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Frolov V. A.

ADMINISTRATIVE MISCONDUCT: CONCEPT AND GENERAL CHARACTERISTIC

Frolov Vyacheslav Aleksandrovich,
Graduate student of Russian Customs Academy,
Glotozop2@yandex.ru

The concept, general characteristic and signs of administrative misconduct are explored in the article on the basis of its comparison, including sameness, with administrative offense.

The author concludes that the concept of administrative misconduct is an integral and essential part of the concept of administrative offense and that as misconduct may be considered a less serious deed than an administrative offense.

Keywords: administrative misconduct, administrative offence, administrative responsibility, signs of administrative offence, signs of administrative misconduct, elements of subjective composition of misconduct.

Concept of administrative misconduct was firstly legislatively introduced in 1980 in the Fundamentals of Legislation of the USSR and the Union Republics on Administrative Offenses [1], later clarified in article 10 of the Code on Administrative Offences of the RSFSR [2] in which, under administrative offense (misconduct) was recognized a wrongful culpable (intentional or negligent) action or inaction encroaching on the state or public order, socialist property, rights and freedoms of citizens, on the established order of management, for which the legislation provided for administrative responsibility.

Concept of administrative misconduct was not included in the Code on Administrative Offences of the RF (hereinafter – CAO RF) of 2002 [3], the legislator has enshrined only the concept of "administrative offence". According to article 2.1 CAO RF under administrative offence recognize wrongful culpable action (inaction) of a physical or legal person, for which CAO RF or laws on administrative offences of the constituent entities of the Russian Federation establish administrative responsibility.

Development of legislative technique has led to the specialization of legal norms. In particular, in order not to repeat the general features of misconducts dozens of times they have been "factored out" through enshrining by the norms of the General Part of CAO RF. That is why the text of any norm, which establishes administrative responsibility, does not contain a complete list of all the signs of offence composition. For a correct understanding the content of a specific composition, in addition to a specific article of normative act, it is necessary to consider its relation with the norms of the General Part of CAO RF, with other parts of legal framework [6, 329].

Administrative offence has four signs: public danger, wrongfulness, guiltiness and punishability [12]. Administrative offence can be committed only culpably. Guilt is a mental attitude of a person to a deed and its consequences in the form of intent or negligence. The wrongfulness of a deed is that it violates administrative-legal prohibitions. Punishability lies in the fact that as an administrative offense may be considered only such a deed, for commission of which provide for administrative responsibility.

Public danger of administrative offence is that it actually inflicts or may inflict harm to public relations protected by law. Harm can be expressed both in causing material damage and in some other form.

Analysis of the scientific legal literature and stated in it positions of leading legal-scholars has led to a conclusion – despite the fact that the current CAO RF does not enshrine the concept of "administrative misconduct", all its specific signs and properties are included in the concept of administrative offense. As a legislative model of offence the composition of misconduct is an integral part of its normative basis and it forms the hypothesis of a norm establishing administrative responsibility.

It can be assumed that the composition of administrative misconduct is recognized as a statutory combination of signs, in the presence of which an antisocial deed is considered as an administrative offense.

As a phenomenon of reality administrative offence (misconduct) has a huge number of signs. Composition of misconduct is a logical construction, its legal

concept, reflecting the essential features of real phenomena, that is, certain anti-social deeds (actions or inaction). The legislator does not enshrines the signs of misconducts in legal norms of either General or Special Part of CAO RF, but only selects from them significant, distinctive features and constructs compositions. Thus, the logical construction of norm is enshrined in law and becomes a mandatory integral part of the basis of responsibility. The majority of administrative law theorists agree that the list of signs enshrined in the administrative-legal norm is a necessary and sufficient ground for the classification of a deed as administrative misconduct

According to D. N. Bakhrakh "A real deed is considered as misconduct only when it contains all the signs of composition mentioned in the norm; the absence of at least one of them means the absence of composition in general" [6, 340].

Misconduct like administrative offence has four elements of subjective composition: object, objective aspect, subject, subjective aspect.

The object of administrative misconduct is legal relations, which violate administrative-legal prohibitions. At that, as the common object of administrative misconducts recognize legal relations that are regulated by various branches of law, and protected by administrative-coercive norms, and as the generic object of misconducts recognize the block of legal relations, which constitutes an integral and independent part of the common object.

Specific object – a kind of generic object, specific group of legal relations that are common to a number of misconducts of the same kind. It includes, for example, administrative responsibility for violation of traffic rules, military registration, customs, tax legislation.

The objective aspect of misconduct is a system of signs provided for by the norms of administrative law, which characterize its external manifestations. The most important among them is the one that determines the deed itself, the varieties of which can be represented by action and inaction.

Deeds may also have other signs. Be repeated, systematic, continued, etc. Features of unlawful conduct in lasting and continued misconducts have great importance for deeds' classification. As lasting misconduct should recognize an action or inaction, after which a legal obligation is not being executed for a long time. In the base of a lasting breach lies a not carried out by a person for a long time legal obligation not to violate legal prohibitions or, on the contrary, obligation to commit an action stipulated by a norm of law. It is characterized by continuous exercising of violation, most often through long inactivity. The starting point of misconduct is an action or inaction that has resulted in prolonged violation of legal prohibition or

prolonged failure to comply with the obligations. It ends actually with the termination of the violation or legally with bringing of guilty person to responsibility.

Continued misconducts consist of a series of identical unlawful deeds directed toward a common goal and constitute in their totality a single misconduct (repeated use of radio transmitting equipment, gross violation the rules of accounting of income and expenses, etc.). Continued misconduct represents several actions, each of which is a misconduct, but, as a rule, they are all joined together by one intent, and often committed in one place, using one and the same means. Continued deed starts from the moment of the first unlawful act and ends actually with the cessation of unlawful activity, so several of such violations also are treated as a single misconduct, or legally with bringing of person to administrative responsibility.

Deed is a rod, around which other signs of the objective aspect (method, time, place, etc.) are grouped.

Conducted research of judicial practice has allowed making an important conclusion that in investigation of administrative offenses (misconducts) the analysis of the objective aspect of a deed is not paid enough attention. Although, according to S. S. Alekseev, S. I. Arkhipov, it is a core, around which the rest of the signs of an offence are formed [4]. Often in administrative-legal norm, which describes a misconduct, indicate the place, time and means. The time of misconduct is recognized as a certain time period, moment or period of the day or year, in which the action or event was committed. The place of misconduct is a location, on which has happened, was happening, will happen an offence, the place can be an arbitrary. In the theory of criminal law and administrative law, time, place and method are referred to optional signs.

The subject of misconduct is a person who committed it, and whose deed contains a misconduct described in administrative-legal norm.

Under the current legislation, individual and collective subjects are recognized as the subjects of administrative violations. Individual subjects are citizens, foreign citizens and persons with special administrative-legal status (officials, military personnel, employees of customs authorities, etc.). All the signs of an individual subject can be divided into two groups: general and special. As general ones recognize such which any person brought to administrative responsibility should have. There are two of them: age from 16 years old and sanity. All the signs of a general subject are enshrined by the articles of the General Part of CAO RF. If a norm does not contain any special signs of subject, therefore, to responsibility under it can be brought anyone who has common signs of subject. In other words, such a norm enshrines the responsibility of a general subject. But if a norm

mentions special signs of subject, it means that it establishes responsibility of a person, who along with general signs has special signs. In other words, such a norm enshrines the responsibility of a special subject [6].

The subjective aspect of misconduct is a totality of signs characterizing the mental attitude of person to a committed deed. Its core is a guilt that can exist in the form of intent or negligence. Most often the legislator does not indicate other signs of objective aspect.

In a number of articles also indicate the form of guilt. Although the sign of the form of guilt is rarely directly included in compositions, obviously that some of deeds may be committed only intentionally. For example, petty theft, concealment of goods from the customs control.

Comparison of the content of the articles of CAO RF and the Criminal Code of the RF, which determine intent and negligence, allows to identify peculiarities of administrative-legal guilt. It is the guilt of misconduct, but not a crime. It involves awareness of the wrongfulness of actions, and not their public danger. It is associated with the relation to harmful, but not socially dangerous consequences [7].

The authors of the Handbook on Criminal Law A. V. Grishin, V. A. Kuzmin and V. A. Mayorov argue that any misconduct or offence is of anti-social nature because inflicts harm to any interest – social or legal ones. The difference of crime from misconduct (offense) lies in the nature or degree of public danger. Harm of crime is much more diverse and greater than harm of misconduct [8, 41]. Nature of public danger of crime depends on the object of encroachment, content of consequences of deed and form of guilt. Degree is a quantity of public danger of the crime of one nature.

According to M. I. Nikulin, administrative misconduct is "a means of resolving the contradiction between the need (real or falsely understood) of a man and prescription (prohibition) formulated in administrative-legal norm". This contradiction is not of antagonistic nature, is not long-continued, the attempt to solve it by means of offense is usually not caused by anti-social essence of offender, and is due to the weakening of internal self-control, the deformation of the evaluation criteria of public danger of a deed. To some extent this state of offender is due to the fact that the borders between administrative misconduct, especially when it concerns technical norms, and permissible behavior sometimes are insufficiently substantiated and understood [11, 82].

M. N. Kobzar-Frolova has a point of view that misconducts are less dangerous by its nature and consequences than crimes. They are committed not in criminal-law sphere and by criminals, but by ordinary citizens in various spheres

of economic, commercial, labor, administrative, cultural, family and industrial activity. And entail not punishment, but penalties [9, 19]. N. I. Matuzov and A. V. Mal'ko have similar positions [10, 209-210].

Thus, it can be concluded that the concept of administrative misconduct is a part and parcel of the concept of administrative offence, however, it is possible to assume, that misconduct might be recognized as a less serious deed than administrative offence.

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Mel'nikov V. A.

MEANS OF ADMINISTRATIVE-LEGAL RESTRICTION ON CITIZENS' RIGHTS IN ACTIVITIES OF INTERNAL AFFAIRS BODIES OF THE RUSSIAN FEDERATION[1]

Mel'nikov Valerii Anatol'evich,
c.j.s. (PhD in law), Professor of the Chair of constitutional and administrative law at Volgograd Academy of the RF MIA, Associate professor, Volgograd.

Despite the fact that the legal regulation of the content of and grounds for the application of measures of administrative coercion in the Russian Federation shall be the sole competence of the legislator and, therefore, be contained only in federal laws, the author argues that this categoricalness does not apply to the legal regulation of the application of administrative coercion measures. According to the author, "the legal regulation of application of administrative coercion measures can be implemented both by law and by subordinate acts, but only strictly based on the law".

The facts of delegation to the federal bodies of executive power of powers in part of normative determination the order of realization of restrictions imposed by the legislator and determining the amount of a special administrative-legal status of certain groups of citizens.

The means of administrative-legal restriction on the rights of citizens by the internal affairs bodies are listed in the article.

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Keywords: human and civil rights and freedoms, restriction on the rights of citizens, administrative-legal restrictions, activities of internal affairs bodies, mechanism of restriction on the rights of citizens.

The mechanism of implementation of administrative-legal restrictions on the rights of citizens we recognize as a totality of legal ways and means, by which authorized bodies (their officials) establish and (or) implement administrative-legal restrictions on the rights of citizens.

With regard to the mechanism of implementing administrative-legal restrictions on the rights of citizens in the activity of internal affairs bodies, it should be noted that the authorities, which are direct participants of this mechanism, are known to us. They are the bodies of internal affairs. The object of the mechanism impact is also known – it is the rights of citizens that are limited in order to ensure a proper balance between the interests of a citizen and society. And in this sense, within the framework of researching the issues of the mechanism of implementing administrative-legal restrictions on the rights of citizens in the Russian Federation by internal affairs bodies, particular significance is gained by the issue of determining the means of implementation administrative-legal restrictions on the rights of citizens in activity of this one of the federal executive bodies.

The legal means of administrative-legal restriction on the rights of citizens in general we recognize as the totality of means-establishments, expressed in the norms of administrative law (rights establishment level), and means-deeds in the form of an individual legal act (law-enforcement level), which restrict the rights of citizens in order to ensure the proper balance between the interests of a citizen and society.

There is no doubt concerning the legality of attributing internal affairs bodies to the subjects of rulemaking. However, everything is not so simple regarding the possibility of normative regulation by internal affairs bodies of legal relations, the content of which covers restriction on the rights of citizens.

Part 3 article 55 of the Constitution of the Russian Federation [1] lays down that "the rights and freedoms of man and citizen may be limited by the federal law only to such an extent to which it is necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defence of the country and security of the State".

Literally interpreting part 3 article 55 of the Constitution of the Russian Federation, many authors suggest that "the grounds, conditions and procedure for the implementation of measures of administrative coercion, the list of measures that are acceptable for use in certain cases, authorities responsible for their application, – all this should be defined only by the norms of federal laws. …However, unfortunately, there is still in effect a certain number of subordinate and even departmental acts authorizing various public authorities in certain cases to apply the measures of administrative coercion and determining the order of their application" [7, 520].

"Since the main threat of unreasonable restrictions comes from executive power, the Constitutions generally provide for the possibility of restrictions on fundamental rights only by law or on the basis of law, i.e., by acts, in the adoption which the executive power is not directly involved" – says M. V. Baglai [6, 165-166]. In the above quote the author understands the restriction on fundamental rights on the basis of law only as adoption of acts, "in the adoption which the executive power is not directly involved". Only the forms of indirect participation of executive power in the adoption of such acts remain uncertain.

Basic Law of the Federal Republic of Germany speaking about the restrictions on the rights and freedoms of citizens repeatedly uses the phrase "by law or on the basis of law". For example, part 1 article 12 of the Basic Law of the Federal Republic of Germany states that "exercise of profession may be regulated by law or on the basis of law". On this occasion, German scientist K. Hesse noted that "in the first case the legislator itself implements restriction without need for further exercising of an executive act, in the second – it regulates the preconditions, under which the bodies of executive or judiciary power can or should exercise a restriction" [10, 165]. In the above quote to the restrictions on rights of citizens on the basis of law the author attributes only the cases of adoption by authorized bodies (their officials) of discretionary decisions about the scope and necessity of imposition such restrictions (i.e. decisions on the application of state coercive measures). The existence of such a possibility of actions of authorized persons on the basis of law raises no objections, but it seems to us not the only one.

T. S. Moskalenko notes that "restrictions on the rights of citizens must be applied within a specific mechanism which shall be understood as a certain system, which defines procedures for restricting the rights of citizens. The author includes into this system the following structural elements: 1) the grounds of restriction on the rights of citizens – factual and legal; 2) the subjects of restriction on the rights of citizens; 3) the objects of restriction; 4) the measures of restriction on the rights of citizens – non-recognition of rights, suspension of rights, deprivation of rights

or complication of the procedure for their implementation" [9, 12]. It seems that the definition of the mechanism of restriction on the rights of citizens contained in the citation is unduly narrowed down by the author, and he puts an equal sign between this mechanism and procedure of application these restrictions. Apparently this preconditions the fact that further as one of the common signs of restrictions on the rights of citizens the author notes that "restrictions on the rights of citizens are defined in federal laws, and subordinate normative legal acts and individual acts on application of law norms must contain only the mechanism for their implementation" [9, 12]. In this citation the author also equates the mechanism of restriction on the rights of citizens and the procedure of application these restrictions to citizens. But even in this case, it is difficult to agree with the author that the individual acts on application of law norms may contain the procedure of application to citizens the restrictions of their rights. Since the individual acts, as reasonably pointed out by the author, are always just the acts on application of law norms. But the regulation of the procedure of application to citizens the restrictions on their rights by subordinate normative legal acts seems to us, in some cases possible.

