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ADMINISTRATIVE RESPONSIBILITY OF DEPUTIES, JUDGES, PROSECUTORS AND OTHER OFFICIALS PERFORMING SPECIFIC PUBLIC FUNCTIONS

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The article examines the current legal provisions governing special conditions for administrative prosecution of deputies, judges, prosecutors and some other subjects, formulates proposals on improvement of the legislation on administrative offenses.

Keywords: administrative responsibility, release from administrative responsibility, immunity, responsibility of deputies, judges and prosecutors.

Part 2 article 1.4 of the Code on Administrative Offences of the RF (hereinafter – CAO RF), which is devoted to the principle of equality before the law of persons who have committed an administrative offence, contains a provision that makes an exception to this principle. Let›s reproduce the text of the provision verbatim: "Especial conditions for taking measures aimed at ensuring proceedings in a case concerning an administrative offence or bringing to administrative responsibility of officials exercising certain state functions (deputies, judges, prosecutors and other persons) shall be established by the Constitution of the Russian Federation and by federal laws".

The phrasing raises a number of questions. First, in doubt the correctness of the wording of "officials exercising certain state functions", secondly, there is no list of such persons, thirdly, it is unclear why the legislator makes an exception to

the general principle of the equality of all before the law, fourthly, it is not clear why the CAO RF that is announced in article 1 as the only federal legal act that regulates administrative responsibility is removed from the regulation of responsibility of such persons and sends law enforcers to the Constitution of the Russian Federation and other federal laws, etc. The list of such questions, which are not so much of theoretical but practical, applied value, can be continued long enough. Let's try to find the answers to the designated and other questions arising concerning this issue.

The wording of the law brings to life various points of view expressed in the legal literature and enshrined in normative sources. So, O. V. Pankova believes that there are special subjects of administrative responsibility with full or partial immunity from administrative jurisdiction, and enumerates among them officials who perform specific public functions, who are established by the Constitution of the Russian Federation and federal laws of the Russian Federation, which include members of the State Duma and the Federation Council members, the RF President, judges, prosecutors and investigators, registered candidates to representative bodies of public authority [17, 62-63]. A similar view was expressed by N. V. Makareiko, pointing to the existence of such important issue as the immunity of certain entities (deputies, judges and prosecutors) from administrative responsibility, by virtue of which the mentioned officials in practice can avoid bringing to administrative responsibility, what in turn generates permissiveness, and these actors have potent power resource that repeatedly increases the damage that they can inflict [16].

As already noted, the legislator does not establish a full list of officials that perform specific public functions, using a vague wording "and other persons". Of course, this is not conducive to the needs of law enforcers and researchers of the considered issue, brings to life the numerous viewpoints (including the previously said ones) concerning this issue. The only (although, in our view, not enough legitimate) instrument, which has sub-legislative nature, is a departmental normative legal act of the RF MIA. According to Administrative Regulations of the Ministry of Internal Affairs of the Russian Federation Concerning the Execution of State Function of Control and Supervision over Compliance with the Requirements in the Area of Road Safety by Road Users approved by the Order of Ministry of Internal Affairs of Russia No. 185 from March 02, 2009 [11], officials with specific public functions, who are subjected to the special conditions of application the measures of ensuring proceedings on a case of administrative offence and bringing to administrative responsibility, include:

- registered candidate for the RF President (article 42 of the Federal Law No. 19-FL from January 10, 2003 "On the Elections of the President of the Russian Federation" [8]);
- member of the Council of Federation, deputy of the State Duma of the Federal Assembly of the Russian Federation (article 19 of the current edition of the Federal Law No. 3-FL from May 08, 1994 "On the Status of Deputy of the Federation Council and the Status of Deputy of the State Duma of the Federal Assembly of the Russian Federation" [4]);
- deputy of the legislative (representative) body of state power of a subject of the Russian Federation (article 13 of the Federal Law No. 184-FL from October 06, 1999 "On the General Principles of Organization of Legislative (Representative) and Executive Authorities of State Power of the Russian Federation Subjects" [6]);
- registered candidate for a deputy of the State Duma of the Federal Assembly of the Russian Federation (article 47 of the Federal Law No. 51-FL from May 18, 2005 "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation" [9]);
- registered candidate for a deputy of legislative (representative) body of state power of a subject of the Russian Federation, representative body of a local self-government body, registered candidate for the position of an elected official of local government (article 41 of the Federal Law No. 67-FL from June 12, 2002 "On the Basic Guarantees of Electoral Rights of the Citizens of the Russian Federation and the Right to Participate in the Referendum" [7]);
- the Commissioner for Human Rights in the Russian Federation (article 12 of the Federal Constitutional Law No. 1-FKL from 26 February 1997 "On the Commissioner for Human Rights in the Russian Federation" [1]);
- member of election commission, referendum commission with casting vote right, chairman of election commission of a subject of the Russian Federation (article 29 of the Federal Law No. 67-FL from June 12, 2002 "On the Basic Guarantees of Electoral Rights of the Citizens of the Russian Federation and the Right to Participate in the Referendum");
- judges (article 16 of the RF Law No. 3132-1 from June 26, 1992 "On the Status of Judges in the Russian Federation" [3]);
- prosecutors (article 42 and paragraph 2 article 54 of the Federal Law of the RF No. 2202-1 from January 17, 1992 "On the Prosecutor's Office of the Russian Federation" [2]).

