

PROCEDURAL GUARANTEES OF ENSURING THE PROTECTION  
OF LEGALITY IN PROCEEDINGS ON A CASE  
OF ADMINISTRATIVE OFFENCE

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Some issues of realization of the principle of legality in administrative and jurisdictional activities are discussed in the article. The author formulates proposals for amendments into the legislation of the Russian Federation to improve procedural guarantees of ensuring the protection of legality in proceedings on a case of administrative offence.

**Keywords:** proceedings on a case of administrative offence, principle of legality, prosecutorial oversight, procedural guarantees.

A norm established in part 2 article 15 of the Constitution of the Russian Federation [1], which obliges all actors to strictly abide by the Basic law of the state and laws, in the legal literature is strongly associated with the principle of legality. The essence of the principle of legality was correctly suggested by French legal scholar G. Breban, who defined it as “binding of administration by law. This principle consists of two interrelated elements: the obligation to act in accordance with law and the obligation to take the initiative to ensure the implementation of the law” [7, 171]. All legally significant actions, perpetrated by authorized bodies, shall be consistent with the requirements of the law, be reasonable and motivated.

In scientific works the legitimacy is traditionally opposed to free discretion, excessive degree of bureaucratic administration, broad discretionary powers of dominating actors and arbitrariness. True meaning of legitimacy should not be confused with such phenomena as revolutionary and corporate legitimacy. The first one “does not exclude and cannot exclude the need for derogations in certain conditions from the letter of law, especially when, for example, the law is outdated and has stopped to meet vital needs of revolution” [11, 19]. The second one, not having anything to do with the idea of justice, lurks in the anti-people laws that are lobbied by groups with an ax to grind.

Any activities undertaken to further strengthening of ensuring legality are inevitably accompanied by reduction of declarative norms and their inconsistency, improving the mechanism for implementing laws and by-laws, increasing of legal culture in society. The idea of legality is seen as a belief in the need for strict adherence to legal norms enshrined in the law [8, 36]. People need to develop not the fear of the law, but the sense of legality – “motivation to comply with established laws, i.e. general rules of conduct, not in line with the specific conditions of their application... A sense of legality is not only a conduct consistent with the law, it is an irrepressible, maybe unconscious desire to act according to the law, the need for compliance with the law”, wrote more than a hundred years ago G. F. Shershenevich [14, 144-153].

The universality of the principle of legality is also that a contravention of any other principle of proceedings automatically causes negative impact on legality. You cannot, however, assume that the principle under consideration is a totality of other principles, since in this case it loses its autonomy. “The idea of strict compliance with the law during proceedings... forms the content of only the principle of legality. Exactly in this its content it differs from of all the other... procedural principles and content of those legal ideas that serve as their basis” [9, 6].

At the same time, the principle of legality may limit the breadth of application of other principles, such as the principle of objective (substantive) truth. So, part 2 article 195 Civil Procedure Code of the RF [3] determines that a court bases its decision only on evidence that has been investigated in court session. A case in point is about the extent of lawful discretion of a jurisdictional body.

Proceedings on a case of administrative offence are carried out on the basis of regulatory prescriptions, step by step leading all the parties involved to resolving of the case. When the sequence of these or those actions is not detailed, this in turn allows an official to act at its own discretion, arbitrarily and inevitably leads to the violation of legality.

Ensuring legality during procedural actions in proceedings on a case of administrative offense plays important role because: 1) they actually decide the fate of a person brought to administrative responsibility; 2) they apply coercive measures having a negative impact on the offender [10, 117].

A. M. Baryshev calls the main causes of violations of legality in proceedings on a case of administrative offence, they are the failure to fulfil the requirements of the principle of legality by proceedings subjects; the lack of a proper level of legal culture among Russian citizens and officials of various bodies of state power and local self-government; inconsistency of many laws and, especially, by-laws with international criteria of legality, validity of a law or a by-law [6, 39-40]. We believe that the violation of the principle of legality is also based on other reasons, more specific, such as notorious performance indicators in the activity of a number of controlling administrative and jurisdictional bodies, not just the absence of "legal culture", but an elementary ignorance of the provisions of the Code on Administrative Offences of the RF (hereinafter – CAO RF), failure to perform administrative-procedural actions, etc.