"Of course, the inclusion into the law both the restrictions of right and the procedure for implementation of this restriction can be considered as a perfect option. However, in this case in the absence of legally prescribed procedure for implementation of right restriction the restrictions stipulated by the law, …will have no legal force" – it is, in our view, rightly noted by V. P. Kamyshanskii [8, 47].

It appears that the legal regulation of the content and grounds for the application of measures of administrative coercion in the Russian Federation should be the sole competence of the legislator and, therefore, be contained only in federal laws. Such categoricalness is not applied by us to the legal regulation of the procedure for application measures of administrative coercion. In our view, the legal regulation of the procedure for application measures of administrative coercion can be carried out both by law and subordinate laws, but only strictly on the basis of law.

A number of existing normative-legal acts, which have the force of law and regulate imposition of rights restrictions on citizens, directly provide for the possibility of legal regulation of the procedure (or certain provisions of the procedure) for applying measures of administrative coercion by the bodies of executive authority of the Russian Federation. So, part 2 article 27.6 of the Code on Administrative Offences of the Russian Federation (hereinafter – CAO RF) [2] contains a provision according to which "the conditions for holding detainees in custody, nourishment norms and the procedure for medical treatment of such persons shall be determined by the Government of the Russian Federation". However, the conditions for

holding in custody, nourishment norms and the procedure for medical treatment of persons, who have been subjected to administrative detention, is an integral part of the procedure for application such a measure of administrative coercion as administrative detention.

The second paragraph of part 2 article 27.15 CAO RF contains a provision, according to which the delivery shall be carried out "by an internal affairs body (the police) on the grounds of a ruling issued by the mentioned body, another body or official that considers a case concerning administrative offence, in the procedure established by the federal executive body in the area of internal affairs". In this case the legislator has fully delegated to the Ministry of Internal Affairs of the Russian Federation its powers concerning the legal regulation of the procedure for application such measure of administrative coercion as delivery.

Thus, it appears that *the legal regulation of the content of and grounds for the application measures of administrative coercion in the Russian Federation is an exclusive competence of the legislator and, consequently, can be contained only in federal laws. On the basis of law, through delegating by the legislator of its powers to the specifically listed in law federal bodies of executive authority, only legal regulation of the procedure (or certain provisions of the procedure) for application certain measures of administrative coercion is possible.*

However, delegating by the legislator of its powers on legal regulation of the procedure (or certain provisions of the procedure) for application certain measures of administrative coercion to federal bodies of executive authority is not the only legal means of administrative-legal restriction on the rights of citizens by internal affairs bodies. The legislator can also delegate to federal bodies of executive authority the powers concerning the normative determination of the procedure for implementing restrictions that are established by the legislator and determine the volume of a special administrative-legal status of certain groups of citizens.

In addition, legal regulation of the procedure for implementation these restrictions by a federal body of executive authority may be not only an internal (in relation to the federal body of executive authority exercising this regulation), but also of an external orientation.

Examples of delegation by the legislator to federal bodies of executive authority of its powers on legal regulation of the procedure for implementation of the laid down in law restrictions on special administrative-legal status of the staff of these authorities can be provisions of a number of articles of the Federal law "On the Police" [5]. So, in accordance with paragraph 1 article 27 of the Federal Law "On the Police", a police officer is obliged to undergo regular checks of the knowledge

of the Constitution of the Russian Federation, legislative and other normative legal acts in the sphere of internal affairs. Legal regulation of the procedure for undergoing such test is entrusted to the federal body of executive authority in the sphere of internal affairs.

In accordance with paragraph 2 article 37 of the Federal law "On the Police" "police officers, if necessary, may be involved in performing official duties in excess of the duration of weekly work time, as well as at night time, on weekends and public holidays. Legal regulation of the procedure of such involvement is also entrusted by the legislator on the federal executive body in the sphere of internal affairs.

The current legislation has also examples of the delegation by the legislator to federal executive body of its powers on legal regulation of the procedure for implementation of established by law restrictions of special administrative-legal status of not only the employees of these bodies, but also other specified by law groups of citizens (the powers of federal executive bodies of external orientation).

So, part 3 article 16 of the Law of the Russian Federation No. 2487-1 from March 11, 1992 "On Private Detective and Security Activities in the Russian Federation" [3] establishes responsibility of private guards be periodically inspected for suitability to act in situations involving the use of firearms and (or) special means. The powers on legal regulation the content of such periodic inspections, the order and timing of their conduct the legislator delegates to the Ministry of Internal Affairs of the Russian Federation.

Part 3 article 6 of the Federal Law No. 77-FL from 14.04.1999 "On Departmental Security Service" [4] contains a provision stating that "departmental security service personnel are required to undergo annual medical examinations, as well as periodic checks for suitability to act in conditions associated with the use of physical force, special means and firearms". These examinations and checks are also implemented in the order established by the Ministry of Health of the Russian Federation and the Ministry of Internal Affairs of the Russian Federation.

The existing in the current legislation examples of delegation by the legislator to federal executive bodies of its powers on legal regulation of the procedure for implementation of established by law restrictions of special administrative-legal status of not the employees of these bodies, but other specified by law groups of citizens (the powers of federal executive bodies of external orientation), appear to be insufficiently substantiated.

In this case there is a legal regulation of the procedure for restriction on the rights of citizens by a federal executive body, where the body is a party to

the relevant legal relations. It turns out that in these cases the federal body of executive authority implements legal regulation of its own external activity in legal relations on restriction the rights of citizens.

Delegation by the legislator of powers on the legal regulation of restriction on the rights of citizens by any federal executive body to the executive body itself seems unacceptable, or, as an option, possible only in exceptional cases for the higher federal body of executive authority – the Government of the Russian Federation.

Bodies of internal affairs are one of the main bodies that are authorized to apply measures of administrative coercion in the Russian Federation. Each year, internal affairs bodies reveal more than 70 million administrative offences. The number of measures of administrative coercion applied by internal affairs bodies is at times more.

Given the fact that application of measures of administrative coercion is the only possible means to implement the law-enforcement method of administrative-legal restrictions on the rights of citizens, we should admit the existence of such means of administrative-legal restriction on the rights of citizens in the arsenal of internal affairs bodies.

Taking into account the above, as *the first means of administrative-legal restriction on the rights of citizens by internal affairs bodies* acts the establishment of restrictions on the special administrative-legal status of employees of internal affairs bodies by local norms of law relating to the execution of their official duties.

As *the second means of administrative-legal restriction on the rights of citizens by internal affairs bodies* acts the establishment of restrictions on the special administrative-legal status of employees of internal affairs bodies that are not related to the performance of their official duties, which are created by delegating by the legislator to a federal executive body of its powers in the area of internal affairs.

As *the third means of administrative-legal restriction on the rights of citizens by internal affairs bodies* acts legal regulation of the procedure (or certain provisions of the procedure) for application certain measures of administrative coercion carried out on the basis of law, and created by delegating by the legislator to a federal executive body of its powers in the area of internal affairs.

The fourth means of administrative-legal restriction on the rights of citizens by internal affairs bodies is a legal regulation of the procedure for implementing of established in law restrictions on the special administrative-legal status of employees of internal affairs bodies, which is created by delegating by the legislator to a federal executive body of its powers in the area of internal affairs.

The fifth means of administrative-legal restriction on the rights of citizens by internal affairs bodies is application of measures of administrative coercion by employees of internal affairs bodies.

Delegation by the legislator to federal executive bodies in the area of internal affairs of its powers on legal regulation of the procedure for implementation of established by law restrictions of special administrative-legal status of not the employees of these bodies, but other specified by law groups of citizens (the powers of federal executive bodies of external orientation), appears to be unacceptable. Possibility of legal regulation of the content of and grounds for the application measures of administrative coercion in the Russian Federation also cannot be the legal means of administrative-legal restriction on the rights of citizens by internal affairs bodies. Such legal regulation should be an exclusive competence of the legislator and, consequently, should be contained only in federal laws.

Determination of the list of means of the mechanism for implementation of administrative-legal restriction on the rights of citizens in the Russian Federation by internal affairs bodies provides possibility of a comprehensive study of theoretical problems of legal regulation the activities of internal affairs bodies concerning the application by their officials of measures of administrative coercion of various groups.

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Nosenko L. I.

TOWARDS THE ISSUE OF SERVICE DISPUTES[1]

Nosenko Lidiya Ivanovna,
c.j.s. (PhD in law), Head of the Chair of civil law and process of Orenburg State University law faculty, Honorary Worker of Higher Education of the RF, Orenburg,
lidiano@list.ru

The author notes the existence of a legal conflict arising from the content of the norms of the Labor Code and the Law "On Public Civil Service" on the application of these laws to public civil service.

The author admits the possibility of collective service disputes in the field of public service, with the exception of specific legal relations, which contain explicit prohibition.

Here is risen a question about the need to develop a general concept of "service dispute" and its legislative consolidation in the Federal Law "On Public Civil Service", for the purpose of subsequent differentiation of the concept of the dispute and procedures for its consideration depending on the kind of official activity.

Keywords: controversy, service disputes, service legal relations, public service, individual service dispute.

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Strengthening theoretical positions on service law [10, 21], service legal relations, has become justified after the development of legislation on civil service. Questions related to the protection of violated rights raise a lot of discussions.

In accordance with article 10 of the Federal Law "On the Public Service of the Russian Federation", the procedure for resolving conflicts of interest and service disputes is established by an appropriate federal law on the form of public service [4]. The same law defines public service system, which includes the following forms: public civil service, military service, law enforcement service [4, page 2].

In all cases, the legislator operates with a special concept of "service", emphasizing the specificity of exercising the constitutional rights of Russian citizens to freely dispose of their abilities to the choice of occupation and profession (see article 37 of the RF Constitution [1]). Legislative prerequisites are implemented through entry of citizens into special legal relations associated with their specific subject and object of legal regulation (see articles 4-6 of the Federal Law "On the Public Service of the Russian Federation" [4]).

There is no a single comprehensive list of areas of public service [8, 262], what complicates insightful analysis of the specificity of all service relations on the matters relating to disputes concerning application of labor.

Individual service dispute is given a normatively enshrined definition, which is subjected to scientific analysis. However, most often analyzed service disputes concerning the application of labor of public civil servants. Category "individual service disputes" really raises scientific interest, because everywhere the debates are focused on sectorial affiliation of relations regarding public civil service. Legal collision arising from the provisions of the Labor Code and the law "On Public Civil Service" still has not been abolished. So, article 11 of the Labor Code of the Russian Federation states that "operation of the labor legislation and other acts containing norms of labor law applies to public civil servants and municipal employees with the peculiarities provided for by federal laws and other normative legal acts of the Russian Federation, laws and other normative legal acts on civil service and municipal service of the subjects of the Russian Federation", while article 5 of the Federal Law "On Public Civil Service" determines that "Regulation of relations associated with civil service shall be exercised by: the Constitution of the Russian Federation, the Federal Law "On the Public Service of the Russian Federation", this Federal Law" (i.e., excludes the regulatory impact of the Labor Code).

However, touching upon the issue of "service disputes" we have no right, in our view, to limit ourselves only by the abovementioned laws, because service disputes can occur not only at public civil service.

We note that not all legislative acts, which are designed to regulate service relations, contain the term of "service disputes". Analyzing some of them, we have found a special indication only in some [5, article 69; 6, article 72]. Unfortunately, for example, in the Federal Law "On Military Duty and Military Service" and "On the Status of Servicemen" such legal category as "individual service dispute" does not exist at all. It cannot be assumed that there are no disputes concerning the application of their abilities to labor in the sphere of military service. Disputes and disagreements may occur in all areas of professional activity. However, the specifics of disputes consideration is not affected by a number of normative acts designed to regulate service relations. Let's suppose that the laws "On Military Duty and Military Service" and "On the Status of Servicemen" do not contain reference to individual service disputes, because initially the relations of military service have never related to the subject of labor law, and that is why there is no place for disputes on the application of labor in the legislation on military service. In this case, by analogy, we should talk about employees of the Interior Ministry, since service activity of police, has never been related to the subject matter of labor law. However, reference to the notion and procedure for consideration of service disputes takes place in the Federal Law "On Service in the Internal Affairs of the Russian Federation and on Amendments to Certain Legislative Acts of the Russian Federation" [6]. The abovementioned indicates the insolvency of assumption on interrelation of service disputes and the subject of labor law. So, it is possible to assume the omission of the legislator in the field of protection of service rights.

While supporting the concept of unity of service relations [11], in our view, attention should be given to the need for developing a general concept of "service dispute" and its legislative enshrining in the Federal Law "On Public Civil Service, allowing subsequently in special definitions to differentiate the concept of dispute and the procedure for its consideration depending on the type of service activity. The centralization of basic theoretical concepts, including service dispute and individual service dispute, will allow, in our view, to take into account basic theoretical approaches in elaboration a special legislation designed to regulate particular type of service activity.

Next thing, to which we would like to pay attention, is kinds of disputes on the application of labor. Since the essence of service disputes, as referred to above, boils down to implementation their abilities to labor, issues related to conflictology in applying their abilities to professional activity today are very urgent. There are various theories that imply delimitation of conflict and dispute under various grounds. Also, in theory delimit the concept and content of labor disputes and

disputes relating to public civil service. Much of the reasonings of theorists appear to be quite interesting and debatable. However, given the above, we note that the theoretical concept of "individual service dispute" is not limited and should not be limited to the Federal Law "On Public Civil Service". In addition, in analyzing the concept of individual service dispute in the two laws [5; 6], we find it not quite tenable. More precisely, in accordance with the legislation, under individual service dispute commonly understand unsettled disputes between the representative of employer and.... citizen claiming to "hold a post" or earlier was on service, which are filed to the body for consideration of individual disputes [5, 6].

Having analyzed the content of legal norms, we conclude on the presence of special service relations of citizens **applying for** holding post, and who **were previously** on duty. How justifiably this normative provision is applied to state-service legal relations as special (status) legal relations that establish the **status** of public servants [10, 23]? On the occurrence of the legal status of servants we can talk only after the conclusion of a service contract. In other cases we can talk only about citizens applying for holding a certain service position. Legal regulation of prerequisites for realization of professional abilities is outside of service legal relations. That is, presentation of the content of article 69 of the Federal Law "On Public Civil Servants" and article 72 "On Service in the Internal Affairs..." confronts the content of service legal relation and requires serious remaking. We assume that as the prerequisite for such an exposition of legal norms has served the labor-legal concept of labor and closely related with them legal relations. This issue is theoretically correct designed in labor legislation, and relations prior to and arising out of labor ones are included in the subject of labor law (and the institute of labor disputes is included in relations that are not labor ones). Still there is no clear classification of legal relations that are closely related to service ones in service law, although the prerequisites certainly take place. Yu. N. Starilov highlights the second group of service relations, which include public relations on formation of public-service ones [10, 34]. The seventh group includes relations concerning termination of public service [10, 35], if the author would allow to add the term "as well as concerning the restoration and protection of violated rights and legally protected interests", then, in our view, it would be fully possible also to include in the seventh group relationships concerning service disputes.