Thus, this list can serve as a guideline for categorizing certain entities as officials that perform specific public functions. At the same time we cannot but note the fact that it is totally unclear in respect of classification criteria by which the mentioned entities are included in the list and what is the difference between "certain public functions" and all other public functions? Moreover, it is clear that some of these entities, for example, registered candidate for a deputy of legislative (representative) body of state power of a subject of the Russian Federation, representative body of a local self-government body, registered candidate for the position of an elected official of local government and other candidates to hold certain positions at the time of possession this status generally do not perform any public function, and only lay claim to it with vague prospect in the future.

Meanwhile, there is a gradually strengthening opinion in the public mind, and also in the law enforcers' community, that the considered entities are not subject to administrative responsibility at all (do not bear it) and (or) are exempt from it.

However, this is far from being the case, and the special conditions of bringing these officials to administrative responsibility that are mentioned in part 2 article 1.4 CAO RF do not mean or imply the existence of complete immunity from administrative jurisdiction and their release from responsibility. Doubting the need for existence and legislative enshrining these special conditions, let's consider, however, these special conditions regulated by existing legal acts.

The Constitution of the Russian Federation does not explicitly mention special conditions for bringing to administrative responsibility, but in relation of the members of the Council of Federation and deputies of the State Duma States it is said that they shall possess immunity during the whole term of their mandate, they may not be detained, arrested, searched, except for cases of detention in flagrante delicto, as well as they may not be personally inspected, except for the cases envisaged by the federal law in order to ensure the safety of other people; the issue of depriving immunity shall be solved upon the proposal of the Procurator General of the Russian Federation by the corresponding chamber of the Federal Assembly (article 98); in respect of judges it is said that they shall possess immunity and that a judge may not face criminal responsibility otherwise than according to the rules fixed by the federal law (article 122).

Analysis of federal laws dealing with the determination of the status of subjects referred to in article 1.4 CAO RF suggests significant differences in the formulation of the special conditions for bringing them to administrative responsibility.

In particular, in accordance with part 4 article 16 of the Federal Law "On the Status of Judges in the Russian Federation", decision of bringing a judge to administrative responsibility is taken:

- in respect of a judge of the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, the Higher Arbitration Court of the Russian Federation, the Supreme Court of a Republic, district, regional court, court of a city with federal status, autonomous region court, autonomous district court, military court, Federal Arbitration Court – by a judicial panel of three judges of the Supreme Court of the Russian Federation upon the petition of the Procurator General of the Russian Federation;
- in respect of a judge of another court – by a judicial panel of three judges of respectively the Supreme Court of a Republic, district, regional court, court of a city with federal status, autonomous region court, autonomous district court upon the petition of the Procurator General of the Russian Federation.

Decision on the question of bringing a judge to administrative responsibility is taken in 10 days after the receipt of the petition of the Prosecutor General of the Russian Federation.

Law-enforcement practice of implementation the established procedure for bringing judges to administrative responsibility is enough extensive and transparent, what reflects not only the potential but also the actual possibility of exercising legal regulations.

The Law quite differently regulates the issues of bringing representatives of the Federal Assembly (the members of the Federation Council and State Duma deputies) to administrative responsibility. They are regulated in articles 19 and 20 of the Federal Law No. 3-FL from May 08, 1994 "On the Status of Deputy of the Federation Council and the Status of Deputy of the State Duma of the Federal Assembly of the Russian Federation" (in the current edition). In accordance with the provisions of these articles, a member of the Federation Council, deputy of the State Duma have immunity during the whole term of their authority, without the consent of an appropriate Chamber of the Federal Assembly of the Russian Federation they may not be:

a) brought to criminal responsibility or to judicially imposed administrative responsibility;

b) detained, arrested, inspected (except for cases of detention in flagrante delicto) or questioned;

c) subjected to body search, except when required by federal law to ensure the safety of other people.

