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DELIMITATION OF INSULT FROM RELATED ADMINISTRATIVE OFFENCES AND CRIMES¹

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The attention is given to the problems that occur in the legal assessment of insult as a new kind of administrative offense. It is noted that the decriminalization of certain offenses against the honor and dignity of an individual, although has increased the role of administrative jurisdiction in their defense, however has also complicated qualification of insult and its delimitation from other related compositions of administrative offenses and crimes.

Keywords: insult, protection of honor and dignity, administrative responsibility for insult, crimes against honor and dignity of an individual.

One of the constitutional rights of everyone is right to protection of honor and dignity of an individual. Breaches of this right not only affect the interests of an individual, they often find great public interest, undermining the moral foundations of Russian society. The State undertakes measures to protect the honor and dignity of an individual, establishes appropriate penalties for infringement on these constitutional rights. Until recently, this protection was provided primarily through the norms of the Criminal Code of the Russian Federation, which envisaged criminal responsibility for slander and insult.

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Meanwhile, the legislator, being guided by the principles of humanism and saving of criminal repression, gradually replaces criminal punishments by administrative ones against those persons who commit minor offences, thereby expanding the scope of administrative and jurisdictional protection of public relations. Not by chance the decriminalization is now being considered as one of the factors of forming administrative-tort legislation. The reform of the Criminal Code of the Russian Federation has continued the trend of criminal policy. In accordance with the Federal Law No. 420-FL from December 07, 2011 "On Amendments to the Criminal Code of the Russian Federation and Certain Legislative Acts of the Russian Federation" [4], numerous changes were introduced to the Criminal Code, the Criminal Enforcement Code, Code of Criminal Procedure and the Code on Administrative Offences of the RF. This law implemented the decriminalization of some crimes that were transferred into the category of administrative offences. Among them was article 130 providing criminal responsibility for insult, which was excluded from the Criminal Code of the RF (hereinafter - CC RF), and the Code on Administrative Offences of the RF (hereinafter - CAO RF) was added article 5.61 "Insult" [1]. These innovations did not only change the sectorial normative evaluation of the mentioned deed infringing upon the honor and dignity of an individual, increase the role of administrative jurisdiction in their protection, but also complicated qualification of insults, correlation with other adjacent compositions of administrative offenses and crimes. In this article an attempt was made to draw attention to the problems that have emerged in the legal assessment of insult as a new type of administrative offence.

As we have already pointed out, administrative responsibility for insult is envisaged in article 5.61 CAO RF. In accordance with this norm:

"1. Insult, i.e. humiliation of honor and dignity of another person, which is expressed in a rude form, -

shall entail the imposition of an administrative fine on citizens in the amount from one thousand to three thousand rubles; on officials - from ten thousand to thirty thousand rubles; on legal entities - from fifty thousand to one hundred thousand rubles.

2. Insult in a public speech, publicly demonstrated work or mass media, - shall entail the imposition of an administrative fine on citizens in the amount from three thousand to five thousand rubles; on officials - from thirty thousand to fifty thousand rubles; on legal entities - from one hundred thousand to five hundred thousand rubles.

3. The failure to take measures to prevent insults in a publicly demonstrated work or in mass media, -

shall entail the imposition of an administrative fine on officials in the amount from ten thousand to thirty thousand rubles; on legal entities - from thirty thousand to fifty thousand rubles" [1].

General characteristic of new administrative-tort norm was presented by us earlier [7, 226-229], so let's look at the features of its structure. After decriminalization of insult the legislator preserved in the first two parts of article 5.61 CAO RF the signs of the former article 130 CC RF [2] and introduced the new composition of the administrative offence in form of failure to take measures to prevent insult in a publicly demonstrated work or in mass media. Thus, not only sectorial qualification of the offense was changed, but also part 3 of article 5.61 CAO RF introduced the new composition of the administrative offense, which is defined as the failure to take measures to prevent insult in a p publicly demonstrated works or in mass media. Inclusion of this composition of the administrative offences in article 5.61 CAO RF seems not successful, because its object is management order, and the object of insult, under part 1 and part 2 of this article, is honor and dignity of an individual.