Touching upon the concept of "individual service dispute", we note that there is a theoretical discussion about the possibility of merging the concepts of "individual labor" and "individual service dispute". The combined result is referred to as "individual dispute" [9], where the subject of individual dispute is unsettled

controversies between special subjects of labor and service relations. In our opinion, we should not agree with this on the following reasons: first, the term of "individual dispute" is much broader than dispute associated with application of their abilities to labor or another kind of professional activity. The subject of individual dispute may become compensation for the harm caused to a citizen by damage to property (e.g., in car accident), division of property between spouses, and much more. Once a dispute is based on the expression of will of an individual personality, it can entirely be named individual. The personality, in accordance with the legislation, has the right to insist on protection of all, and not only of labor and service rights, so it is true to name labor and service disputes "individual", and the term of "individual" should be applied only when denoting the subject-matter affiliation of dispute. Otherwise word combination "individual dispute" is pointless and does not reflect the essence of service and labor dispute.

Next, we would like to draw attention to the need for classification of service disputes. If you adhere to the classical approach to the classification of labor disputes according to disputable subject [7, 6], they are subdivided into individual and collective.

Correlation of collective disputes and service relations conceals a problem that requires deep theoretical study. In accordance with the legislation, there is a specific reference to the inadmissibility of strikes in strictly designated cases [2, page 3]. From the analysis of normatively-enshrined provisions follows a specific list of prohibitions applicable to the RF Armed Forces that are responsible for national defense, national security, etc. However, there are no indications of a direct ban on strikes of public civil servants (as in the old law "On Fundamentals of Public Service of the Russian Federation") [3]. Following the logic that everything what is not prohibited is acceptable, we can make a conclusion on the possibility of strike in order to settle a legal conflict of collective nature in the sphere of public civil service.

Considering the fact that strike is an **extreme** form of expression disagreement of workers with violation of their rights or legally protected interests, which does not cover the whole spectrum of collective labor dispute, we come to the conclusion on the possibility to allow collective service disputes in the sphere of public service. Specific legal relations, which contain direct prohibition, will be an exception, for example, in internal affairs bodies [6, page 79].

Conclusion is based on the absence of direct prohibition on the participation of public servants in a collective service dispute. This suggestion, in our view, requires further substantial theoretical elaboration.

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Onokolov Yu. P.

ADMINISTRATIVE SUPERVISION IS A TOOL OF BOTH PRIVATE AND GENERAL PREVENTION OF CRIMES AND OTHER OFFENCES[1]

Onokolov Yurii Pavlovich,
c.j.s. (PhD in law), Lecturer of Novorossiysk branch of Modern Humanitarian Academy, Novorossiysk,
onokolov@mail.ru

On the grounds of a retrospective analysis of Russian legislation in part of the functioning of the institute of administrative supervision the author alleges about succession of Soviet legal science provisions by Russian law. Here is determined a distinctive feature of the Russian legislator's approach to administrative supervision – its establishment only by court decision, which shall be made in civil proceedings and may be appealed in accordance with the provisions of the Code of Civil Procedure of the Russian Federation.

Noting the high social danger of recurrence of crimes by persons released from places of detention, the author stresses the need for application to the named category of persons effective and based on law measures of preventive nature, which, in his view, are the actual basis for the establishment of administrative supervision.

It is stated that administrative supervision reduces the possibility of criminal and anti-social impact of supervised persons on other citizens.

Keywords: administrative supervision, prevention of crime, prevention of offences, general prevention, private prevention.

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On July 1, 2011, on the base of the entered into legal force of Federal Law No. 64-FL from April 06, 2011 "On Administrative Supervision over Persons Released from Prisons" [1] (hereinafter – the Law or FL-64) and Federal Law "On Amendments to Certain Legislative Acts of the Russian Federation Russia in connection with the adoption of the Federal Law No. 66-FL (66-FL) from April 06, 2011 "On Administrative Supervision over Persons Released from Prisons", was revived the institute of administrative supervision over the part of persons released from prison, which continue to maintain significant social danger.

This institute existed earlier, during the Soviet period, based on the Decree of the Presidium of the Supreme Soviet of the USSR No. 5364-VI from July 26, 1966, which approved the "Provision on administrative supervision of internal affairs bodies over persons released from prison".

As noted by some authors [19, 31-39], until 90-ies of XX century in our country existed a clearly elaborated system of preventing the commission of crimes by persons released from prison, the main component of which was the institute of administrative supervision, which was a tested by long practice, effective coercive legal mean to prevent recidivism. Therefore, in the Soviet period, the level of recidivism among persons, who were under administrative supervision, ranged 10% [6, 40-42].

However, the quite effectively functioning institute of administrative supervision was abolished in the early 90s, during the period of "democratization and liberalization", what was supposedly motivated by human rights violation. At that, different researchers pointed to the hastiness of the abolition of administrative supervision and the need for its recovery [16, 6, 42].

According to N. V. Vitruk "under the slogan of liberalization of life, liberty and human rights, in particular, the right of privacy, was disorganized the system of social and special preventive measures to combat crime and other offenses" [8, 376].

The scientific literature of the early 2000-ies began to discuss not the administrative supervision, but programs of individual correction of wrongdoing conduct [9, 98].

By the mid-2000-ies the increase of overall crime in the country took place, including, "in connection with the cancellation of responsibility for breach of the rules of administrative supervision and with the dying away of the relevant institute" [13].

The need for the elaboration and adoption of the Federal Law "On Administrative Supervision ..." was due to the lack of adequate legal framework for

the prevention of returns to crime, as well as the existing crime situation in the country and standing out against its background growth of recidivism [11].

Revival of the institute of administrative oversight was caused by the complication of criminal situation in the country, as well as by the importance of prevention of returns to crime in the general system of measures to combat crime. In recent years, serious concern is caused by the level of recidivism, which, depending on the region of Russia, ranging from 25 to 40%. Summarized data indicate that in 85% of cases recidivism takes place in the first three years after dispensation from imprisonment, what clearly demonstrates that there are serious problems of prevention. 80% of the prisoners are serving their sentences for serious and very serious crimes, in respect of a substantial part of which fail to achieve the purposes of punishment and they continue to maintain a high degree of public danger after their release from a correctional facility. A measure of social control, which has historically proven its effectiveness in preventing recidivism, is the administrative supervision over persons released from places of imprisonment [18, 54-57].

Statistics show that in 2002, 365 thousand from 721 thousand convicts in penal colonies were sentenced for the second or third time, in 2003 – respectively 351 from 682, in 2004 – 298 from 601, in 2005 – 310 from 645, in 2006 – 330 from 697, in 2007 – 331 from 717, in 2008 – 343 from 734, in 2009 – 346 from 724 [10, 50-52]. That is about half of the persons detained in penal colonies, was convicted for the second or third time, which also confirms the need for the institute administrative supervision, which should become an effective part of the warning system of repeated crimes and other offenses.

In the explanatory memorandum to the draft Federal Law "On administrative control ..." it was noted that the need for such control is due to complication of the criminal situation in Russia, as well as to the importance of preventing recidivism in the general system of measures to combat crime. During the last years each year more than 350 thousand ex-convicts have being released from prison. They commit every fifth crime. Prevention activity in the Russian Federation to prevent the crimes by previously convicted persons has proven its lack of effectiveness. One of the most effective ways to prevent the commission of crimes by previously convicted persons is the administrative control (supervision).

Time has shown the incorrectness of refusal from the reasonably well functioning in the Soviet period institute of administrative supervision. The model of the Russian administrative supervision largely preserves the continuity of the Soviet administrative supervision, but the essential difference is its humanization,

which is expressed in the establishment of administrative supervision only by court decision, which is taken in civil proceedings and may be appealed in accordance with the provisions of the Code of Civil Procedure of the Russian Federation. Now has been substantially revived the existing in the Soviet period institute of administrative supervision.

Historical analysis allows us to conclude that the institute of administrative (police) supervision has objectively proved its demand in different countries and in different historical periods, what is due to its effectiveness in preventing re-infringing conduct of persons released from prison [7, 23 - 26]. Despite the generality of functions of the institute of administrative supervision, legislations of various countries have different approaches to the issues of establishing grounds, terms, subjects of supervision, as well as to establishment of procedural forms, in which the supervision is applied. In some cases, there can be also observed the absence of any specific procedural forms for the implementation of provisions of the laws on administrative supervision, despite mandatory judicial control of its application. Transfer of the issues of establishing administrative supervision under judicial control in modern Russia seems quite justified.

According to article 1 FL-64, administrative supervision – is a carried out by internal affairs bodies monitoring of compliance by a person released from prison the time constraints of its rights and freedoms, as well as the performance of its duties under this Law and established by the court. Administrative supervision tasks are also the prevention of the committing by supervised persons crimes and other offenses, exerting on them individual preventive influence in order to protect state and public interests (article 2 FL-64). In this regard, in paragraph 1 of the Decree of the Plenum of the Supreme Court of the Russian Federation No. 22 from June 27, 2013 "On the Application of the Legislation by Courts in Consideration of Cases on Administrative Supervision", was stressed that administrative supervision can be established by court decision namely to prevent the commission of crimes and other offenses by persons released from prison, as well as to protect state and public interests [5, 19].

Thus, the continuing high public danger of the above persons released from places of detention, as well as the need for applying to this category of persons of meaningful and based on law appropriate measures of preventive nature, is the actual basis of administrative supervision establishment.

A prerequisite for the implementation of administrative coercion in the form of administrative supervision is the duration of the conviction term, since only within this period this supervision is possible. Cancellation of a criminal record or

removal of conviction immediately entails the impossibility of implementation of administrative supervision and application of its inherent measures of administrative coercion.

The presence of a criminal record of a certain person indicates that a judgment of conviction retains its force in respect of it. That is why, the person, even after serving its sentence, stays in criminal-legal relations with the state, what also justifies the possibility of establishing, in the cases determined by law, administrative supervision, which should be recognized for the part of persons released from prison as a "compulsory prevention", administrative coercion to abstain from crimes and other offenses.

Part 1 article 4 FL-64 provides for the following administrative restrictions imposed during administrative supervision: 1) prohibition of residence in certain places; 2) prohibition of visits to places of mass and other events, and participation in these events; 3) prohibition of staying out of residential or other premises, which are the place residence or staying of a supervised person at a certain time; 4) prohibition of going out of the territory stipulated by court 5) required appearance from one to four times per month in the internal affairs bodies at the place of residence or stay for registration.

Administrative supervision is established by the court in respect of an adult person, who is being released or freed from prison and has outstanding conviction or un-removed criminal record for the commission of: 1) grave or especially grave crime; 2) recidivism; 3) intentional crime against a minor (article 3 FL-64).

Compulsory administrative supervision is applied to adult persons who are being released or freed from prison if they have an outstanding conviction or un-removed criminal record for committing a crime by a dangerous or especially dangerous recidivism or for crimes against sexual inviolability and sexual freedom of minors (Part 2 article 3 of the Law and part 1 article 173.1 of the Penal Code of the RF).

In other cases, administrative supervision is established if: 1) person while serving its sentence in places of deprivation of liberty has been recognized to be a malicious violator of the established order of serving the sentence; 2) a person that has served criminal sentence in the form of deprivation of liberty, and has outstanding conviction or un-removed criminal record, has committed within one year two or more administrative offences against the order of management and (or) administrative offences encroaching on public order and public safety and (or) on public health and public morals.

The immediate purpose of administrative supervision is private prevention. As the overall objective of administrative supervision should recognize the protection of society against the criminal actions of individuals, who have previously committed offences and are released from prison. Therefore, some authors rightly consider administrative supervision as a criminological institute [15, 48].

In our opinion, the institute of administrative supervision is aimed at not only private, but also general prevention. At that, article 2 FL-64 notes that administrative supervision is established in order to protect state and public interests, what indicates that there is a goal of not only individual, but also of general prevention of crimes and other offenses. At the same time implementation of administrative supervision in accordance with the established requirements reduces the possibility of criminal and anti-social effects of supervised persons on other citizens, who are not inclined to commit crimes and other offenses, and if its proper implementation is known to surrounding persons, to a certain extent it deters other citizens from committing of those or other offenses.

Since most of the functions for the implementation of administrative supervision is the responsibility of the MIA RF, the actual implementation of the Law is related to the adoption and entry into legal force September 06, 2011 of the order of the MIA RF No. 818 from July 08, 2011 "On the Procedure of Implementation the Administrative Supervision of Persons Released from Prison". This order regulates the exercised by internal affairs bodies supervision over the observance by persons released from prison of court-ordered administrative restrictions of their rights and freedoms, as well as over their compliance with obligations under FL-64.

Citizens, in respect of whom there is an administrative supervision, are obliged to register with the internal affairs bodies at the place of residence or stay. They must periodically be there for registration (1-4 times per month), to notify it about the change of residence or stay, change of job or dismissal. Supervised persons are prohibited to travel outside the territory, which is stipulated by the court for their stay, without the permission of internal affairs bodies. Obtaining the permission to travel outside this territory is provided only for valid excuse, such as death or serious illness of a close relative, the need for medical care, training or passing entrance exams, employment issues. In addition, the supervised persons may be not allowed to appear in specific locations, attend mass events, and be out from home at a certain time of the day.

The supervision may be suspended in case of announcement of a controlled person as wanted, recognition of it as missing, imprisonment, and after termination of these circumstances the supervision will be renewed.

Administrative supervision is terminated after cancellation of a criminal record of a citizen. The Law contains an important educational moment: early termination of administrative supervision by the court decision may be possible if a person under supervision conscientiously performs its duties and is positively characterized at its place of work, residence or stay. After the termination of administrative supervision a person under supervision is removed from the register in internal affairs bodies.

Administrative supervision is carried out mainly through the systematic monitoring of the supervised persons at the place of residence or stay concerning the observance of administrative constraints established by the court and the discharge of its obligations.

Direct involvement into administrative supervision is a duty of the units for the organization and implementation of administrative supervision or officials, who are responsible for the implementation of administrative supervision in order to prevent the commission by persons released from prison of crimes and other offenses, to provide an individual preventive impact.

In this work also involved police commissioners; employees of regimental units: Patrol-Guard Service of the Police, non-departmental security forces, road patrol of the Russian traffic police; units authorized to carry out operational investigative activities; police dispatch centers of territorial bodies, as well as police officers of linear departments of the Ministry of Internal Affairs on rail, water and air transport [3].

Much of the work on the implementation of administrative supervision is vested on the police commissioners, which, according to the order of Ministry of Internal Affairs No. 818 from July 8, 2011, oversee supervised persons, monthly report to the chief of the territorial body about their observing of court-ordered administrative constraints and discharge of their obligations, as well as about the possibility of committing by them crimes and other offenses, including those involving evasion of administrative supervision. Information on the results of conducted conversations and activities for the implementation of administrative supervision is included in the questionnaires and lists of preventive events.

Police officers carrying out investigative activities, within the limits of the granted powers, should participate in monitoring over supervised persons' observing of court-ordered administrative constraints, collect information in order to determine the location of the supervised persons deviating from the administrative supervision, in the prescribed manner conduct searches for supervised persons, who evade administrative supervision.

Also employees of other sub-divisions of internal affairs bodies in carrying out their functions are required to take part in the implementation of individual preventive events.