Immunity of a member of the Federation Council, deputy of the State Duma applies to their current residential and office accommodation, personal and service vehicles, means of communication, documents and baggage belonging to them, to their correspondence.

In the case of criminal proceedings initiation or commencement of proceedings on a case of administrative offence, which provide for judicially imposed administrative responsibility against the actions of a member of the Federation Council or deputy of the State Duma, the body conducting the preliminary inquiry or the investigator within three days informs the Prosecutor General of the Russian Federation. If a criminal case has been initiated or proceeding on a case of administrative offense, which provides for judicially imposed administrative responsibility, has been instituted against actions associated with the exercise of official duty of a member of the Federation Council, State Duma deputy, the Attorney General of the Russian Federation within a week after receiving the message of the body of inquiry or investigator is obliged to introduce to a relevant chamber of the Federal Assembly of the Russian Federation a petition on depriving immunity of a member of the Federation Council, State Duma deputy.

After the end of inquiry, preliminary investigation or proceeding on a case of administrative offence, which provides for judicially imposed administrative responsibility, the case cannot be brought before the Court without the consent of the relevant chamber of the Federal Assembly of the Russian Federation.

Member of the Federation Council, State Duma deputy cannot be held criminally or administratively liable for expressing an opinion or expression a position in the voting in a corresponding chamber of the Federal Assembly of the Russian Federation and other actions consistent with the status of a member of the Federation Council and the status of a State Duma deputy, including at the expiration of their term of office. If, in connection with such actions a member of the Federation Council, State Duma deputy has made a public insult, slander or other violations, responsibility for which is provided for by federal law, the institution of criminal proceedings, the performing of initial inquiry, pre-trial investigation or initiation of proceeding on a case of administrative offence, which provides for judicially imposed administrative responsibility, shall be carried out only in case of deprivation immunity of a member of the Federation Council, deputy of the State Duma.

The issue of depriving immunity of a member of the Federation Council, deputy of the State Duma is resolved upon the petition of the Procurator General of the Russian Federation by a relevant Chamber of the Federal Assembly of the Russian Federation.

The Federation Council, the State Duma shall consider the petition of the Prosecutor General of the Russian Federation in the manner prescribed by regulations of the relevant Chamber of the Federal Assembly of the Russian Federation, take a reasoned decision concerning the petition, and within three days notify the Prosecutor General of the Russian Federation. By the decision of the relevant Chamber of the Federal Assembly of the Russian Federation additional materials may be claimed from the Prosecutor General of the Russian Federation. Member of the Federation Council, State Duma Deputy, in respect of which a petition has been submitted, shall have the right to participate in addressing the issue at the meeting of the relevant Chamber of the Federal Assembly of the Russian Federation.

Refusal of the corresponding Chamber of the Federal Assembly of the Russian Federation to agree to deprive immunity of a member of the Federation Council, State Duma deputy is a circumstance that precludes criminal proceedings or proceedings on a case of administrative offence, which provide for judicially imposed administrative responsibility, and leads to termination of such cases. Decision on termination of a corresponding case can be canceled only if there are newly discovered circumstances.

A body conducting an initial inquiry, investigator or the court, within three days, notifies corresponding Chamber of the Federal Assembly of the Russian Federation about criminal proceedings initiation or commencement of proceedings on a case of administrative offence, which provide for judicially imposed administrative responsibility, about termination of the case or about entered into legal force court verdict.

As for the procedure of bringing prosecutors to administrative responsibility, the possibility of its occurrence is regulated in article 42 of the Federal Law of the RF No. 168-FL from November 17, 1995 "On the Prosecutor's Office of the Russian Federation" (with the latest amendments and additions) [5], according to which the verification of messages about the fact of offence by a prosecutor is an exclusive competence of procuracy authorities. Detention, delivery, personal examination of a prosecutor, examination of its things and transport is prohibited except when it is mandated by federal law to ensure the safety of others and detention during commission of a crime.

Special administrative-legal status in the sphere of administrative responsibility of the Commissioner for Human Rights is governed by article 12 of the Federal Constitutional Law No. 1-FCL from 26 February 1997 "On the Commissioner for Human Rights in the Russian Federation", the text of which reads as follows: "The Commissioner shall enjoy immunity during the whole term of its powers.

Without the consent of the State Duma it cannot be brought to criminal or administrative responsibility imposed in court, arrested, detained, searched, except in cases of detention in flagrante delicto, as well as subjected to personal examination, except for cases stipulated by federal law to ensure the safety of other persons. The Commissioner›s immunity applies to its residential and office accommodation, baggage, personal and service vehicles, correspondence, means of communications, and documents belonging to it [1].