An effective barrier to the implementation of wrongful actions and taken decisions is procedural guarantees to ensure the protection of legality in proceedings on a case of administrative offence, which are based on control and oversight activity.

Control by the authorities over the compliance with legality in proceedings on cases of administrative offences can be exercised by authorized administrative and jurisdictional bodies, prosecutors and judges in accordance with the legislation of the Russian Federation.

The Procurator's Office of the RF is a unified federal system of bodies that on behalf of the Russian Federation exercise oversight over the compliance with the Constitution of the RF and implementation of laws on the territory of Russia (article 1 of the Federal Law No. 2202-I from January 17, 1992 "On the Procurator's Office of the Russian Federation") [4]. Prosecutors are ones of the most active participants in proceedings on a case of administrative offences. Failure to comply with their lawful demands causes administrative responsibility under article 17.7 CAO RF. In accordance with article 25.11 CAO RF, a prosecutor, within the scope of its authority, shall be entitled to initiate proceedings in a case concerning an administrative offence, participate in its consideration, submit evidence, make petitions, give opinions on questions arising during the consideration of a case, lodge a protest against a decision in respect of a case concerning an administrative offence irrespective of participation in the case, as well as perform other procedural actions [2].

The intervention of a prosecutor is acceptable only if the tasks of proceedings cannot be achieved otherwise. Participation of a prosecutor in a case should in all cases be justified and accepted. In proceedings on cases of administrative offences prosecutors are empowered to protect public interest. They have a right to initiate a case of administrative violation, come into proceedings at any stage, and use a variety of means of legal protection to ensure legality. In this case, the protection of rights and interests of interested participants to proceedings, unable to defend their rights, may be an exceptional cause of prosecutor's interference. Prosecutors should not have decision-making authority outside the scope of administrative jurisdiction and should not have more rights than the other parties to proceedings. The intervention of a prosecutor in a case occurs only for substantiated reasons.

But the most effective is judicial control over the observance of legality, which includes the checking of standards and resolution of complaints against the actions (inaction) of officials of jurisdictional bodies. We should agree with the conclusion of E. V. Smirnova, who noted that "consideration of public-law disputes should take place within the framework of special procedure – administrative court procedure" [9, 12]. The principle of legality prevails when unlawful actions or decisions of an administrative and jurisdictional body are successfully appealed. It is important to remember that "legality without state guarantees ceases to perform its purpose" [13, 393]. Mechanisms to ensure the guarantees of the rights of citizens and organizations to a legitimate, substantiated and taken in a reasonable time decision on a case are present in the legislation on administrative responsibility, are constantly being improved on the background of the ongoing reform of judicial and administrative system. We believe that the establishment of administrative courts in Russia could be a serious step in this direction.

Moreover we consider it necessary to normatively enshrine in CAO RF the procedural guarantees to protect legality in proceedings on a case of administrative offence. In this connection, we propose the inclusion of article 24.8 in chapter 24 CAO RF, as follows:

"Article 24.8. Procedural guarantees to protect legality in proceedings on a case of administrative offence.

1. Proceedings on a case of administrative offence are carried out by the bodies and officials in strict accordance with the law.
2. Compliance with the requirements of the law in proceedings on a case of administrative offence is ensured through systematic control on the part of superior bodies and officials, prosecutorial oversight, the right of appeal, other legal means".

Thus, the principle of legality in the system of principles of proceedings on a case of administrative offence ranks independent position. Its observance must be assessed through comparing specific actions and decisions of a jurisdictional body to relevant provisions of CAO RF.

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