The main task of internal affairs bodies in the implementation of administrative supervision is prevention of offences among supervised persons, formation of their law-abiding behavior, which is achieved primarily through preventive conversations with such individuals, explanatory work and monitoring of their behavior [11].

As a result, administrative supervision reduces the possibility of criminal and anti-social influence of supervised persons on other citizens who are not inclined to commit crimes and other offenses. Even the very fact of implementation of administrative supervision, if its proper implementation is known to other people, can often deter other people from committing those or other offences.

That is why article 6 of the draft Federal law on fundamentals of the system for prevention of offences in the Russian Federation" [17] notes that administrative review will be one of the main activities of the subjects of offences prevention.

The above circumstances indicate that administrative supervision is a logical continuation of the process of legal influence on persons released from places of deprivation of liberty of persons, in respect of whom administrative supervision has been established, which, at that, is one of the major and effective forms of offences prevention exercised in respect of this category of persons.

Tasks of administrative supervision defined by law that are aimed at preventing persons released from places of detention from committing crimes and other offences, and at exerting on them individual preventive influence require law-enforcement bodies, which carry out administrative supervision, to provide to these persons assistance in social rehabilitation, employment, organization of everyday life. Unfortunately, the tasks of resocialization and post-penitentiary adaptation of supervised persons are not specifically listed in FL-64.

Meanwhile, in some foreign countries (England, USA) operates the probation service, which is engaged in both post-penitentiary adaptation and control over the conduct of persons released from places of deprivation of liberty, which is associated with the execution by the named persons of a number of requirements established in the court verdict (prohibition to visit certain locations, meet with certain persons, etc.). In the United States in the early 1980 's. in some states as a form of probation into practice was introduced intensive supervision [14, 546-548; 12, 368-373].

Since this foreign experience is positive, in Russia in 2010 has been adopted the Concept for development of the criminal and penal system of the Russian Federation until 2020, which was approved by the RF Government Decree No. 1772-r from October 14, 2010 [4]. The Concept aims to create the conditions for the preparation of released persons to further post-penitentiary adaptation through the probation service. That is, in our country it is also planned to create the probation service, the competence of which will possibly include not only the resocialization and post-penitentiary adaptation, but also administrative supervision over persons released from prison.

Thus, administrative supervision is established to prevent the committing of crimes and other offenses by supervised persons, to exert on them individual preventive influence in order to protect state and public interests.

Proper application of the institute of administrative supervision will be an effective measure for the prevention of crime and other offenses either by persons released from prison, or individuals entering with them into those or other relations.

Currently, has been needed an appropriate organization of functioning of the administrative supervision institute, which is an effective legal tool to prevent the recidivism of crimes and will serve as a tool for not only private but also general prevention of both crimes and other offences.

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Popugaev Yu. I.

ABOUT OPTIMIZATION OF ADMINISTRATIVE-TORT LEGISLATION[1]

Popugaev Yurii Il'ich,
c.j.s. (PhD in law), First Deputy Head of the of State-owned Federal State Institution All-Russian Scientific Research Institute of the MIA RF, Associate Professor, Moscow.

The author proves the need for the third codification of the Code on Administrative Offences of the RF on the basis of comparative analysis of such legal regulation methods as penal prohibition and administrative-legal prohibition in terms of their effectiveness and efficiency in law enforcement practice and the proportionality of the amount of rights restriction, legal guarantees of tort relations participants.

Excessive divergence of a number of administrative-tort norms, their both intrabranch and interindustry competition with the norms of criminal legislation, which negatively impacts on law enforcement practice, is revealed in the article.

A lack of visible border between the upper limit of administrative penalty and the lower limit of a similar criminal penalty, which leads to arbitrary, sometimes illogical laws, is noted by the author.

Keywords: administrative-tort legislation, legislation on administrative offences, code on administrative offences, administrative offences, crimes.

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In countering any form of tort a special role is given to the adjusted, socially-mediated, evidence-based and qualitative legislation. At that, legal norms providing for these or those kinds of responsibility are subject to higher demands both in terms of the possibility of their effective practical application and compliance with the rights and guarantees of participants of tort relations, the fundamental principles of law.

The Russian legislation on administrative offences is quite young. The first codified act devoted to this legislation appeared in 1984. The new Code on Administrative Offences of the Russian Federation (hereinafter CAO RF) has been exercised since July 01, 2002. More than 500 articles of CAO RF formulate compositions of administrative offences and establish administrative penalties for their commission. At that, a considerable number of articles of the Special Part of CAO RF contain description of several compositions, so their total number more than twice exceeds the number of articles of the Special Part.

In addition to CAO RF, the legislation on administrative offences includes laws of constituent entities of the Russian Federation (codes on administrative offences), which also formulate many compositions of administrative offences. So, the code on administrative violations of the Moscow city includes more than 260 compositions of administrative offences.

Basic researches on the analysis and development of administrative-tort legislation, specificity and practical application of substantive and procedural norms began to be carried out mainly at the end of the last century and beginning of the 21 century [1; 2; 3; 4; 5; 6; 8; 9; 10; 11].

Analysis of administrative-tort law-making practices of recent years shows that this activity is very dynamic. CAO RF is regularly updated with new compositions of administrative offences. So, since its entry into force more than 260 amendments and additions have been made, with that separate legislative acts provide for over 800 changes in the articles of the Special part regarding specific compositions of offences and penalties for their commission. In our view, not only an ordinary citizen, but also a lawyer-specialist cannot timely comprehend and keep a close watch on such significant changes.

It seems that the constant, permanent and often hasty legislative reforms do not improve the quality of administrative-tort legislation. Comparative-legal analysis finds excessive contradiction of a number of administrative-tort norms, their both intra- and inter-branch competition with the norms of criminal legislation. This fact, in our view, has an extremely negative impact on law-enforcement practice. The need to distinguish between same-type offenses often leads enforcers to

a specific legal impasse in legal assessment of deeds, sectorial affiliation of which is not only unclear, but also within the existing regulation has received a dual characteristics and accordingly on the merits dual legal nature. It appears that this circumstance may contain a corruption component – presence of a so-called "backlash of discretion", moreover, not because of a lack of regulation, but on the contrary because of excessive, tangled tort regulation.

Let us illustrate the foregoing by specific examples.

Comparison of article 5.38 CAO RF (violation of the legislation on meetings, rallies, demonstrations, marches and pickets) and article 149 of the Criminal Code of the RF (obstruction of meetings, rallies, demonstrations, marches, picketing or participation in them) shows that in case when obstruction or coercion to participation is committed by an official, it must be said about a complete coincidence of the compositions of offence. Reasonable question arises – what responsibility should be applied?

Another example is part 4 article 222 of the Criminal Code of the RF (unlawful sale of civilian smoothbore long-barrelled firearms, firearms with limited lesion, gas weapons, edged weapons, including missile weapons) and part 6 article 20.8 CAO RF (unlawful acquisition, sale, transfer, storing, transporting or bearing of civilian smoothbore long-barrelled firearms or firearms with limited lesion).

In fact, one deed at the same time is recognized as a crime and as an administrative offence. At the same time, on the merits, a legal confusion must be noted – there is criminal responsibility for the illegal sale of gas arms, cold steel weapons, and there is administrative responsibility practically for the same actions in relation to firearms!?

Paragraph b) part 3 article 158 of the Criminal Code of the RF (theft of oil pipeline, oil-products pipeline, gas pipeline) directly "competes" with article 7.19 CAO RF (unauthorized connection and use of electrical, heat energy, oil, or gas). Such examples, unfortunately, are not isolated.

It should be noted that the list of administrative punishments under the current legislation has expanded considerably, and their repressive component has significantly increased.

Article 3.2 CAO RF establishes ten kinds of administrative punishments that may be imposed and applied for commission of administrative offences. Moreover, these penalties vary widely in nature of contained in them deprivations and right restrictions, i.e., in the degree of repressiveness (e.g., warning and administrative detention, administrative penalty and administrative expulsion, etc.). In addition, the volume of right restrictions (deprivations) contained in a particular form of

punishment varies greatly. So, the period of deprivation a special right for various offences can be established from one month to three years; the term of administrative detention from one day up to thirty days, mandatory works from twenty to two hundred hours, and so on.

Obviously, such a wide range of administrative punishments and volume of right restrictions contained in each form of punishment are due to the various degree of public danger of administrative offences (acts that are subject to punishment).

Administrative punishments established by the legislator for this or that type of administrative offence must be commensurate with its danger. The reverse violates the principles of fairness and equality before the law (unfortunately, the general legal principle of fairness has not been enshrined in the legislation on administrative offences, although it most reflects the social essence of law as a fair and effective regulator of social relations).

Analysis of legislation on administrative offenses shows a disproportionality of a range of administrative punishments in respect of public danger of administrative offenses. It is undoubtedly recognized that administrative offenses are different from crimes by lesser degree of public danger. Consequently, imposed for them administrative punishments should have less repressive nature than criminal punishments. Existing situation, in which the maximum size (period) of administrative punishments exceeds the minimum size (period) of similar and identical in nature of right restrictions (deprivations) punishments under the criminal law, appears unjustified and unacceptable. So, in accordance with paragraph 2 article 46 of the Criminal Code of the RF, fines are imposed in the amount of five thousand to five million rubles. Moreover, a fine of more than 500 thousand rubles may be imposed only in certain cases specifically provided for by the relevant articles of the Special Part of the Criminal Code of the RF (CC RF currently contains more than 20 such offenses), except for cases of calculating the amount of fine on the basis of a sum that is multiple of the amount of commercial bribery or bribe (CC RF contains 15 offenses with such sanctions).

At the same time article 3.5 CAO RF under general rule allows imposition on citizens a fine of up to 5 thousand rubles, and on officials up to 50 thousand rubles. At that, there are fines of up to 300 thousand rubles and up to 600 thousand rubles for certain types of administrative offences. Thus, the maximum amount of administrative penalty for individuals is by two orders of magnitude greater than the minimum size of a similar criminal punishment (CAO RF contains more than

450 administrative offences, sanctions of which are greater than 5 thousand rubles, not including penalties involving calculation of fine at times).

This situation leads to the blurring of borders between administrative offences and crimes. Judging by the sanctions of some articles of the CC RF and CAO RF, public danger of certain administrative offences is estimated by the legislator higher than public danger of crimes with similar signs. So, insult contained in a public speech provides for administrative punishment for citizens in the amount from 3 to 5 thousand rubles, and for officials from 30 to 50 thousand rubles (part 2 article 5.61 CAO RF), and public insult of a representative of authority is punishable by a fine up to 40 thousand rubles (article 319 of the Criminal Code of the RF), i.e., an administrative offense (insult) committed by a citizen is estimated by the legislator in respect of the degree of public danger similarly to the lowest bound of the degree of public danger of a crime (insult of a representative of authority), and offence committed by an official is estimated as superior to the degree of public danger of a crime (similar disparity can be found in correlation of sanctions of other articles of the Criminal Code of the RF and CAO RF, which, in addition to fines, also provide for other punishments. For example, part 4 article 20.2 CAO RF and article 214 of the Criminal Code of the RF and other).

Such distortions in the process of criminalization of deeds can be avoided by introducing amendments to the norms of the general parts of CAO RF and Criminal Code of the RF that establish the types and amounts (periods) of punishments. Their essence is the "moving apart" of upper bounds (limits) of administrative punishments and lower bounds of similar criminal punishments, i.e. between them should be left a "gap", a kind of space, not allowing the legislator to overstate the degree of public danger of an administrative offence up to the level of public danger of a crime. The solution to this problem is possible by lowering the upper bounds of the amounts (periods) of administrative punishments or increasing the lower limits of criminal punishments. Simultaneous concerted modification of administrative-tort and criminal legislation is also possible.

If however, in the opinion of the legislator, public danger of a deed really requires punishment, which is similar in nature and size to a criminal punishment, it is obvious that such deed is subject to subsumption to administrative offense, and not subject to criminalization.

The current situation, in which an administrative offense entails punishment that is by nature and amount (period) equal to criminal punishment or even exceeds it, significantly violates the principles of justice and equality before the law.

In fact, the same legal consequences affect persons who have committed an administrative offence and a crime, and this seems unfair.

In addition, bringing to administrative responsibility does not involve special procedures and procedural guarantees of legality and justification of bringing to responsibility that are inherent to criminal process (solely judicial process; preliminary investigation; approval of a prosecutor's indictment, act, decision; special procedure for the appeal against actions and decisions of a person conducting investigation, prosecutor, etc.). That is, the same (similar in essence) punishments provided for the commission of a crime and administrative offence are applied to offenders under different procedures and different procedural guarantees of legality and justification for their application. This situation cannot be considered acceptable because it is contrary to the principle of equality before the law.

In addition to creation of legal prerequisites for implementation of the principles of justice and equality, making the above amendments to the legislation would facilitate optimization of the processes of subsumption to administrative offense and criminalization of socially dangerous deeds, more reasonable legislative assessment of the degree of their public danger and, accordingly, establishment of adequate punishments.

In the absence of precise and strict criteria allowing flawless determination the degree of social danger of a deed referred to administrative offense and establishment of appropriate administrative penalty it is necessary to compare the deed, which is subject to subsumption to administrative offense, with other administrative offenses and crimes. The presence of visible border between the upper limit of administrative punishment of and the lower limit of similar criminal punishment will help the legislator to most adequately estimate public danger of a deed and decide on the need for establishing of administrative or criminal responsibility for its commission, establish the optimal type and amount of punishment. The absence of such a boundary generates arbitrary, sometimes illogical legislative settings.

So, in presence of the norms of the Criminal Code of the RF that provide for responsibility for intentional infliction of light injury, which has caused temporary damage of health, in the form of fine of up to 40 thousand rubles or compulsory works of up to 480 hours (article 115 CC RF), and for wilful destruction or damage of other people's property, if these acts involved the infliction of considerable damage, in the form of fine of up to 40 thousand rubles or compulsory works of up to 360 hours, the legislator attributes to administrative offences deeds associated with the violation of established order of organizing or holding meetings, rallies, demonstrations, marches and picketing, which have caused harm to human health

or damage to property, if such deeds do not represent a criminal offence, and establishes for their commission a fine on citizens from 100 thousand to 300 thousand rubles or mandatory works for up to 200 hours; on officials – a fine from 200 to 600 thousand rubles (part 4 article 20.2 CAO RF). A similar norm that provide for a fine for citizens from 150 thousand to 300 thousand rubles and for officials from 300 thousand to 600 thousand rubles is contained in part 2 article 20.2.2 CAO RF.

Comparative analysis of the norms contained in articles 115 and 167 of the Criminal Code of the RF and articles 20.2 and 20.2.2 CAO RF indicates that infliction of injury to a person or damage to property, which does not contain signs of a crime, the legislator has estimated as more socially dangerous than crimes under articles 115 and 167 of the Criminal Code of the RF, and there are established punishments for individuals in the form of a fine, the amount of which is 15 times higher than the maximum fine for the relevant crimes, and the period of compulsory works is more than 3 times higher than the minimum period of compulsory works, which can be imposed for these crimes.

Differentiation of amounts (periods) of administrative and similar criminal punishments would allow the legislator through comparing the public danger of a deed subject to subsumption to administrative offense with the public danger of already criminalized similar deeds to properly assess the degree of this danger and establish corresponding administrative punishment (or make a justified decision on the need to criminalize such a deed).