As you can see, the legislative regulation of the procedure for bringing the considered entities to administrative responsibility of varies greatly in scope, content, order and sophistication of the procedures for bringing, etc. For example, in regard to administrative responsibility of the State Duma deputies and the Federation Council members, the Commissioner for Human Rights it is only about a special order for bringing to responsibility occurring in court proceedings, which gives an opportunity to bring them to administrative responsibility in a general manner by other (not judges) entities endowed with jurisdictional powers. However, such order does not apply to judges and prosecutors.

How should the provisions contained in part 2 article 1.4 CAO RF be implemented in law-enforcement practice? Unfortunately, the procedure of bringing the considered entities to administrative responsibility, but only if there is a violation of traffic rules, is defined in the previously named order of the Ministry of Internal Affairs of Russia No. 185 from March 02, 2009, which approved Administrative Regulations of the Ministry of Internal Affairs of the Russian Federation Concerning the Execution of State Function of Control and Supervision over Compliance with the Requirements in the Area of Road Safety by Road Users. However, also the content of this document in part of a special order of bringing to administrative responsibility and application of coercive measures of procedural ensuring in respect of the considered entities raises a number of serious questions of researchers [13].

Enshrined in CAO RF attempt to define specific conditions and procedure for bringing deputies, judges, prosecutors and other persons to administrative responsibility through considering them as officials, even if performing certain public functions, seems to be unsuccessful. As is known, article 2.4 CAO RF, which regulates responsibility of officials, states that an official, who has committed an administrative offence in connection with its failure to discharge or improper discharge of its official duties, shall be administratively liable. With a stretch it can be possible to admit that the considered entities (e.g., candidates for deputies) fall under the definition of the notion of officials contained in a footnote to the article 2.4

CAO RF. In addition, it appears that most administrative offences are committed by these persons off-duty and in an unofficial atmosphere.

As you know, CAO RF is a legal act of direct action, exhaustively regulating legal relations of administrative and jurisdictional nature, understandable to not only law enforcers, but also to other participants of mentioned legal relations. In this regard, it seems unjustified to include in it norms of reference nature, similar to that contained in part 2 article 1.4 CAO RF and establishing special conditions for administrative prosecution of deputies, judges, prosecutors and other persons. In addition, in accordance with part 1 article 1.1 CAO RF, legislation on administrative offences consists of the Code and adopted, in accordance with it, laws on administrative offences of the subjects of the Russian Federation, i.e., at the federal level no legislative acts but solely the Russian Federation Code on Administrative Offences decides on administrative responsibility of all the subjects without exception.

Note, that attempts to draw the attention of lawmakers on the need to enshrine in CAO RF special provisions relating to the responsibility of certain persons (including deputies, judges, prosecutors, etc.) have been taken. Thus, at the State Assembly – Qurultay of the Republic of Bashkortostan the Russian State Duma was introduced a draft law on addition to CAO RF a new chapter 30.1 "Peculiarities of Proceedings on Cases of Administrative Offences in Relation to Certain Categories of Persons", which was considered on the 14th of June, 2007 [18]. Not stopping at the essence of the draft that also touches upon the procedure for bringing the considered entities to administrative responsibility, from the substantial point of view we note undoubted relevance of turning CAO RF into a document of direct action.

The current special conditions of bringing the considered entities to administrative responsibility are quite cumbersome; require involvement of numerous representatives of public authorities, up to the Prosecutor General of the Russian Federation; stretched in time. On the one hand, it serves as additional guarantees of immunity of some officials, but on the other hand, makes it possible to evade responsibility simply because of the expiration of period of limitation for the institution of administrative proceedings without review on the merits the issue of bringing to such.

Current state of Russian society obviously voicing intolerance to offenses of any kind and nature not only by representatives of law enforcement bodies, but also by other representatives of authorities, allows us sufficiently justified to raise the question about the extent of their responsibility for committing of administrative offenses. However, it is not about preserving the existing order, but about

equal or perhaps even higher compared with other entities level of responsibility. The current lack of elaboration of legal prescriptions regarding, for example, the possibility of administrative responsibility of prosecutors (there is neither an enshrined order, nor the subjects, nor the timing of review, nor the form and details of a final procedural document, etc.) leads to the situation that raises a fair concern: "as for the procedure for bringing prosecutors to criminal and administrative responsibility, it is such that a prosecutor has an opportunity if not avoid bringing to deserved responsibility, but at least very seriously prepare for it, to take action to destroy traces of an offence, including hiding of illicit income, and as a result to receive the minimum punishment. There are no such opportunities among other law enforcement officials, and the more among the so-called ordinary citizens, even if they are obviously not guilty, that in our time is not a rarity.