Delimitation of insult from other administrative offenses and crimes is aggravated by the fact that, first, honor and dignity are evaluative categories; second, insulting actions often affect other rights and freedoms of man and citizen.

Violations of the honor and dignity of an individual are not limited to the offence under article 5.61 CAO RF. Therefore, its correct qualification implies the delimitation of insults from related compositions of administrative violations and crimes.

Most often insult competes with slander. Both deeds encroach upon honor and dignity of an individual. Not by chance the Federal Law No. 420-FL from December 07, 2011 decriminalized both offences and articles 129 and 130 were excluded from CC RF. However, already after half a year the legislator deemed it appropriate to criminalize slander, and CC RF regained an article envisaging criminal responsibility for such deed (article 128.1) [5]. Slander, according to part 1 article 128.1 CC RF [2], is the dissemination of knowingly false information denigrating honor and dignity of another person, or undermining its reputation. Famous Russian criminologists drew attention to the difference between insult and slander. Professor A. A. Zhizhilenko at the beginning of the last century wrote that "while insult encompasses expression by a guilty person of its humiliating opinion about anyone, slander has an attempt to incline other people to such

opinion. Thus, slander is characterized by a desire to undermine the reputation of a person in the eyes of others, denigrate in this way its honest name as a person and as a member of social group" [8, 96]. Delimitation of insult and slander should be conducted under several signs.

Insult is a negative assessment of victim's personality, which is expressed in a rude form and degrades victim's honor and dignity. Subject's actions should reflect the negative qualities of victim. However, the negative evaluation by a person of the employee's production activity does not contain the signs of insult; in contrast to slander, when insulting the offender reports not on specific facts related to the victim, but assesses its personal qualities and conduct in general. Unlike insult, the necessary sign of slander is dissemination of knowingly false information, defaming fabrications about specific facts concerning the victim. The Plenary Session of the Supreme Court of the RF in its resolution No. 3 from February 24, 2005 "On judicial practice concerning the protection of honor and dignity of citizens, as well as the business reputation of citizens and legal entities" [6] explained that the dissemination of information discrediting honor and dignity of citizens or business reputation of citizens and legal persons should be understood as publishing of such information in print, radio and television broadcasting, demonstration in newsreels and other mass media, distribution on the Internet and by other means of telecommunication, statement in performance evaluation report, public speeches, statements addressed to officials, or informing, including in oral form, of at least one person. At that, mandatory sign of slander is a known for culprit falseness of disseminated information discrediting honor and dignity of citizens.

Discrimination, responsibility for commission of which is provided for by article 5.62 CAO RF, is close to the considered administrative offence on meaningful characteristics. Discrimination just as insult assumes humiliation of man and citizen, but it is aimed at infringement of its certain rights and freedoms. The Law defines discrimination as a violation of rights, freedoms and lawful interests of man and citizen depending on the sex, race, nationality, language, origin, material and official status, place of residence, attitude to religion, convictions, and membership of public associations or any groups. As noted earlier, the object of insult is only the honor and dignity of victim, violation of its other human rights and freedoms is not covered by the offense composition provided for by article 5.61 CAO RF. In addition, a rude form of humiliation of honor and dignity of another person is compulsory for this offence. Discrimination is not associated with this sign. For example, a taxi driver refuses to provide transport service to a person of one nationality and immediately agrees to take the client of another nationality.

Insult as a basic concept is used by the legislator in the formulation of compositions of other administrative offences and crimes. Most frequently, insult as a humiliation of honor and dignity of another person, which is expressed in a rude manner (article 5.61 CAO RF), competes with an insult of religious feelings of citizens or desecration of their venerated objects, signs and emblems of ideological symbolism (part 2 article 5.26 CAO RF), contempt of court (article 297 CC RF), insult of a representative of authority (article 319 CC RF), insult of a serviceman (article 336 CC RF). In essence, these are special compositions of the considered administrative offence and design feature of insult are also characteristic for them. Their difference from the general composition of insult is carried out under various signs.