So, the foregoing indicates a need for significant adjustment to the administrative-tort legislation with taking into account new, evidence-based approaches that are based on fundamental principles of law, social conditionality of responsibility and its commensuration with the damage inflicted.

Often the haste in adopting and insufficient elaboration of laws providing for criminal and administrative responsibility leads, as a rule, to the need to repeal in future unconstitutional provisions of these legislative acts by the Constitutional Court of the Russian Federation. A rather recent example is the Decision of the Constitutional Court of the Russian Federation on the case about the verification of constitutionality of the Federal Law No. 4-P from February 14, 2013 "On Amendments to the Code on Administrative Offences of the Russian Federation and the Federal Law "On Meetings, Rallies, Demonstrations, Processions and Picketing".

If you carefully consider other same-type tort institutes, you can find the following paradoxical moments.

Period of limitation for the institution of administrative proceedings for certain offences is 6 years, and for non-grave crimes – 2 years.

However, there are almost two times more mitigating circumstances in the Criminal Code of the RF than in CAO RF. At the same time, CAO RF contains circumstances that aggravate responsibility, which are not provided for in the Criminal Code of the RF. For example, commission of administrative offence in a state of intoxication. Another paradox. If you commit a theft in this state up to 1 thousand rubles – an aggravating one, and if more than 1 thousand rubles, it is not recognized as an aggravating circumstance?!

These examples, and many others, including concerning procedural elements of responsibility, procedural guarantees, indicate the need for further improvement of legislation with taking into account a balanced model of interaction of administrative and criminal responsibility. We should fully support the position of A. P. Shergin about the root idea of further integration of criminal and administrative responsibility, which should govern the common efforts for the system research of counteraction of crime and administrative delinquency [14, 20].

It seems that such methods of legal regulation as a penal prohibition and administrative-legal prohibition need further understanding in terms of their effectiveness and efficiency in law-enforcement practice on the one hand, and the proportionality of the volume of right restrictions, legal guarantees of tort relations participants – on the other. Here we come to the problem of technology of scientific elaboration and preparation of corresponding draft legislative acts and we are fully in agreement with the opinion of the leading scientists about the need to the batched consideration of offenses' structures and thorough joint scientific elaboration of these issues both by criminal law experts and legal scholars [14, 18].

Scientific community actively discusses the idea of introducing the institute of criminal misconduct and establishing the criminal liability of legal persons. The implementation of these ideas would, in our view, unload CAO RF, which is overloaded with relevant compositions – especially related ones, with increased public danger, with serious sanctions.

If these idea is not brought to its logical conclusion, do not get embodiment, in addition to serious improvement of substantive issues of legislation on administrative offenses, there will be a need for optimization of the procedural component of the legislation in terms of a significant increase in the procedural rights and guarantees of administrative-tort process participants, compliance with the fundamental principles of law, including constitutional principle of adversarial proceedings within the framework of judicial review of cases on administrative offenses.

We should express solidarity with the opinion of N. G. Salishcheva on the need to ensure the stability of the legislation on administrative offences [7, 30-31]. But

her proposal in this regard about introduction of fundamentally significant changes to the current version of CAO RF on the basis of system scientific analysis will not solve, in our view, the problem. Further serious optimization of administrative-tort legislation is possible only in the case of adoption of new third codification [12; 13].

In this connection, should intensify a debate about the need for the third joint or separate codification of substantive and procedural norms of the legislation on administrative offences with a view to the further development of relevant drafts, their elaboration and active support in the special-purpose committees of the State Duma of the Federal Assembly of the Russian Federation.

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Rossinskii B. V.

REFLECTIONS ON ADMINISTRATIVE PENALTIES IN THE FIELD OF ROAD TRAFFIC[1]

Rossinskii Boris Vul'fovich,
Doctor of law, Provost for academic affairs, Head of the Chair of administrative and financial law at The Russian Law Academy of the Russian Federation Ministry of Justice, Professor, Honored Lawyer of the Russian Federation, Moscow.

Invariability in the indicators of accidents and absence of continuous positive impact of increase in administrative fines introduced by the relevant amendments to the Code on Administrative Offences of the RF are noted in the article.

Attention is drawn to the fact that the administrative-jurisdictional practice in the field of road traffic in Russia is focused primarily on road users, rather than on officials of organizations designed to ensure the safety of road transport and these organizations themselves.

Here is stated that while the constant expansion of the range of compositions of offences committed by drivers, tightening of imposed administrative penalties, the list of compositions of administrative offences, the subjects of which are legal entities or their officials, has been very little changed.

Keywords: administrative responsibility, administrative penalties, administrative responsibility in the field of road traffic, violation of traffic regulations, road traffic safety, drivers' wrongful actions.

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Motorization of the country along with great value for socio-economic development of society has negative aspects. The most significant among them is accident rate in road transport. About 200-230 thousand traffic accidents (RTA) occur in Russia every year, in which at least 25-32 thousand people die and 270-290 thousand people receive various injuries. The number of accidents, which are not subject to state statistical account (which do not have affected road users), is several times more. A significant part of the fatalities in RTA is constituted from the people of the most active working age. Approximately 20% of the affected have become disabled. Compared to European countries, the accident rate in the Russian Federation is characterized by one of the highest rates of deaths and the severity of consequences. Relative indicator of the number of people injured in RTA calculated per 10 thousand vehicles in Russia is several times higher than in European countries; relative indicator of the number of deceased persons per 100 thousand population is approximately 2 times higher than in the countries with developed motorization; the number of persons deceased in RTA calculated per 10 thousand vehicles, which have taken part in a car crash, in our country is order of magnitude higher than in European countries and the USA.

Road transport accident rate causes enormous damage to the Russian economy. Only the direct loss of RTA each year is 2.4-2.6% of GDP. And it is not possible to assess fully the loss of human lives. Indirect kinds of damage associated with loss of labor capacity and psychological trauma of persons caught up in RTA, as well as a number of other factors, are not considered at all.

The main causes of RTA according to the official statistics in line with the accepted rules of their accounting are traffic violations. Each year in the country punish up to 65 million of such violations, the majority of which is committed by the drivers of vehicles. It's officially registered data. Researches show that in fact there are 2 times more of detected traffic violations. Some of them due to a number of circumstances are not punished at all, and in many cases road users "pay off" informally. Actually, you can speak about more than 120-130 million detected violations of traffic rules each year. Besides, their huge latency should be taken into account: no more than 15-20% of committed violations are detected, and often even less.

Comparison of traffic violations with the number of vehicles in Russia shows that the driver of each vehicle every year commits more than one violation. In terms of road safety it is an extremely poor indicator (for comparison: in Germany one violation accounts for almost 10 drivers). Since traffic surveillance in countries of developed motorization, in particular in Germany, is performed significantly better

than in Russia, it is not surprising that the real relative indicator of violations on the Russian roads is even worse.

Of particular concern is the fact that, according to the existing global patterns, with the number of vehicles approaching to 250-300 cars per 1000 inhabitants, noted an aggravation of all the problems associated with motorization, including a sharp decline in road safety. In terms of further accident rate growth in road transport, Russia is in a dangerous sate.

In addition, the deterioration of the situation concerning the road safety is influenced by the fact that road traffic, which has a social nature, is clearly affected by all the negative phenomena in the society and the state. In an unstable economic environment, financial problems in the country the work for RTA prevention, reducing the severity of their consequences is significantly complicated.

In such a situation one of the solutions to the problem is strengthening of accountability for violations of traffic rules. However, both the development of appropriate draft laws and itself making amendments to the Code on Administrative Offences of the RF (hereinafter – CAO RF) [1] give rise to many questions and usually progress with troubles.

To begin with, almost always increasing of administrative responsibility in this sphere raises disapproving reaction of the population to the actions of public authorities; such a measure is not popular. First of all, many, of course, do not like the increase in the size of administrative fine, the increase in the period of deprivation of the right to drive motor vehicles, etc. Simultaneously the issue of corrupt traffic police gets new sounding, since not without reason there is a belief in society that granting employees of traffic police additional powers of authority and the establishment of higher administrative fines inevitably cause another level of extortion on the roads.

Of course, we have to fight with the extortions. But the attempt to resolve the problem by artificial restriction of administrative and jurisdictional activity of employees of traffic police is futile.

First, the common opinion that the traffic police is the most corrupt police service (or, at least, one of the most corrupt) is absolutely wrong. Police in any state are reflection of society: in a sick society cannot be healthy police. While the roads, like in a mirror, reflect all the dark spots of both the police and society in whole. Of course, the virus, which, unfortunately, infects the traffic police, is visible to the naked eye. Bribes on the road cannot be hidden from the eyes of thousands, but immeasurably larger bribes, which are given in the silence of an office, no one sees. The fight against corruption is a daunting task that requires large-scale actions,

integrated efforts of all sectors of society. Combating against extortions on the road through dumping all the blame only on the staff of traffic police, "blocking the oxygen" in carrying out their law enforcement activity, is useless. This is a dead-end way. Because even drivers themselves "have a skeleton in the closet".

We are not trying to whitewash and even more justify those who take bribes or otherwise despoil drivers, who are rude on the road. We only urge calmly, without unnecessary emotions, without anger to thoroughly understand the causes of what is happening, try to find effective cures for this disease. Certainly, the disease has already started. But this does not mean that we cannot combat it. We can, and we should! But the fight should be such as not to ruin the whole body.

Secondly, and most importantly, we must clearly understand that the combat against corruption is not facilitated by either mitigation of responsibility for offences or the weakening of state bodies designed essentially to fight with offenses and corruption (even bodies themselves to some extent corrupt) or restriction of powers of these bodies. Effective combating against corruption can be only in a truly democratic state. And such it can become only when in it will be execute the laws, in particular, the powers of law enforcement agencies are aimed at this. Proper resolution of this dialectical contradiction allows combating with extortions on the roads, even with increased administrative responsibility in the sphere of road traffic.

Over the past 20 years the vector of "drivers' mood" has changed several times. Thus, sociological researches carried out under our supervision in a number of regions of the country in 1998-2001 showed that no more than 20-25% of drivers who committed traffic violations, for which it was possible to impose an administrative fine without protocol, preferred to pay a lesser sum to traffic police officer personally, without registration of the violation. Similar researches, which were carried out in the next three years, already after the entry into force of CAO RF (2002-2005), showed that the proportion of such drivers raised initially at least twice, i.e. up to 50% (and in some major cities even more), in 2003 it became to drop dramatically, and, since the spring of 2004 once again to grow, reaching by the spring of 2005 the value of 40-45%. Unfortunately, we have not been conducting such large-scale studies of this problem after 2005, but according to expert assessments, we can conclude that in the last decade this figure grew slightly, reaching about 50% (of course, we are talking about an average value in the country, because somewhere it is essentially less than half, and in some regions above), except for those streets of cities and small sections of motor roads that are equipped with working in automatic mode special technical means of registration the violations of traffic rules.

The results of these studies are explainable. The need to go to bank or ATM, sometimes spending a significant amount of time (and sometimes nerve-racking, because the organization of this process, of course, leaves much to be desired), deterred by the drivers, and they preferred to give money in the hands of traffic police officer, moreover the sum was usually less than the size of the fine. But very soon drivers understood that the state actually had no real opportunity to exact their unpaid fines, and drivers in many cases simply stopped to pay them. Of course, the number of people who preferred to give money to traffic police officers personally had decreased. However, the legislative establishment in December 2003 of a new mechanism of execution of decisions on the imposition of administrative fine with strengthening in this process the role of bailiffs, as well as severe repeated administrative responsibility for failure to pay a fine, had caused new leap in the number of persons who preferred "to solve the case peacefully" at the place where violation was committed. In June 2007, along with a further strengthening of administrative responsibility for a number of violations of traffic rules in fact was given the green light penalties, both drivers and vehicle owners for violations recorded working in automatic mode by means of the photographing and filming, video recording, or by any means, photographing and filming, video recording.

In June 2007, along with a further strengthening of administrative responsibility for a number of violations of traffic rules, in fact, was given the green light to imposition of penalties both on drivers and owners of vehicles for violations recorded by working in automatic mode special technical means with functions of photographing and filming, video recording, or by means of photographing, filming or video recording.

The introduction of this procedure was preceded by a lengthy discussion, both in academia and in the media. The main arguments of the necessity of establishing the responsibility of owners of vehicles for committed on them administrative offences were the following.

Unlawful actions of drivers on the roads of Russia, which the most strongly influence the occurrence of RTA, are represented, first of all, by exceeding the established speed limits (for this reason occurs every third incident). And given the accidents that occurred due to a mismatch of vehicle speed to specific traffic conditions and violations of the rules of overtaking (what also indirectly associated with increasing of speed), the total proportion of "high-speed accidents" reaches 50% of all RTA.

Meanwhile, the level of detectability of such violations is low and does not correspond to the degree of their danger. Despite the fact that the proportion

of administrative penalties for violations of speed limit in the total number of administrative penalties of drivers is quite high (40%), overspeed of vehicles is very poorly detected. Researches show that overspeed of vehicles, being the most common type of traffic violations, is detected by traffic police inspectors only in one case out of 80-100 violations. An interview of significant array of drivers in a number of the regions of Russia indicates that their considerable number many times a day exceeding the permissible speed limit are never stopped and punished by traffic police officers (the latency of offences in the sphere of road traffic has already discussed above).

This can be explained by several circumstances. First, speeding takes place mostly on the roads, where there are no traffic police officers. Second, even in the case of detection of speeding violation in some cases it is impossible to prove the speeding due to the absence in a number of traffic police units of modern technical means of control and supervision. Thirdly, in identifying traffic violations traffic police officers spend a lot of time on their procedural implementation, detracting from the supervision of the road traffic. Field studies show that a traffic police officer, who is engaged by violation registration, misses several drivers who commit the same traffic violation. Drivers are well aware that the "inspector is not up to them". By the way, the study of the mechanism of extortion by traffic police officers, which has been conducted in several regions of the country, revealed an interesting fact. Drivers, offering to an inspector the money often explain to him that, if he starts documenting of their violation in accordance with the procedure provided by CAO RF, he will "miss" many other violators.

The situation can be improved only through mass transition of traffic police units to performance of duty using modern, mostly automated, technical means of detection the most dangerous traffic violations (of course, we are not talking about identifying of only violations of speed limits).

Such technical means of traffic supervision allow not only sharp improvement in the detectability of violations (with, in some cases, virtually 100% of its level), but also objective registration of violations that excludes subjective assessment of traffic police officers in the assessment of drivers' conduct. All this should also contribute to the observance of legality in the activity of traffic police officers, reducing conflicts with road users.

Use of technical means of road traffic supervision will also enable traffic police officers to focus on detection of a number of other traffic violations (especially those related to driving while intoxicated), ensuring the safe and smooth flow of traffic, implementation of measures to increase the capacity of road network and

participation in the fight against crime. The release of traffic police officers from performing certain tasks of road traffic monitoring will allow them to focus on providing the necessary assistance to road users.

Application of devices of automatic detection and registration of traffic rules violations has become widespread abroad. Virtually under the "presence" of police on the roads in many European countries is implied not only the presence of real police officers, but also photo- and video- cameras of surveillance that detect exceeding of the established speed, driving, when traffic lights prohibit it, violation the rules of driving through crossroads, etc. The number of such devices is constantly growing on the streets and highways of foreign countries.