So, when bringing prosecutors to criminal and administrative responsibility, the verification of message about the fact of offence committed by a prosecutor is an exclusive competence of prosecutor's office (that is, the presence or absence of the signs of an offence in the actions of prosecutor will be determined by its colleagues), detention, delivery, personal examination, examination of its belongings and transport is not permitted, except for cases prescribed by federal law…" [14].

Pointedly, that the Chief Adviser to the State-legal Administration of the President of the Russian Federation A. V. Kirin, speaking about the necessity of the conceptual editing of provisions concerning the subjects of administrative offences, sees proper to carry out "a significant expansion of the grounds for bringing subjects with special legal personality not to disciplinary, but to administrative responsibility on a general basis" [15, 24]. We believe that this is not just about military personnel, employees of internal affairs bodies and other entities who are subject to disciplinary regulations, but also about the considered category of officials.

It seems that the main motivation to change the existing order of bringing deputies, judges and prosecutors and other considered entities to administrative responsibility may be the provisions contained in the Decision of the Constitutional Court of the RF No. 5-P from February 20, 1996 "On the testing the constitutionality of provisions of the first and second parts of article 18, article 19 and the second part of article 20 of the Federal Law from May 08, 1994 "On the Status of Deputy of the Federation Council and the Status of Deputy of the State Duma of the Federal Assembly of the Russian Federation". In particular, this document states that "the immunity of a parliamentarian does not mean its release from

responsibility for an offence, including criminal or administrative one, if the offence has been committed not in connection with the implementation of actually deputative activity. Expansive understanding of immunity in such cases would lead to a distortion of a public-law nature of parliamentary immunity and to turning it into a personal privilege, which would mean, on the one hand, the wrongful removal of the constitutional principle of equality of all before the law and court (article 19, part 1), and on the other hand –violation of the constitutional rights of victims of crime and abuse of power (article 52). Therefore, subject to the restrictions provided for in article 98 of the Constitution of the Russian Federation, exercising of judicial proceedings at the stage of inquiry and preliminary investigation or proceedings on administrative offences up to the decision to refer case to court under the provisions of the Criminal Code, Code of Criminal Procedure of the Russian Federation and CAO RF without the consent of corresponding Chamber of the Federal Assembly is permissible in respect of a parliamentarian" [10]. If the Constitutional Court of the Russian Federation has addressed these words to the upper class of the deputies, they are fully applicable in relation to other entities covered by the protection of today's legal structure contained in part 2 article 1.4 CAO RF.

One of the possible options to resolve this issue is seen in the legal enshrining of a provision that the considered entities bear administrative responsibility on a general basis. If an offense is committed in the exercise of service activity, then the special conditions of bringing these entities to administrative responsibility enter into force.

Another option of legislator's actions is a return to the issue concerning the consolidation in a separate chapter of CAO RF of provisions directly regulating the grounds and procedure for administrative responsibility and application of other administrative and coercive measures in relation to specific subjects included in the exhaustive list established by law, and not by departmental legal act. Note, that the possibility of such enshrining can be observed in chapter 42 of the Administrative Offences Code of the Republic of Kazakhstan "Peculiarities of Proceedings on Cases of Persons with Privileges and Immunity from Administrative Responsibility". This chapter defines the procedure of bringing to administrative responsibility of deputies of the Parliament of the Republic of Kazakhstan (art. 686), candidates for the President, for deputies of Parliament (art. 687), the Chairman or members of the Constitutional Court (art. 688), judges (art. 689) and the Prosecutor General of the Republic of Kazakhstan (article 690). Let's note that prosecutors are at all not included in the list of persons with privileges and

immunity from administrative responsibility, and the issues of their responsibility are regulated in section "General Provisions" of article 35 "Administrative Responsibility of a Serviceman, Prosecutor and other Persons, which are Subject to Disciplinary Statutes or Special Provisions, for Commission of Administrative Offences".

We believe that such legal norms contained in the law are extremely important, especially for law enforcers. Their absence gives rise to the view that the authorized officials in the course of law enforcement activity should be able to subdivide officials who have committed administrative offences in six separate groups [12, 74]. We believe that law enforcers should not engage in any classifications, especially under criteria non-designated by the author, and in dealing with issues of bringing to administrative responsibility they should be guided by solely specific, and not reference norms of CAO RF.

Secondly, direct wordings of the law are required also to form public perception of legal prescriptions as not declarative, but really able to ensure the implementation of the constitutional principle of equality before the law.

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