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PROBLEMS OF ADMINISTRATIVE RESPONSIBILITY FOR FAILURE TO COMPLY WITH THE REQUIREMENTS OF NORMS AND RULES FOR PREVENTION AND LIQUIDATION OF EMERGENCIES[1]

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The author notes the ambiguity of judicial practice in cases of bringing to administrative responsibility in the application of articles 20.4 and 20.6 of the Code on Administrative offences of the RF. Emphasis is laid on the need to comply with the limits of the competence of bodies and officials involved in proceedings on cases of administrative offences.

Keywords: administrative responsibility, emergencies, prevention and liquidation of emergencies, administrative responsibility for failure to comply with the injunctions of the body of administrative jurisdiction.

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Administrative responsibility for failure to comply with the requirements of norms and rules for prevention and liquidation of emergency situations has been existing for 12 years in the Russian administrative law. This is not too little, but also it is not much. Law-enforcement practice, which has been accumulated during this period, makes it possible to reveal a number of problems associated with the difficulties of applying the mentioned norms. Let us pause only at some problems associated with the difficulties of delimitation of the compositions and procedural characteristics of the norms of the Special part of the Code on Administrative Offences of the Russian Federation (hereinafter – CAO RF) [1].

There is a problem of delimitation the spheres of application of part 1 article 19.5 and part 1 article 20.6 CAO RF. The matter is that in some cases officials authorized to draw up protocols on administrative offenses provided for by article 20.6 CAO RF do not give detected violations due legal assessment and limit themselves to issuance of instructions to eliminate the detected violations. In the next control check, after revealing that the instruction has not been executed, they draw up a protocol on administrative offense under article 20.6 CAO RF on the fact of initially detected offense. But such application of the mentioned article is often beyond the limitations period, because the time period that is provided for addressing detected violations usually exceeds the limitations period concerning this category of cases on administrative offenses. To "bypass" this difficulty, the subjects of administrative supervision try to discern a continuing administrative offense in actions of persons who have not fulfilled prescriptions, but, at that, the day of its detection, from which procedural deadlines shall begin to be calculated, is considered to be the day when non-compliance of prescription to eliminate violations was revealed.

This position is unreasonable, because, according to paragraph 14 of the decision of the Plenary Session of the Supreme Court of the Russian Federation No. 5 from March 24, 2005 "On some Issues that Arise in Courts when Applying the Code on Administrative Offences of the RF" [2], the day of detection a continuous administrative offense shall be the date when an official authorized to draw up a protocol on administrative offense reveals the fact of its commission. Obviously, that in case of non-performing of direction on a revealed offence the moment of accomplishment of the offense is not when it has been detected by an authorized official (in this connection an order to eliminate violations has been issued), but the day following the date specified in the direction.

There is a norm of the Code, which establishes administrative responsibility exactly for failure to timely perform a direction from a body or official exercising state supervision. This is part 1 article 19.5 CAO RF. It provides for a softer

punishment than article 20.6 CAO RF. I think, by this is explained the practice of bringing to administrative responsibility only under one norm, i.e., part 1 article 19.5 CAO RF.

In contrast to the officials of controlling bodies the courts, in the case of submission to them of two protocols on administrative offenses, occupying a correct position, bring to responsibility along with part 1 article 19.5 also under part 1 article 20.6 CAO RF.

So, for example, the director of the Federal State Unitary Enterprise "RTRN" of "Tomsk Regional Radio and TV Transmitting Center" was found guilty of an administrative offense under part 1 article 20.6 CAO RF by the resolution of justice of the peace of judicial district No. 1 of Oktyabrski district court of Tomsk from 26.04.2013. This deed resulted in non-compliance with the legislation stipulated duties to protect the population and territories from emergency situations of natural and man-made nature, as well as non-compliance with the requirements of the norms and regulations for the prevention of accidents and disasters in the objects of industrial purpose. This conclusion was made by an official authorized to institute administrative proceedings under article 20.6 CAO RF in the check of the performance of a direction imposed almost two years before. The court of appellate instance left valid the decision of the justice of the peace.