Study of the practice of use such technical means shows that they provide 24-hour control over traffic flows on multilane roads and intersections of any complexity, with sufficient precision carry out simultaneous or sequential registration of several offenses, including with accompaniment of video recording with recognition of vehicle's registration plates. Application of devices for violations' registration tenfold increases the efficiency of supervision over the observance of traffic rules, greatly reduces the number of violations. Positive sides of these technical means include a manifold increase in the frequency of detection of stolen vehicles and detection of other offences.

There is also some experience of operating the devices for automatic detection of violations of traffic rules in our country. So, back in the 80s of the last century in three cities of the former USSR (Moscow, Vilnius, Tomsk) were installed photorecording radar stations of control over speed that allowed automated detection of vehicles that exceeded the prescribed speed limit. The devices took pictures both of a vehicle itself, and its registration plate, registered the speed value of the vehicle, place, date and time of the violation. The operation of these devices proved their reliability and high efficiency. Daily on the sections of highways where they were installed the number of detected violations of speed limit was ten times more than in case of ordinary supervision of road traffic by traffic police officers.

Currently, a considerable numbers of modern technical means for detecting violations of traffic rules automatically operates in cities and on motorways of Russia. They also contribute the most to the objective consideration of cases on such violations, eliminate bias in actions of traffic police officers. It would seem, that to eliminate the sharpness of the problem of road safety in the country, it is necessary to continue equipping motorways with such technical means, to increase the number of detected violations of traffic rules, to strengthen administrative (or even

criminal) responsibility for the most dangerous of them and punish the guilty persons. But, alas, everything is not so univocal and easy!

Statistics on administrative punishments imposed for traffic rules violations, and accident rate in road transport over the past 40 years show the following. Whenever administrative fines were increased or otherwise administrative responsibility in this field was intensified, there was a decrease of the number of traffic violations and the number of RTA during the first period of time (about 6-8 months, and sometimes up to a year or even a little longer). However, gradual habituation of road users to new sanctions took place in subsequent periods, and everything was back to square one. And with the continuing increase in the car fleet of the country and therefore the intensity of traffic in the city streets and on roads, the total number of traffic violations and accident rate only grow.

Up to 100 million of administrative violations per year have been punished in the past few years in the country by all the subjects of administrative jurisdiction, of which 70-80 million by the officials of internal affairs bodies. And among the punishments imposed by officials of internal affairs bodies, the vast majority (up to 85 per cent) for traffic violations, which corresponds to 60-65 million of administrative punishments per year. In 2012, for example, 64.96 million road users were brought to administrative responsibility, 54.8 million (84%) of which were drivers of vehicles owned by physical persons! It sounds sharp, but it, in fact, is a war of traffic police with people! And the accident rate actually does not change!

We note by the way that, 28.3 million from total 64.96 million traffic violations identified in 2012 were detected by means of automated registration (in 2011 were detected only 16.2 million of such violations, that is, for a year the number of similarly detected violations increased by 12.1 million – 75%). In 2012, automated equipment on the roads provided 43.5% of all administrative punishments in this area! And if we double the presence of automated equipment on the roads, we will detect almost 60 million traffic violations, but at all there are 100 million! As you can see, there is a reserve and it is considerable. The war with citizens will be increased to the limit, and the accident rate, we think, again will not change.

But, whom do we punish? With whom traffic police does wage the war? It appears that "the enemy" has long entrenched and it is not afraid of police bullets.

Traditional Russian questions of "who is guilty?" and "what to do?" here are a bit different: "with whom to fight?" and "whom to punish?"

Analysis of accident statistics in a number of countries, where the quality of roads, traffic management and related technical means are much better than Russian ones, shows that the percentage of accidents because of bad road conditions

in total volume of RTA is higher than our. Is it a paradox? No, it is not, everything can be explained: those incidents, which under foreign regulations relate to RTA perpetrated because of bad road conditions and poor quality of roads, according to the Russian regulations are "hang" on drivers.

Administrative and jurisdictional practice in the field of road safety in our country is focused primarily on the road users, but not on the officials of organizations that are intended to ensure safety of road transport, and not on those organizations themselves. Thus, 38 from 41 articles of chapter 12 CAO RF "Administrative Offences in the Area of Road Traffic" provide for administrative responsibility of drivers and other road users and other citizens. At the same time, only 11 articles stipulate responsibility of officials of corresponding organizations, in 9 of them in parallel – of the organizations (legal entities) themselves.

Meanwhile, back at the beginning of Russian statehood, when the country began to go to market conditions applicable to those or other areas of public relations, administrative responsibility of legal persons received consolidation in separate legislative acts. With the adoption and entering into force of CAO RF the institute of administrative responsibility of legal persons was not only fully recognized, but also began to develop. The need to impose administrative punishments on legal entities is associated mainly with violations committed by them in entrepreneurial and another organizational and economic activity. First of all, these are administrative offences: in the field of property protection; in the field of environmental protection and environmental management; in manufacturing, construction and energy; in agriculture, veterinary medicine and land reclamation; in the field of communication and information; in the field of entrepreneurship; in the field of finances, taxes and fees, securities market; violation of customs regulations. In General, in these fields 85% of articles of CAO RF provide for the responsibility of legal persons.

A similar trend meets the needs of the state to regulate in the contemporary socio-economic conditions the activity of economic entities, to combat offenses that are dangerous for citizens and society. In view of this trend, administrative responsibility of legal persons has become a powerful and indispensable lever of state regulation of economic units' activity.

Development of the institute of administrative responsibility in the field of road traffic, unfortunately, does not correspond to the specified trend. With the constant expansion of the range of compositions of offences committed by drivers in the said field, tightening of imposed on them administrative punishments, the list of administrative offenses compositions, the subjects of which are legal

entities and their officials, undergoes very little changes. But, apparently, no one pay particular concern about it. For example, the author of this article, being an expert of the draft Federal Target Program "Increasing of Road Safety in 2013-2020", in the proceedings of the program has drawn attention, for example, to the fact that the reduction in the number of persons deceased in road accidents is planned to achieve mainly through the impact on drivers, pedestrians and children, including through the application of necessary sanctions to them (of course, including administrative punishments). We think that in some cases it is necessary to influence, and quite often, on legal persons and their officials involved in solving the problem of ensuring road safety.

It seems that this approach constitutes one of the directions of development the institute of administrative responsibility in the field of road traffic, increasing its efficiency, what, in our opinion, shall contribute to the improvement of road conditions, reduce the number of road accidents and the severity of their consequences.

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Shergin A. P.

GENERAL AND ESPECIAL IN ADMINISTRATIVE-TORT LAW[1]

Shergin Anatolij Pavlovich,
Doctor of law, Professor, Honored Worker of Science of the RF, Chief research worker of State-owned Federal State Institution All-Russian Scientific Research Institute of the MIA RF, sherginap@bk.ru

Here is noted that the basic institutes do not only contain more generalized prescriptions, but also carry out pass-through legal regulation, and are reflected in the one-type structure of norms of the Special Part of the Code on Administrative Offences of the RF.

General rules, according to the author, demonstrate certain conservatism, stability of regulatory impact and are less subject to change. In contrast, the norms of administrative-tort law, which are contained in the Special Part of the Code on Administrative Offences of the RF, reflect the dynamics of administrative and jurisdictional protection of public relations.

Proceeding from the analysis of existing administrative-tort norms the author concludes about considerable variety of manifestations of the general and the especial, about discrepancies between general and especial norms that disrupt "balance" of their correlation. He cites cases where the general rules of imposing administrative punishment do not actually apply to a significant range of the most common administrative offenses.

Keywords: administrative-tort law, theory of administrative-tort law, legislation on administrative responsibility, general norms, especial norms.

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

Contemporary development of administrative-tort law is characterized not only by the dynamism of its constituent norms, but also deepening scientific research of the problems of this young branch of Russian law. The fruitfulness of such elaborations is evidenced by defense of half a dozen doctoral dissertations (in recent years on the issues administrative-tort law doctoral thesis have been defended by V. V. Denisenko, A. V. Kirin, V. A. Kruglov, O. S. Rogacheva, P. P. Serkov, V. G. Tatarian), many master's theses, the constant discussion of problematic situations at scientific and practical conferences, including in the framework of the Nebug club of legal scholars. You can already say with certainty about the active formation of the theory of administrative-tort law. The scope of studied problems covers a wide range of issues: sectorial affiliation of administrative-tort norms, scenarios of their codification, institutionalization of administrative-tort law, application and effectiveness of administrative-tort law norms, etc. Further development of this problematics should, in our view, be associated with the study of norms themselves, the totality of which constitutes administrative-tort law.

This direction is already represented in legal science. The main place in the study of administrative-tort norms is taken by general issues of administrative responsibility, forming of legislation on administrative offenses, issues of administrative-jurisdictional process. Scientists have given considerable attention to the content of administrative-tort relations, the conceptual apparatus of the legislation on administrative responsibility, law-enforcement practice of numerous subjects of administrative jurisdiction. However, many theoretical issues of administrative-tort norms have not attracted the attention of researchers. There is a need for their further development from the perspective of philosophical categories of *general* and *especial*, that will allow us to deeper study the content and interrelation of these legal norms, place in the common system administrative-tort law, identify their regulatory capacities, justify the ways of removing existing conflicts. D. A. Kerimov stresses that on the base of correlation of these concepts is essentially formed the whole theory of fundamental legal categories, such as norm, institute, branch and system of law, which have a great cognitive and practical relevance [6, 229].

The proposed aspect of research is due to large variety of administrative-tort law norms, which are characterized by differences in subject matter and scope of regulation, addressees of norms, forms of interrelation, and other. These differences predetermine ambiguous roles of these norms in the regulation of administrative responsibility, separation of corresponding blocks in existing legislation. The general norm contains the concentration of regulatory impact. But it cannot exist without especial norms. General is detailed in an especial. Paying attention

to the correlation of these categories, Hegel wrote that "a general is the base and soil, the root and substance of an especial [4, 283]. Many of codified acts are built on this basis.

So, the norms of the first section of Code on Administrative Offences of the Russian Federation (hereinafter – CAO RF) "General Provisions" are general in relation to the norms of the second section of CAO RF "Special Part". The very terminology of the law stresses an especial nature of the norms of the second section, they regulate only the illegality and punishability of certain types of administrative offences, i.e. especial concretizes the general legal matter. Signs of the norms of the Special Part of CAO RF are unreplicated and it, as noted by P. P. Serkov, is a guarantee of the proper legal assessment of a deed [8]. If these signs are not precisely defined or coincide with signs of another administrative-tort norm we are dealing with collision of norms, which complicates the qualification of administrative offences. Let's immediately make a reservation that any legal norm is a general rule of conduct and is obligatory for execution. General and especial just reflect the different roles of law norms in the system of administrative-tort law, various versions of their correlations.

Separation of administrative-tort norms into two sections: "General Provisions" and "Special Part" reflects the basic normative model of the correlation of general and especial in the considered branch of law. Its really existing in the legislation modifications are more diverse, varied, dynamic. This is reflected in the existence of reciprocal transits of one and the same phenomena (law norms, institutes, branches of law, etc.) from general to especial and vice versa. So, for example, legal institute is an especial category compared to administrative-tort law, at the same time it has common characteristics with respect to separate norms within this institute. Analysis of the existing administrative-tort norms shows a great variety of manifestations of general and especial. Let's consider the main ones.

First, complexes of administrative-tort norms, which regulate key issues administrative responsibility, are of overall nature. Such complexes are associated with the concept of basic legal institutes (according to S. S. Alekseeva, "main legal institutes"). Unlike other institutes governing local public relations (for example, institutes of the period of limitation for the institution of administrative proceedings, the possibility of release from administrative responsibility, etc.) the basic legal institutes cover fundamental blocks of administrative-tort law, which define the essence of this branch of the Russian law. They include administrative offence and administrative punishment [9, 106-111]. They form the basic institutes of administrative-tort law, perform the role of its load-bearing structures. The need for such

institutes is due to the need for uniform regulation of the most common issues of administrative responsibility. The legislator puts the basic institutes in the Section 1 "General Provisions" (chapters 2-4), emphasizing their priority in relation to other norms of administrative-tort law. For example, the norms enshrining the concept, objectives, system and types of administrative punishments, the rules of their imposition (articles 3.1-3.13, 4.1-4.4) are mandatory when applying any other norms of administrative-tort law concerning the choice of the type, amount and period of administrative punishment. Thus, the basic institutes not only contain more generalized prescriptions, they implement end-to-end legal regulation, are reflected in the one-type structure of the norms of Special Part of CAO RF (disposition and sanction), have baseline value in the interpretation and application of other norms of administrative-tort law.

Secondly, general norms have a certain conservatism, the stability of regulatory impact, they are less likely to be changed. In contrast, administrative-tort law norms contained in the Special Part of CAO RF reflect the dynamics of administrative and jurisdictional protection of public relations. Just for the time of action of CAO RF there have been adopted over 270 federal laws, which have made amendments and additions mostly to the Special Part of the Code. But the basic model of their correlation is formed on the principle of compliance of especial norms with the general ones. Analysis of the current administrative-tort legislation indicates that there are contradictions between general and especial norms that violate the "balance" of their correlation. The most significant are the following

The first contradiction is that the formation of the norms of Special Part is carried out without taking into account the relevant legal rules of the first section of CAO RF "General Provisions". This is most evident in the expansion of the absolutely certain sanctions for committing various types of administrative offences. This legislative practice has been tested in numerous reforms of the norms of chapter 12 "Administrative Offences in the Field of Road Traffic". Today absolutely certain sanctions are established for 63 types of these offences, that is, in most of the articles of chapter 12 of CAO RF. Later a similar design of sanctions has been extended to a number of articles providing for responsibility for other types of administrative offences. It is hardly necessary to prove that absolutely certain sanctions exclude individualization of administrative punishment, the legislator "cranks out" in a ruling on a case the same type and amount that is defined in sanction. And regarding many administrative offences, fixed by technical means, the same action is made by equipment. Articles 4.1-4.3 CAO RF determine the general rules of sentencing, provide for a wide range of circumstances relating to an offence committed and

the identity of offender (extenuating and aggravating administrative responsibility), which should be taken into account by the legislator when choosing the type, amount and period of administrative punishment. But there is no such choice in case of absolutely certain sanction. We add, the legislator is not entitled to reduce the amount of an administrative penalty established by the sanction of applied article of the Special Part of CAO RF, since the current CAO RF, in contrast to the Criminal Code of the RF, does not provide for the possibility of assignment of punishment below the lower limit. Thus, the general rules for the imposition of an administrative punishment in fact do not apply to a large range of the most common administrative offences.

The second contradiction is that establishing of new prohibitions in the Special Part is accompanied by tightening of responsibility for their violation. Moreover, there is a clear tendency to set the amounts of administrative fines that significantly exceed the maximum limits for this type of punishment under article 3.5 Administrative Code. And this kind of novelties of especial norms entails yet another exceptions to this, we emphasize, general administrative-tort norm. And these exceptions have already affected 50 articles of the Special Part of CAO RF. Essentially there is a return to the formula of article 27 of CAO RF of 1984, where, in addition to the overall limits of a fine, part 2 provided for an opportunity, if necessary, to increase these limits for certain types of administrative offenses, defining the maximum limits of the increased amount of fine. But in this case, the possibility of increasing the amount of fine was established by a general norm, according to which the legislator provided for responsibility for a certain kind of administrative offence. Modern rule-making practices goes from the reverse: the norm of the Special Part of CAO RF pushes the general norm through introducing in it new and new exceptions. Moreover these exceptions in article 3.5 CAO RF are focused on increasing the amount of administrative fine, substantiation of which is called into question not only by citizens, but also by the Prosecutor-General of the Russian Federation, the Constitutional Court of the Russian Federation.

