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**ADMINISTRATIVE-LEGAL REGULATION
OF BRINGING TO RESPONSIBILITY FOR VIOLATIONS
IN THE SPHERE OF PRIVATE CARRIAGE¹**

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The problem points of application administrative responsibility under article 14.1 of the Code on Administrative Offences of the Russian Federation are considered in the article.

The author proposes normative enshrining of the possibility to detain a vehicle until the confirmation of payment of administrative fine imposed to offender.

Keywords: administrative responsibility, responsibility for violations in the sphere of private carriage, illegal transportation, private cabbng.

¹Published on materials of VIII All-Russian scientific-practical conference «Theory and practice of administrative law and process» (Krasnodar – Nebug – 2013)

In recent years, major Russian cities have faced a problem related to the monitoring of compliance with the rules in the field of private carriage. Services of illegal cabbies are contemporary reality on Russian roads. Police raids indicate that drivers providing these services do not have permission on exercising activity on the carriage of passengers and baggage. Often private carriage is exercised by foreign nationals (mainly immigrants from the CIS) with poor knowledge of Russian language, not having documents for driving vehicles or having invalid (expired) driving licenses. Some of them were denied licenses because of driving vehicle being drunk. There are cases when private cabbings is exercised by vehicles with registration numbers of foreign countries, in the absence of compulsory motor TPL insurance, on cars with an unpleasant outside appearance, the passenger compartments of which do not meet basic sanitary and epidemic requirements, and regarding technical condition they have long been subject to official recycling.

Illegal carriers organize spontaneous parking nearby railway stations, subway stations, major shopping malls, thereby creating additional problems in the organization of traffic on already difficult road sections of large cities. This shows that the services of illegal taxi drivers pose a real threat to the safety of passengers and other road users.

One of the means of impact on illegal taxi drivers is the application of measures of administrative responsibility under article 14.1 of the Code on Administrative Offences of the RF (hereinafter - CAO RF) [1]. However, their practical implementation involves a complex of various problems.

Under Article 9 of the Federal Law No. 69-FL from April 21, 2011 "On Amendments to Certain Legislative Acts of the Russian Federation", activities for the carriage of passengers and baggage by car taxi in the territory of a subject of the Russian Federation shall be subject to the permission of a legal entity or individual entrepreneur to exercise activities on the carriage of passengers and baggage by car taxi issued by an authorized body of the executive authority of the corresponding subject of the Russian Federation [2; 3; 4; 5].

When solving the question of presence in actions of a person the signs of an administrative offense under part 2 article 14.1 CAO RF, it must be assumed that, in accordance with the third subparagraph of paragraph 1 article 49 of the Civil Code of the RF, the right to carry out activity, the exercising of which requires a special permit (license), emerges from the moment of obtaining a permit (license) or within a period specified therein and is terminated upon its expiration (unless otherwise is specified), and also in cases of suspension or revocation of permit (license) [7].

Solving the question of whether person's actions constitute an administrative offense under article 14.1 CAO RF, it is necessary to check whether they contain signs of entrepreneurial activity listed in paragraph 1 article 2 of the Civil Code of the RF.

In view of the aforementioned norm, entrepreneurial activity is an activity designed to systematic profit from the use of property, sale of goods, providing works or services, which is carried out at own risk of a person registered in accordance with the law as an individual entrepreneur. With this in mind, individual cases of the sale of goods, performance of works and rendering services by a person not registered as an individual entrepreneur do not form composition of administrative offence provided that the quantity of goods, the range of products, the volume of work performed, services rendered and other circumstances do not indicate that this activity has been aimed at systematical deriving a profit [7]. In this regard, in case of taking decision to bring a person to responsibility, an authority has to have knowledge of that passenger carriage is aimed at systematical deriving a profit.

In order to detect illegal taxi drivers in all districts of Moscow the government organizes mobile groups to combat illegal cabbng, which consist of the representatives of the Moscow Department of Transport, employees of internal affairs bodies, migration service officers [8].

A question rises concerning collecting evidence on the case. In practice, only an explanation is taken from a passenger; this is a violation of article 28.1 CAO RF, since it is necessary to demand an application containing data indicating the presence of an administrative offense. Members of the initiative, mobile groups, who act as passengers, have to carry out the control purchase and register it according to a corresponding procedure, but in practice this is not done, that leads to a lack of evidence. The absence of a control purchase registered according to a corresponding procedure leads to the fact that the materials of case are based solely on confessions of the driver; it is not enough for a comprehensive, full and objective clarification of the circumstances of the case. The absence of driver's confession can lead to the termination of proceedings.

Certain issues arise within the framework of law-enforcement practice in sentencing under part 2 of article 14.1 CAO RF.

The sanction entails administrative fine on citizens in the amount from two thousand to two thousand five hundred rubles with confiscation of manufactured products, tools and raw materials or without such. Employees of internal affairs bodies during drawing up a protocol on administrative offense detain car, sent it to auto impound or to safekeeping. However, in the case of transferring case files to

court, the additional penalty of confiscation of the vehicle is not imposed. Because, according to the sense of the sanctions, it is about the confiscation of a tool of production, but car is not such.

In this regard, it seems necessary to amend the sanction of part 2 article 14.1 CAO RF, through providing for the possibility of punishment in the form of confiscation of a vehicle that is used for passengers' carriage. However, in establishing this kind of punishment it is necessary to take into account that, according to the legal position of the Constitutional Court of the RF expressed in its decision No. 6-P from April 25, 2011 [6], the confiscation of the instrument or target of administrative offense owned by a person, who is not brought to administrative responsibility for this administrative offense and not recognized in court guilty of its committing, is not applied, except for administrative violations in the field of customs, provided for in chapter 16 CAO RF. This legal position was enshrined in CAO RF.

This legal position of the Constitutional Court of the Russian Federation is of particular importance for a decision on bringing to administrative responsibility for the carriage of passengers and luggage without permission on exercising this type of activity. In most cases, drivers are not the owners of the vehicles used to carriage. Therefore, in case of bringing a person to administrative responsibility, the penalty of confiscation of vehicle cannot be imposed.

In this situation, an offender may be sentenced to an administrative penalty in the form of a fine from two thousand to two thousand five hundred rubles, which cannot have a significant impact on combating these violations.

Denoting the problem of engagement of foreign nationals in illegal private cabbage, we note that in case of imposition to them an administrative penalty they may freely leave the territory of the Russian Federation. And if the fine is not paid within the statutory period, the decision of court in the part of recovery of penalty is unenforceable. The lack of international cooperation on this issue makes it impossible to execute the judgment taken against an offender. It is also problematic for bailiffs to determine the location of a foreign national in the territory of Russia.

Thus, in the case of administrative offence, officials have to rely on the honesty of the person that has been called to account.

An effective measure of impact on a person, who has been brought to administrative responsibility, is the possibility to seizure the vehicle within the framework of proceedings on case of administrative offence. CAO RF should provide for the possibility to detain a vehicle until the confirmation of payment of administrative fine imposed by judge, authorized body or official.

The lack of opportunity to apply confiscation of the vehicle when making a decision, as well as a small size of fine, make administrative-legal measures of enforcement ineffective in combating illicit private cabbings.

In order to improve the effectiveness of administrative-legal measures to combat violations in the sphere of transportations it is expedient to amend the current legislation through increasing the size of fine under part 2 article 14.1 CAO RF, as well as through providing a mechanism of returning the seized vehicle after the confirmation of payment of fine imposed by court.

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