Insult differs from insult of religious feelings of citizens under the object (part 2 article 5.26 CAO RF). If the object of encroachment for the first administrative offences is honor and dignity of another person, then for the second - religious feelings of citizens, i.e. victims under part 2 article 5.26 CAO RF may be citizens professing one of the traditional forms of religion.

The legislator provides for criminal responsibility for insulting certain categories of persons. Increased responsibility for such action is associated with the especial legal status of victims, the nature of exercised public activity. It is, therefore, appropriate to speak not only about the insult of their honor and dignity, but also about the encroachment upon normal conditions of exercising corresponding activity (state authority, administration of justice, military service). However, there are doubts in the literature concerning isolation of special compositions of insult and slander in the various chapters of CC RF [9, 28-29].

Article 297 CC RF establishes responsibility for contempt of court, which is expressed in insult of participants of court proceedings, i.e., persons involved in a particular form of proceedings (constitutional, civil, criminal, arbitration). The law defines the range of persons for each of these types of legal process. For example, the list of participants in criminal proceedings, their procedural status in the current Code of Criminal Procedure of the RF is defined in chapter 6 "Participants in Criminal Proceedings for the Prosecution" and Chapter 7 "Participants in Criminal Proceedings for the Defense". Insult of a judge, juror or another person involved in the administration of justice shall constitute an offence under part 2 article 297 CC RF. In other words, the victims under article 297 CC RF can be only persons specified in law. The range of victims in cases of insult under article 5.61 CAO RF is not defined; it may be any other person.

The structure of compositions of articles 336 and 319 CC RF is analogical. Article 319 CC RF stipulates responsibility for insulting representatives of authority.

According to article 318 CC RF they include officials of law enforcement or control bodies, another officials endowed with regulatory powers in respect of people not subordinated to them. However, corpus delicti under article 319 CC RF forms insult of a representative of authority if it has been committed in the performance of its official duties or in connection with the performance of them. If a police officer outside of its official duties is insulted by neighbor, then such actions form composition of administrative offence under article 5.61 CAO RF. Unlike the last, the compulsory sign of corpus delicti under article 319 CC RF is public nature of insult.

Article 336 CC RF also provides for a special composition of insult. Its special feature is that the subject of this crime and the victim are servicemen. According to article 2 of the Federal Law No. 76-FL from May 27, 1998 "On the Status of Servicemen" (in edition from 26.06.2012 No. 90-FL) [3], they include: officers, warrant officers, cadets of military educational institutions of vocational education, sergeants and petty officers, soldiers and sailors passing military service under contract, as well as sergeants and petty officers, soldiers and sailors passing compulsory military service. Corpus delicti under part 1 article 336 CC RF encompasses insult by one serviceman of another serviceman during the discharge of their duties of military service, or in connection with the discharge of these duties. Part two of this article establishes increased criminal responsibility for insult by a subordinate of his superior, and also insult by a superior of his subordinate during the discharge of their duties of military service, and in connection with the discharge of these duties.

The conducted analysis of norms stipulating responsibility for insult shows their difference both in content, focus of illegal actions, types of victims and in their sectorial affiliation. At that, the general norm is article 5.61 CAO RF, because only it contains legislative definition of insult. Other norms on insult provide for special compositions of administrative violations and crimes. Special norm is applied in presence of their signs. In this regard, it is advisable to pay attention to the conflicts between CAO RF and CC RF that have arisen in connection with the decriminalization of insult. Special criminal-legal norms (articles 297, 319, 336 CC RF) using the term of "insult" do not disclose its concept. Previously they were based on the general concept of insult, which was enshrined in former general norm - article 130 CC RF. After the decriminalization the general norm, which defined the concept of insult, disappeared from criminal law, it is represented in article 5.61 CAO RF. Reference to the definition of insult in administrative-tort norm in the current situation, in our opinion, does not seems correct because the logic of correlation of general and specific criminal-legal norms is broken. The latter should be based on the norm stipulating general composition of crime.

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