Let's turn to the position of the Constitutional Court of the RF No. 4-P from 14.02.2013 "On Verification the Constitutionality of the Federal Law "On Amendments to the Code on Administrative Offences of the RF and the Federal Law "On Meetings, Rallies, Demonstrations, Processions and Picketing" in connection with the request from a group of deputies of the State Duma and complaint of E. V. Savenko" [2]. Analyzing the increased sizes of administrative fine in sanctions of articles 5.38, 20.2, 20.2.1, 20.18 CAO RF as amended by the Federal Law No. 65-FL from June 08, 2012, Constitutional Court of the Russian Federation drew attention

to the fact that the minimum amounts of administrative fine for violation the order of organizing or holding meetings, rallies, demonstrations, marches, picketing or organization of other mass events that have led to the violation of public order exceed the maximum limit for the amount of administrative fines established by the Administrative Code for all other administrative offenses. As a result, in application even the minimum possible size of fine for such administrative offences citizens and officials have to bear financial losses, which often surpass the level of their average monthly salary. The Federal legislator has been requested to make the necessary amendments to the legal regulation of minimum sizes of fines for administrative offences under articles 5.38, 20.2, 20.2.1, 20.18 CAO RF. Pending the appropriate amendments of CAO RF the size of an administrative fine imposed on citizens and officials for the mentioned administrative offences may be reduced by the court below the lower limit stipulated for the commission of corresponding administrative offence.

We note the important positions of the mentioned decision of the Constitutional Court of the Russian Federation. First of all, here can be traced a negative attitude to a sharp increase in the size of administrative fine, what does not preclude its transformation from a measure of impact aimed at preventing offences into a tool of excessive restriction of citizens' right of ownership, which is incompatible with the requirements of fairness in imposition of administrative punishment. Taking into account this position of the Constitutional Court of the RF, we deem it expedient to establish a moratorium on the increase of administrative fines, to set their limits only in article 3.5 CAO RF without exceptions that operate today, to increase within this general norm the size of administrative fine only on the basis of extensive research, but not emotions of separate initiators of bills and market condition. Let's recall that in the first years of Soviet Power and after World War II the legislator had to take measures against establishment of the excessive sizes of fine (see, for example, the Decree of the Presidium of the Supreme Soviet of the USSR from June 21, 1961 "On Further Restriction on the Application of Fines Imposed by an Administrative Procedure"). The relevance of adopting a similar Federal Law is more than obvious… So, for example, some deputies of the State Duma (P. Krasheninnikov) have already advocated for the establishment of a 50-thousandth administrative fine for insult. Study of judicial practice of application article 5.61 CAO RF in the Krasnodar region and other regions has showed that most of cases ended with the imposition of an administrative fine in the amount of 1000 rubles, that is, the justices of the peace did not use all the possibilities of the current sanction of part 1 article 5.61 CAO RF (from one to three thousand rubles) [3].

Further, the Constitutional Court of the RF on the merits recognized (although regarding certain types of offences) the feasibility of application administrative fine below the lower limit, for that has long been advocated by scholars and judges [5, 10; 7, 172]. Introduction of the appropriate norm in CAO RF will significantly expand possibilities of individualization of administrative responsibility. Pursuant to the considered decision of the Constitutional Court of the RF the Russian Ministry of Justice has prepared a draft Federal Law "On Amendments to the Code on Administrative Offences of the RF and the Federal Law "On Meetings, Rallies, Demonstrations, Processions and Picketing" [1]. But the content of this draft does not remove the problem indicated above, since, in accordance with it, imposition of administrative punishment below the lower limit applies only to certain types of administrative offences. This approach of the initiators of the draft is not correct because the focus should be given to the establishing of a general norm governing the rules of imposition of administrative punishments. In addition, a similar norm in the Criminal Code of the RF does not provide for any waivers to the rule of imposition of punishment below the lower limit enshrined by the sanction of the corresponding article of the Special Part of the Criminal Code of the RF.

Thirdly, the general exists not only in the first section of CAO RF "General Provisions". Many of the norms of the Special Part correlate between each other as general and special. This is true especially for articles providing responsibility for a general composition of administrative offense and special compositions. For example, article 7.17 CAO RF provides for administrative responsibility for the destruction or damage of other's property, if these actions have not caused significant damage. But the positive signs we find in the disposition of a number of other articles of the special part of the code. But its structural features we find in the disposition of a number of other articles of the Special Part of the Code. What is their correlation? Article 7.17 CAO RF provides for the general composition of the destruction or damaging of another's property. According to this article should be classified such illegal actions in respect of property, administrative responsibility for the destruction or damage of which is not enshrined in special norms: damage or destruction of religious or liturgical literature, objects of religious veneration, signs or emblems of worldview symbols or paraphernalia – part 2 article 5.26 CAO RF, elimination or damage to special marks – article 7.2 CAO RF, damage to facilities and systems of water supply, sewerage, hydraulic structures, devices and installations of water management and water protection – article 7.7 CAO RF, damaging property on transport vehicles – article 11.15, willful damaging or removing a stamp (seal) – 19.2, disorderly conduct accompanied by destruction or damage to

someone else's property – part 1 article 20.1 CAO RF. If a deed contains the signs of these norms, special norms should be applied, and there is no need for an additional qualification under article 7.17 CAO RF. But such law-enforcement practice does not have legal framework in administrative-tort legislation, it is rather the use of the rule enshrined in part 3 article 17 of the Criminal Code of the RF. This rule reads: "If a crime is provided for by both general and special norm, then the totality of crimes is absent and criminal responsibility shall arise according to the special norm". The expediency of introducing of such a norm to CAO RF is obvious, since there are quite a few of paired articles in the Special Part, which provide for general and special compositions of administrative offences.

Basic composition of administrative offence represents the general, special compositions – the especial. General norm defines the signs that are basic for special norms, but their content is richer, more varied due to inclusion of additional objective and subjective signs. In general, such legal structure constitutes a unity based on the interrelation of general and special norms.

In this regard, it is advisable to pay attention to the conflicts between CAO RF and the Criminal Code of the RF, arising in connection with the decriminalization of insult. Special criminal legal norms (articles 297, 319, 336 of the Criminal Code of the 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 the previous general norm – article 130 of the Criminal Code of the RF. After decriminalization the general norm defining the concept of insult disappeared from the criminal law, the statutory definition of insult is represented only in article 5.61 CAO RF. Reference to the definition of insult in administrative-tort norm in this situation seems, in our opinion, incorrect because the logic of correlation of general and special criminal legal norms is broken. The latter should be based on the norm that stipulates general composition of offence.

In this article we have touched on only one aspect associated with correlation of the norms of administrative-tort law. There is a need for further study of these norms aimed at uncovering their essence, generic characteristics, constructional features and efficiency.

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Shmalii O. V.

THE CODE OF ADMINISTRATIVE COURT PROCEDURE AS AN ELEMENT OF CONSTITUTIONAL MODEL OF JUSTICE[1]

Shmalii Oksana Vasil'evna,
Doctor of law, Head of the Department of administrative and service law at South-Russian Institute – branch of Russian Academy of National Economy and Public Administration under the President of the Russian Federation, Rostov-on-Don.

The author provides a critical analysis of some of the provisions of the draft Code of administrative court procedure of the Russian Federation that has been introduced to the State Duma by the RF President. There is noted a lack of normative regulation of the procedure for consideration of civil lawsuits, the rules of collection, research and evaluation of evidence in support of civil lawsuits, the allocation of the burden of proof, measures to ensure a civil lawsuit, the possibility of appealing against decisions on a civil lawsuit, the procedures for the issue of a writ of execution in the draft Code. The attention is paid to the institute of representation in administrative court procedure.

Keywords: administrative court procedure, administration of justice, administrative justice, Code of administrative court procedure.

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

Administrative court procedure in the Russian Federation is carried out by the courts of general jurisdiction and arbitration courts. Administrative-procedural norms are contained in the Code of Civil Procedure of the RF, Arbitration Procedural Code of the RF and Code on Administrative Offences of the RF (hereinafter – CAO RF). The science of administrative law and judicial practice have repeatedly pointed to the contradictions of administrative-procedural norms in these codes and to complexities emerging during their application, what does not always ensure the rule of law in protecting the rights and freedoms of citizens and organizations. Consistently defending the constitutional postulates of independence administrative court procedure, the Supreme Court of the Russian Federation on September 19, 2000 introduced to the State Duma of the Federal Assembly of the Russian Federation a draft law on administrative courts, which was considered in the first reading on November 22, 2000 [1]. Later, in November 2006, to the State Duma, in accordance with the Decision of the Plenary Session of the Supreme Court of the Russian Federation, was introduced the draft Code of Administrative Court Procedure of the Russian Federation (hereinafter – draft Code) [2]. At the session of the State Duma the draft was not discussed; June 17, 2013 the draft was excluded from consideration of the State Duma in connection with the revocation of this document by the Supreme Court of the Russian Federation.

Apparently, the reason for the revocation of the draft Code is the fact that in March 2013 the President of the Russian Federation introduced to the State Duma a new draft Code of Administrative Court Procedure of the Russian Federation [3].

Heated debates concerning administrative court procedure took place at the VIII all-Russian Congress of Judges on December 18, 2012. As if long-term efforts of researchers in the field of elaboration of procedural norms of administrative legislation have got a new breath. The controversy, which was unfolded at the Congress, was somewhat unexpected for the President of the Russian Federation, but it was absolutely logical from the standpoint of law enforcer, because the issues related to administrative court procedure not only mediate legislative innovations, but, as a rule, precede judicial reform. At the specified Congress the President of the Russian Federation denoted the creation of administrative court procedure and protection of citizens through laying the burden of proof on public authority as one of the main directions for optimization of administrative justice. At that, the issue on establishment of administrative courts still was not resolved. The Head of the State said in his speech: "We must first complete the establishment of administrative court procedure, as soon as possible adopt the appropriate Code and form judicial panels that will settle disputes of citizens with public authorities and bodies

of local self-government" [4]. Thus, creation of specialized administrative courts is not planned at this stage of the optimization the model of administrative court procedure, what somewhat at odds with the general concept of administrative justice, an integral part of which is the system of administrative courts.

The literature has repeatedly expressed the view, according to which "... all cases arising from administrative and other public relations should be considered by the courts of general jurisdiction. Arbitration courts also should be merged with the courts of general jurisdiction in a unified judicial system. All this would take away the very acute problem of determining jurisdiction of cases, which are currently being considered as by courts of general jurisdiction and by arbitration courts" [8, 55]. The result of the years of disputes on this occasion has become the proposal of the President of the Russian Federation to merge the Supreme Court of the Russian Federation and the Higher Arbitration Court of the Russian Federation. This merging is explained by the need for unification of judicial practice, which in itself is quite topical, but in the absence of a clear understanding of the merged system and the uncertainty of consolidation procedure it raises more questions than answers.

Four forms of court procedure established by part 2 article 118 of the Constitution of the Russian Federation have their own specificity of purposes and legal regulation, but they are designed to solve a common problem – ensuring rights and freedoms of man and citizen through administration of justice. Thus, all forms of court procedure must be considered in the tight functional unity. As a consequence, "exhaustively mentioned four forms of court procedure represent optimally necessary totality guaranteeing full judicial protection, the right to which is provided under article 46 of the RF Constitution. Accordingly, the absence of any of court procedures reduces the effectiveness of judicial protection" [6].

Of course, the adoption of the Code of Administrative Court Procedure of the Russian Federation will promote not only to the development of an applied direction of the administrative court procedure, but also will lead to a change in the doctrinal understandings of administrative process, the debates on the subject and content of which have not been subsiding for years.

There are two approaches to the determination of administrative process in modern science – "narrow" and "wide"; some authors also speak on judicial and non-judicial administrative process [5]. On the basis of the maxim known as "Occam's Razor" – entia non sunt "multiplicanda praeter necessitate – do not multiply entities beyond the necessary, I note that the leitmotif of many debates is the allocation of administrative-procedural law in an independent branch of law.

The lack of a commonly recognized in the doctrine concept of "administrative process" is evident in law-making and law-enforcement spheres in the form of normative collisions and defects in legal practice.

Clearly that the adoption of the Code of Administrative Court Procedure of the RF will be a major step towards increasing the efficiency of the administrative-procedural legislation, however, it will not resolve finally the task of forming administrative justice.

The Russian Constitution stipulates that the judicial power is exercised through constitutional, civil, administrative and criminal court procedure. Hence, it is reasonable to assume that the Code should regulate the procedure for consideration of all administrative and court procedure cases, but this is not so.

The cases, the procedure for consideration of which will be defined by the Code, include the cases that currently defined by chapters 24-26.2 of the Code of Civil Procedure of the RF. In particular, the cases on contesting norms, acts, decisions, actions (inaction) of public authorities, local self-government bodies and their officials, as well as cases on protection of electoral rights. Other cases that are currently resolved in the course of administrative court procedure, will still be considered by arbitration courts and courts of general jurisdiction under the rules of the Arbitration Procedural Code of the RF and CAO RF (apparently this approach will be revised in view of the forthcoming merging of the Higher Arbitration Court of the Russian Federation and the Supreme Court of the Russian Federation).

Article 5 of the draft Code, by analogy with criminal process (article 44 of the Criminal Procedure Code of the RF – civil plaintiff), provides for the possibility of simultaneous resolving a civil claim for damages, including moral damages, when considering administrative case by court. However, the draft does not include the mechanism for the implementation of this norm, what seriously complicates the implementation of articles 52 and 53 of the Constitution of the Russian Federation. So the draft doesn't stipulate the procedure for consideration of civil claims, the rules of gathering, examination and assessment of evidence that substantiate civil claims, apportionment of the burden of proof, the measures of ensuring civil claim, the possibility of appealing against a decisions concerning civil claim, the procedure for the issue of a writ of execution.

As a result, the courts will be forced to resort to the analogy of law (obviously – to similar institutes of civil-procedural legislation), what, in our opinion, is not the most effective means for overcoming the gaps of legal regulation of administrative-procedural relations and is fraught with serious problems of implementation the right to judicial protection. Thus, an aggrieved person, who brings a civil claim in

an administrative case in the absence of normatively established procedure for the implementation of article 5 of the draft Code, risks to lose its right to further judicial recourse with a similar civil claim due to the ban enshrined in paragraph 2 part 1 article 134 of the Code of Civil Procedure (identity of claims). Moreover, in case of appeal of judicial decision concerning civil claim, according to part 2 article 188 of the draft Code this will entail not-entering into legal force of the judicial decision in general, and, therefore, in its main part (administrative claim). In turn, this means that the elimination of the violation of the rights, freedoms and legitimate interests of an administrative plaintiff or obstacles to their implementation or obstacles to the implementation of rights, freedoms and legitimate interests of persons, in whose interest the relevant administrative lawsuit is submitted, is postponed [7]. Here it is worth noting that in the 2011-2012 75% of criminal cases were accompanied by civil claims. Taking into account the categories of administrative cases that are alleged to be considered in administrative court procedure, such percent hardly will be below.

