian leadership reasonably believed that the presence of its own legislation on public service would be a significant, crucial attribute of state sovereignty of the RSFSR" [4, 25]. And concludes, that without a unified state apparatus throughout the country, without a unified public service the performance of basic provisions of the RF Constitution on national sovereignty is impossible. "Constitutional principles cannot be implemented" [4, 26]. And he provides evidence.

Correlation and methodological features of Russian law branches attract the attention of scientists, in particular, in the Soviet law system the hybrid of administrative planned task with its execution by the contract of civil type led academician V. V. Laptev to formulation of economic law with diagonal method of legal regulation, economic-legal method. Talking about the history of economic law in the USSR and execution by a firing squad of a number of supporters of this theory supposedly for commitment to this theory, Professor V. S. Martem'yanov describes as follows the main controversy between the views of these scholars and the organic needs of the national economy, expressed by academicians A. Ya. Vyshinskii, E. B. Pashukanis and others:

"Sophisticated mind of a faithful servant of the Stalinist state has long realized that the economic concept for all its half-heartedness and concessions "a special form of a proletarian state policy" poses a threat to the administrative-command

system, because attempts to justify the need for legal foundations in the field of economics, where bureaucracy has already been boundlessly dominating. Civil law as a branch serving the horizontal links of commodity exchange of national economy branches did not bothered and touched the interests of this class, because the issues of economy management were started and solved not in this field. The economic law claimed to legitimacy vertically! But administrative-command system already could not allow this" [13, 40].

Defamation of administrative law in such a way as it done by V. S. Martem'yanov, reflects both incorrect author's views about the place of administrative law in the State, and does no credit to civil law, does not lead to increasing its relevance in the management of public relations.

First, legal norms are established (or authorized) only by the State and the removal of economic law supposedly outside the administration of the State is the lack of understanding of the role and place of the State and law in life. Economic law in functions does not differ from other branches of law. Second, it is strange that V. S. Martem'yanov finds legal foundations not in the will of the State, but in the spontaneous market, while legal norm – it is the will of the ruling class, beyond of which the law does not exist at all. Because legal norm is ensured by coercive force of specially created state apparatus, police, courts, prisons, what essentially distinguishes it from morality and agreements of the parties of civil-law turnover. Third, the wording of V. S. Martem'yanov is flawed, since the presence or absence of law of a respective type, including in the field of conducting business affairs by the state, depends not so much on the view of A. Ya. Vyshinskii as on the nature of law in a state-organized society, it is always such as economic basis allows it to be. Fourth, nowadays we cannot put the question that public servants and officials are inherently representatives of wicked state centralized administrative-command system, because the question lays in quality of such servants, degree of their qualifications rather than in their historical place. If state apparatus is bad, the treatment is a simple replacement of such officials. Fifth, the folly of law is fixed not by negation of bureaucracy in general, but by reasonable correction of the situation. The State historically emerged as the economic regulator in its very essence. Sixth, class approach to bureaucracy in the country as to middle class appears to be farfetched. D. M. Shchekin speaking up about this, in our view, exaggerates the class solidarity of public servants, they do not feel themselves a special class [7, 118-122]. Unlike the dream of Russian President Boris Yeltsin, they do not constitute the middle class, like thieves that have any property cannot be called a new class. According to political economy, money, which is not invested in development, is not capital.

Seventh, the expression of V. S. Martem'yanov, as if administrative law "at its birth was destined pathetic role of the vassal of bureaucracy. ... It is not by chance that in this theory only administration possesses legal personality, but labor organizations of enterprises, associations and guilds do not. The last act here only as recipients of authoritative commands" [13, 40], methodologically and in fact reflects a misunderstanding of the creative role of power exercised by state executive apparatus under norms of administrative law. Not the vassal of bureaucracy, but its organizer! Eighth, understanding of administrative legal relationship only as directed from the top to down is incorrect, because a citizen enters into administrative relations even when it demands from the administration the compliance with its rights. V. S. Martem'yanov putting the question of the role of labor collectives in other than the socialist system of law bumps up against the right of the owner to dispose of its enterprise without the consent of staff, because the enterprising person is the owner, and not the staff.

In general, defamation by "market" reforms' supporters of administrative law as a kind of reactionary branch of law, in comparison with civil, democratic law, reflects a misunderstanding of the essence of the state and law, as well as the place of civil and administrative law in the functioning of a state-organized society.

In the light of the above, we propose to amend the Constitution of the Russian Federation.

Concerning administrative law the thought of A. S. Dugents seems to be correct: "The modern Russian legislator chose the right direction: at the federal level all the rules regulating the types of punishable misconducts and punishments, grounds and procedure for bringing to responsibility should be concentrated in a single codified legal act – the Code on Administrative Offences of the Russian Federation. Regulation of administrative responsibility by regional laws is largely of transitory nature" [9, 18]. In our opinion, this foresight of a major Russian legal scholar, and most importantly, the opinion of practitioner and one of the leaders of law enforcement sphere of state power, correctly advances an idea that administrative law as a law that governs the functioning of the executive power in the country cannot be regional. Not because of the notorious "vertical of power", but in principle. Power in the State is indivisible. Paraphrasing the words once said by V. I. Lenin, we can say that there is no power of Ryazan or Kaluga, there is only state power.

We agree with the assessment of A. V. Mal'ko, when he writes about the actual absence of full-fledged legal policy in the country. "The current policy is largely exercised in isolation from the really existing public relations, without regard to

the patterns of legal life of Russian society" [11, 11]. However, "absence of policy" is a policy too, it is just needed to correctly evaluate such absence. If in the RF Constitution of1993 it is recorded that state ideology is prohibited in the RF, it does not mean that such ideology is absent. It just has another content.

And then understating the value of administrative and civil law is quite clear – it is aimed at the creation of legal preconditions for further collapse of the Russian state. Putting administrative legislation under the authority of local self-government means to contribute to the collapse of the State.

The origin of this fundamental error in Russian policy is largely due to the efforts of foreign advisers, who proposed the text of the RF Constitution of 1993 (in addition adopted two months after the shooting of the parliament), as a result of the victory of B. N. Yeltsin in the confrontation of powers. As we believe, to defeat the potential of the former USSR was implemented the idea of referring administrative law to sectors secondary for the state (joint jurisdiction), which laid the mine under the unity of the new state – the Russian Federation.

This provision should be removed, replaced and corrected with the further strengthening of the Russian state and statehood.

It seems necessary to remove from the RF Constitution the provisions on the Federation and local self-government, to transform the state into a unitary one based on the equality of individuals, regardless of their nationality, where administrative law is the most important regulator of public relations. But as long as the Federation is preserved, administrative law and legislation cannot be decentralized, while civil law and legislation are centralized. When amending the Constitution we should swap them with respect to the subject matter of jurisdiction.

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