The following problem seems to be significant. Under paragraphs 1 and 7 part 2 article 28.3 CAO RF, officials of internal affairs bodies (police) and officials of the bodies specially authorized to address the challenges in the field of civil defense, protection of population and territories from emergency situations of natural and man-made nature are authorized to draw up protocols on administrative offenses under article 20.6 CAO RF. However, as is evident from the files of studied cases, in practice, often the functions of these officials are arbitrarily undertaken by other persons. Most frequently inspectors on fire supervision act in this role. This is contrary to the procedural norms of CAO RF and departmental legal acts of the Ministry of Civil Defense and Emergency Response, according to which the competence of officials of the state fire supervision bodies does not include drawing up protocols on cases of administrative offenses under part 1 article 20.6 CAO RF. In such circumstances, an administrative offense case under part 1 article 20.6 CAO RF must be dismissed for the lack of an administrative offense composition in actions of a person. However, the judicial practice on cases of this kind is also ambiguous. In some cases the courts take substantiated and lawful decisions based on the correct delimitation the spheres of application of articles 20.4 and 20.6 CAO RF, including in procedural aspect.. In other cases, the courts:

- wrongfully ignore the norms of legislation on administrative offenses that delimit the competences of fire supervision bodies and officials of the bodies specially authorized to address the challenges in the field of civil defense, protection of population and territories from emergency situations of natural and man-made nature associated with the implementation of norms and rules on the prevention and dealing with emergencies;

- make rulings without taking into attention the fact that protocol on administrative offense has been drawn up by improper official.

Such practice seems to be wrong, be inconsistent with the requirements of the laid down in article 1.6 CAO RF principle of ensuring legality in application of administrative coercive measures in connection with an administrative offense. According to the meaning of the norm of part 2 article 1.6 CAO RF, the requirement of strict compliance with the limits of competence of authorities and officials involved in proceedings on administrative offences must be observed not only in respect of application of administrative punishment and interim measures, but at all stages of proceedings on a case of administrative offense, starting with the initiation of proceedings that, according to paragraph 3 part 4 article 28.1 CAO RF, shall be considered initiated, including from the moment of protocol on administrative offense. This understanding directly comes from the requirement of legality contained in article 1.6 CAO RF.

According to D. N. Bakhrakh, "any real legal responsibility has three grounds: a) normative (the system of legal norms that govern it); b) actual (wrongful acts of subjects of law); c) procedural (acts of the subjects of power to impose sanctions of legal norms to specific subjects). Availability of norm establishing responsibility and deed mentioned in this norm – it is just normative and actual prerequisites of legal responsibility. … The presence of all three its grounds is needed for occurrence of real responsibility [3, 539].

To this has to be added that in cases where administrative proceedings on administrative offence are considered to be initiated from the moment of protocol on administrative offense (paragraph 3 part 4 article 28.1 CAO RF), the occurrence of real responsibility requires that judgment (decision) has been made not only by an authorized for that entity, but also on the base of protocol drawn up by a person authorized to draw up protocols about an appropriate type of administrative offense.

In the meantime, given the above, for the purposes of more proper (in accordance with the principles of legislation on administrative offenses) application of CAO RF norms establishing responsibility, including for failure to comply with rules and regulations for the prevention and elimination of emergency situations,

it is advisable to make corrective changes in the wording of part 2 article 1.6 CAO RF, and to read it as follows:

"Initiation of proceedings on a case of administrative offense by an authorized body or official, as well as application of punishment and measures for ensuring the proceedings in respect of a case concerning an administrative offence shall be implemented within the scope of jurisdiction of the said bodies or official in compliance with law".

The problems associated with the application of article 20.6 CAO RF in the practice of consideration and resolving cases of administrative offenses, connected with the nonfulfillment of requirements of norms and rules on prevention and liquidation of emergency situations, do not limit to the designated problematic moments. These problems urgently require further identification and systematization in order to improve both law-enforcement approaches and the current legislation in the field of administrative responsibility for violations of the legislation on protection of population and territories from emergency situations of natural and man-made nature.

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