Another, in our opinion, positive novelty is enshrining in part 1 article 57 of the draft Code of a qualification requirements for representative – possession of higher legal education. The purpose, for which the developers of the draft have introduced this norm, is clear – ensuring the right to receive qualified legal assistance guaranteed to everyone under part 1 article 48 of the Constitution of the Russian Federation. However, the mechanism for the implementation of this provision cannot but raise objections. From the meaning of part 1 article 60 of the draft Code it follows that court is obliged to check the powers of persons and their representatives participating in an administrative case; in accordance with the second part of the article, the court decides the question of accepting the powers of persons and their representatives involved in the administrative case, and their admission to participate in court hearing on the basis of the study of documents submitted to the court by the said persons. The uncertainty of this power of the court not only unduly expands the boundaries of judicial discretion, but also opens up the possibility of the abuse of right. Quite predictable a situation where the court in checking the powers of representative on the basis of submitted documents, will come to the conclusion about the need to determine the existence of license to carry out educational activities at the time of receiving by the representative the document of higher legal education.

Possible option for optimizations the institute of representation in administrative court procedure is seen in revival the institute of licensing of activity on providing legal assistance and establishment of a qualification requirements in

the form of availability of an appropriate license. At that, it is necessary to avoid the fiscalization of the institute of licensing (an obvious example: under the action of the Regulation on licensing of paid legal services the latter constituted, mainly, the way of replenishing the state budget by licensing fees). In the licensing activity must be fully implemented functional component of licensing – state control over the licensee's qualifications and legality of the licensed type of activity. Licensing mechanism should provide for preliminary control (verification of compliance of license applicant with qualification requirements) and subsequent control (control over the legality of licensed activity, expressed in verifying the compliance of the licensee with license terms and requirements). Licensing of legal activities should be carried out by the bodies of justice of the constituent entities of the Russian Federation. Licensing bodies should be empowered to conduct inspections of licensee activity for compliance of activities carried out by the licensee with the licensing requirements and terms, to take compulsory for the licensee decisions obliging it to eliminate detected violations, to establish deadlines for eliminating these violations, as well as to suspend an issued license. It is advisable, in our view, to differentiate the types of licenses depending on the nature of rights protection activity, for example: legal assistance to legal persons, rights protection activity in respect of citizens. Successful passing of qualifying examination should be a prerequisite for the issuance of a license; the organizational form of the institute of qualification examination can be Qualifications Commission created under the body of justice from the representatives of the Chamber of Lawyers, scientists, and law enforcement officers.

These and other issues must be resolved in the theory and practice of administrative court procedure, which, I hope, will gain in the future a complete legal framework in the form of the Code of Administrative Procedure.

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Volkov A. V.

LEGAL FRAMEWORK OF ADVERSARY NATURE IN ADMINISTRATIVE PROCESS

Volkov Aleksei Vasil'evich,
lawyer of Volgograd Region Bar Association, Non-State Educational Institution of Higher Vocational Education "Volgograd Institute of Economics, Sociology and Law", Volgograd,
ily7799@yandex.ru

Here is determined a list of normative legal acts with emphasizing of law norms, which, according to the author, constitute legal framework of adversary nature in administrative process.

Keywords: administrative process, adversarial nature in administrative process, adversarial principle.

Discussing the normative framework of adversarial nature in administrative process, we proceed from the formulation of the administrative process, which we propose as a trial that has its own strictly verified structure, the scope of which includes the consideration of cases on bringing persons to administrative responsibility, as well as all cases on public-law disputes.

Issue of adversarial nature is very relevant now in the Russian legal framework. Adversarial nature received constitutional recognition in domestic law, in the basic acts of international law and is being actively implemented. Therefore, the idea of adversarial nature is seen as one of the most important democratic principles in the procedural sphere. Adversarial nature expresses panhuman wisdom: truth is born in dispute.

Talking about the sources of the administrative process, including adversarial principle, first of all, attention should be drawn to the incomplete formation of the legal base in this area. At the same time, the existing Russian legislation to some extent already allows you to emphasize "sprouts" of administrative-procedural law as an independent branch, and consider adversarial nature as a principle of this branch of law.

In our view, a list of legal instruments that could be taken as a normative base of adversarial nature in administrative process might look like this:

1. The Constitution of the Russian Federation [1], which is the first among equals, establishes the principle of equality of each not only before the law, but also before the court (article 123 of the Constitution of the Russian Federation provides a principle, in accordance with which court proceedings are conducted on the basis of adversarial nature and equality of parties). As noted in the scientific-practical comments to the RF Constitution, "the principle of procedural equality of the parties is such a rule, according to which the relevant (criminal, arbitration, civil, administrative) procedural legislation ensures the equality of persons involved in a case when applying to court, in granting equal opportunities to use procedural means to protect their interests in court" [20].

2. The Federal Constitutional Law "On the Constitutional Court of the Russian Federation" [2]. According to article 6 of the Law, the decisions of the Constitutional Court are binding on the entire territory of Russia for all representative, executive and judicial bodies of state power, bodies of local self-government, enterprises, institutions, organizations, officials, citizens and their associations. Then, in furtherance of the mentioned provision, in part 2 article 100 of the Law is said: "the Constitutional Court decision declaring that a law applied in a particular case does not comply with the Constitution of the Russian Federation is the ground for the revision of this case by a competent authority in usual manner".

3. "Court" legislation which regulates the general questions of judicial system and court procedure. This includes the Federal Constitutional Law "On the Judicial System of the Russian Federation" [4], article 26 of which establishes the possibility of creation of specialized courts to hear administrative cases, as well as the Federal Constitutional Law "On Arbitration Courts in the Russian Federation" [3] , the Federal Constitutional Law "On the Military Courts of the Russian Federation" [5], which in a certain part govern the operation of courts in consideration of public-law disputes (they should be attributed to the sources of administrative procedural law and indirectly to the normative framework of adversarial nature) .

Regarding the significance in determining the place the adversarial nature federal laws are followed by international legal instruments, such as:

4. The Universal Declaration of Human Rights, adopted by the UN [14] December 10, 1948, according to article 10 of which "everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

5. International Covenant on Civil and Political Rights, adopted by the UN General Assembly in 1966 [16], Part 1 article 14 of which enshrines the right of

everyone "to a fair public hearing of a case by a competent, independent and impartial court established by law".

6. Convention for the Protection of Human Rights and Fundamental Freedoms from 04.11.1950 (as amended by the Protocol No. 14 from 13.05.2004) [15], article 6 of which "enshrines the right of everyone in case of a dispute concerning its civil rights and obligations or of any criminal charge against it to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".

7. Of course, the legal sources of adversarial nature include the judicial acts of the Constitutional Court of the Russian Federation. It must be said that the Constitutional Court of the Russian Federation has repeatedly addressed the issue of establishing the principles of procedural equality and the adversarial principle.

In one recent case the Constitutional Court of the Russian Federation reviewed the compliance with the Basic Law of certain provisions of the Civil Procedure Code of the RF, according to which the court considers an application for recognition of a citizen as incapacitated with the participation of the citizen itself, if possible by its state of health [18]. According to the applicants, who have been recognized by the court to be incapacitated, the challenged legislative provisions, allowing the possibility of consideration by the court of application on recognition of a citizen as incapacitated without the participation of the citizen itself, violate their rights guaranteed by the Constitution of the Russian Federation.

The exceptional value of the adversarial principle is constantly noted by the Constitutional Court of the Russian Federation, which says that "one of the guarantees of the right to judicial protection, including with respect to administrative court procedure, is the provision on the implementation of proceedings on the basis of adversarial nature and equality of parties, covering all stages of administrative court procedure" [17].

Of course, talking about adversarial nature, we cannot but specify article 15 of the Code of Criminal Procedure of the RF [9].

The adversarial principle and principle of equality of parties mean such a construction of judicial procedure, which during a court hearing of a criminal case provides for disengagement of the procedural functions of the prosecution and the defense that enjoy equal procedural rights to defend their legitimate interests.

8. Federal Law "On Prosecutor's Office of the Russian Federation" [11], which regulates not only the opportunity (or need) of prosecutor's participation in the resolution of disputes arising from public-law relations, but also in the cases determined by law the obligation of applying to court.

9. The next largest sources of adversarial nature include normative legal acts governing the issues of judicial resolution of public-law disputes of citizens and legal persons with bodies and officials of executive and administrative power. It should be noted that this is an enough "mobile" legal area that in the foreseeable future will be significantly altered in relation to the issues of administrative court procedure. In our view, this group could include:

- Federal Law of the Russian Federation "On Appealing against Actions and Decisions that Infringe Civil Rights and Freedoms" from April 27, 1993 (in edition of the Federal Law of December 14, 1995) [10].

The norms of the Law establish the right of any citizen to go to court with a complaint. This right arises from a citizen if it considers that its rights and freedoms have been violated by actions or decisions of state bodies, local self-government bodies, institutions, enterprises and their associations, public associations or officials, public servants. Definitely that adversarial nature takes place in consideration of civil cases in this category.

- Norms of civil procedural legislation, in particular as specified in section III of the Code of Civil Procedure of the RF (hereinafter CCP RF) [7] "Proceedings on Cases Arising from Public Legal Relations". These include:

a) Chapter 23. General Provisions;

b) Proceedings on Cases of Repealing Normative Legal Acts in Full or Partially;

c) Chapter 25. Proceedings on Challenging Decisions, Actions (inaction) of Public Authorities, Local Self-government Bodies, Officials, State and Municipal Employees;

d) Chapter 26. Proceedings on Cases of Protection of Electoral Rights and Right to Participate in Referendum of Citizens of the Russian Federation;

e) Chapter 26.1. Temporary Accommodation in a Special Institution of a Foreign Citizen, who is Subject to Readmission;

f) Chapter 26.2. Proceedings on Cases of Administrative Supervision over Persons Released from Prison.

According to part 1 article 12 CCP RF justice on civil cases is administered on the basis of adversarial nature and equality of parties. This norm is enshrined in Section 1 "General Provisions" of chapter 1 CCP RF, and certainly extends to the above mentioned provisions.

At present, it is essential to ensure not only legal, but also actual equality of parties. Practice shows that the transition to a fully adversarial process – the ultimate goal, which cannot be provided by a simple proclamation.

- Norms of arbitration and procedural legislation. In addition to general issues of court procedure, III section of Arbitration Procedure Code of the RF (hereinafter APC RF) [6] focuses on the regulation of cases arising out of administrative and other public legal relations. In particular, this section addresses the issues of: features of consideration of cases arising from administrative and other public legal relations (Chapter 22); consideration of cases on contesting normative legal acts (Chapter 23); consideration of cases on contesting non-normative legal acts, decisions and actions (inaction) of state bodies, local self-government bodies, other bodies, organizations with certain state or other public powers, which are given by a federal law, officials (Chapter 24); consideration of cases on administrative offences (Chapter 25); consideration of cases on recovery of compulsory payments and penalties (Chapter 26). A common feature among these cases is the presence of public dispute on the right, the peculiarity of which is the legal inequality of litigants who are in the relations of power and subordination.

The nature of these cases and the requirement for their consideration in the way of administrative court procedure predetermine the specific procedural form of exercising the court powers, while the arbitration court simultaneously performs two functions:

- protection of the rights and legitimate interests of persons carrying out entrepreneurial and other economic activity in a dispute with a body having powers of authority with respect to such persons;

- judicial control over the actions of state bodies, local self-government bodies, other bodies and officials, the process of implementing the powers of which encompasses the scope of entrepreneurial and other economic activity. At that, exactly the judicial protection predetermines in this case the monitoring over the actions of state and other bodies.

We should dwell on the problem of referring the Code on Administrative Offences of the RF to the sources of administrative procedural law in general, and adversarial nature in particular [8]. Currently, there is no single scientific approach to determining the preferred location of norms on appealing of administrative and judicial acts of proceedings on cases of administrative offenses grouped in chapter 30 of the Code on Administrative Offences of the RF. Moreover, this legal act does not say anything about adversarial nature.

At the same time in the scientific literature is firmly rooted an idea of adversarial nature in proceedings on cases of administrative offences. This is due to the fact that the adversarial principle is usually seen as an integral part of the process of bringing to legal responsibility.

Certainly, it is necessary to mention the draft Code of Administrative Court Procedure [19, 6-45], which contains chapter 24 "Specificity of Proceedings on Complaints against Decisions on Cases of Administrative Offenses", as well as chapter 1 "General Provisions", which contains article 8 "Administration of Justice on the Basis of Adversarial Nature and Equality of Parties", what leads to the thought about the impending deep processing of the Code on Administrative Offences of the Russian Federation, in particular its procedural sections.

11. A special place in our list is taken by the Federal law of the Russian Federation "On State Forensic Activity in the Russian Federation" [12], which not only defines the possibility and procedures of a judicial examination in judicial (including an administrative judicial) process, but also similar to APC RF legalizes the term of "administrative court procedure", with the consequent thought about the adversarial principle. In the introduction of the Law is said that "the present Federal Law defines the legal framework, principles of organization and main directions of the state forensic activity in the Russian Federation (hereinafter – state forensic activity) in civil, administrative and criminal court procedure".

Also we believe that the sources of administrative process and certainly adversarial nature must include the Federal Law "On Legal Practice and Advocacy in the Russian Federation". As stated in article 2 of the Law "Providing legal assistance, a lawyer: ... participates as a representative of a client in civil and administrative proceedings; participates as a representative or defender of a client in criminal proceedings and proceedings on cases concerning administrative offenses" [13].

In the Federal Law of the Russian Federation "On Legal Practice and Advocacy in the Russian Federation" on a par with the Arbitration Procedure Code of the Russian Federation and the Russian Federal Law "On State Forensic Activity in the Russian Federation" speak about administrative court procedure, what also at the legislative level legalizes the very concept of "administrative court procedure", and this, in turn, leads to the thought about the adversarial principle.

As has been mentioned above, the potential sources of administrative process and consequently adversarial nature can include a draft Code of Administrative Court Procedure of the Russian Federation [19, 6-45], which passed the first reading in the State Duma in 2003.

In our opinion, when reviewing the list of sources of normative framework for adversarial nature it is impossible not to mention the draft of the Russian Code of Administrative Procedure [21, 11-84], prepared by M. Ya. Maslennikov.

The fact that the scientist developed and proposed for extensive discussion a rather interesting legal document is welcomed. Especially it would be desirable to

highlight that among the principles of administrative process the author points out "adversarial nature in administrative process". That is very symbolic, because "the adversarial principle" is represented in both published today draft administrative-procedural documents. There is a hope that "adversarial nature in administrative process" will become a reality.

Certainly, the list of sources is not complete, because every normative act, including sub-legislative one, has a certain establishment that is used in administrative court procedure and in this part may be referred to the group of acts of administrative-procedural law and indirectly to the normative framework of adversarial nature in administrative process.

The same is true regarding the directives given by the Plenum of the Supreme Court of the Russian Federation, mandatory for courts, other bodies and officials that apply the law, which has been explained. However, there is no consensus in the legal literature concerning the attributing these directives to the sources of law. We support the view that they are not direct sources of law; their essence is acts of judicial interpretation of law norms.

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