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•CONTENTS•

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ABOUT CORRELATION OF ADMINISTRATIVE PROCESS, ADMINISTRATIVE COURT PROCEDURE AND PROCEEDINGS ON CASES OF ADMINISTRATIVE OFFENCES

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Debating points of doctrinal interpretation of the essence of such concepts as "administrative process", "administrative court procedure", "proceedings on cases of administrative offences", "management process" are analyzed in the article. The author provides his own position on the issue of their role in ensuring the rule of law and the quality of public administration, security and protection of the rights and legitimate interests of citizens and legal persons.

Keywords: administrative justice, administrative process, managerial process, administrative procedures, extrajudicial conciliation.

It is no exaggeration to say that the issues about the place and role of administrative justice in the mechanism of the modern Russian State, about the correlation of administrative process, administrative court procedure and proceedings on cases of administrative offences in recent years have actually become a "trademark" of our administrative-legal sciences. However, the reasons for this are rooted not in the successful resolution of these issues on theoretical or practical level.

For the most of Western Europe states, the United States, Australia and New Zealand administrative justice is a really valid institute, is a system of various institutions (administrative courts, administrative tribunals, various agencies) that quite effectively monitor the legality of the activity of public administration, protect the rights of citizens, individuals and legal entities from its wrongful actions or administrative errors [3, 47-98; 10; 15; 16, 137-162; 18]. For Russia (pre-revolutionary, Soviet and post-Soviet), administrative justice is predominantly an sphere of multi-year academic discussions, which still have not been completed by the formation of a doctrine universally accepted by scientific community or the creation of corresponding institutions and legislative framework for their operation. In this connection, we should like to draw attention to the following.

The First. Today, the range of opinions on the content of the concepts of "administrative justice", "administrative court procedure", on the procedural forms for consideration of cases arising from administrative and other public relations continues to be extremely broad.

Y. M. Starilov believes that administrative justice, when fulfilling a vital function of judicial control through the use of appropriate procedural forms in the system of administrative court procedure, must be allocated in a separate branch of court procedure (Justice) dealing with legal disputes arising in the sphere of administration (management), and aiming at ensuring the subjective public rights and freedoms of natural and legal persons [13, 212-213]. At that, he believes that only the process of consideration of administrative-legal disputes is an administrative process. With these or those nuances judicial activity is linked by A. A. Demin with the right to be called administrative process.

A large group of scientists, including D. N. Bakhrakh, A. P. Shergin, M. S. Studenikina, A. S. Dugenets, A. B. Zelentsov, write about the two independent forms of administrative court procedure: *administrative-litigious jurisdiction* (administrative justice) and *administrative-tort jurisdiction* [5; 7, 68-79; 17, 752-761].

Position of Yu. N. Starilov and his supporters draws attention, first of all, by its "academic purity" in terms of understanding of procedural form, secondly, continuity with the Russian legal tradition of understanding of administrative justice. For example, A. I. Yelistratov already at the beginning of the last century said that mixing of consideration of disputes concerning a right and bringing to administrative responsibility was a "misunderstanding" [6, 24]. We find alarming the fact that the status of proceedings on cases of administrative offences, which in addition are not considered as procedural activity, is not uniquely defined.

Position of the opponents of Yu. M. Starilov attracts with its pragmatism, I would say – of a real life. First, it does not destroy the enough established vision of a "layered nature" of administrative process, as which we regard both the resolution of a dispute concerning a right and exercising of administrative responsibility. Second, it takes into account the fact that today we can hardly concentrate proceedings on cases of administrative offences only in courts, since removal of executive authorities and their officials from participation in the exercising of administrative responsibility actually paralyzes the entire system combating administrative delinquency. We find alarming the "double standards" in positioning proceedings on cases of administrative offences: if cases are considered by subjects of state executive power – this is a part of administrative and jurisdictional process, if the court – this is an administrative court procedure [2, 70].

Considering the quality of the contemporary public administration that at all desire cannot be recognized satisfactory, given rather ghostly abilities of ordinary citizens to confront "administrative fib", today it is important not to advocate a particular doctrinal position, but to converge these positions in order to obtain specific practical results that improve the quality of life of the Russians.

It seems that a certain compromise on the path of liberation from the "diversity" of modern interpretations of the concepts of "administrative process", "administrative justice", "administrative court procedure" lies in their understanding through the category "form" – processual or procedural one.

We would take off a lot of contentious issues, if *the processual* form we recognized only as a judicial order of consideration of cases, having received as a scientific "preference" an ability to see in the judicial order of resolution of cases, arising out of administrative and other public relations, *legal origins that inherent of exactly processual activity: principles of Justice, fundamental ideas of court procedure activity enshrined in the Russian Constitution*.

We would take off a lot of issues, if the proceedings on cases of administrative offences as part of administrative jurisdiction we considered as a *procedure-processual form* of exercising administrative responsibility by public authorities (their officials) and courts, and if we stopped to consider, as suggested by P. I. Kononov, the activity of courts of general jurisdiction to review such cases as administrative, managerial one [9, 662].

The Second. With all the positive, what is entailed by administrative court procedure for the protection of subjective public rights and freedoms of natural and legal persons, its role in providing *"useful, high-quality, effective, good governance"* [5, 14] should not be absolutized.

Administrative court procedure, as this follows from article 1 of the project of the Constitutional Court of Arbitration of the RF, is connected with judicial *protection of rights that have been violated or disputed rights*. How many cases should be considered in the context of our infantile bureaucracy to influence on the formation of *good governance, the reduction in the number of violations of citizens' rights and freedoms*? And where is the confidence in the fact that administrative court procedure as a processual form of consideration of disputes concerning a right can affect the activity of public administration in such scale that the public administration, without its deep internal modernization, becomes high-quality and effective?

Such doubts are not groundless. On the one hand, the practice of the Russian public administration is associated with a huge number of corruption offences, the direct or side effect of which is improper actions or inactions of public servants and officials in many areas of economic and social life, administrative rule-making which is contrary to the laws. On the other hand, and this is recognized even by the most zealous supporters of the establishment of administrative courts, the project of the Constitutional Court of Arbitration of the RF do not define the crucial categories relating to public administration and its results, which should be the subject of judicial appeal (administrative legal act, normative legal act, administrative procedures). In these circumstances, especially in the absence of legislative regulation of the general principles of administrative procedures, administrative court procedure may turn into a farce, in the form of protection of not citizens, but officials.

This means that in the process of forming *judicial mechanisms for the protection of the rights and lawful interests* of citizens and legal entities from bureaucratic arbitrariness we should more actively and consistently create conditions that exclude or minimize the risk of decisions or actions (inactions) of bodies and officials of public administration, which violate the rights, freedoms and lawful interests of the participants to administrative-legal relations. These conditions I associate with the improvement of the *procedural forms* of public administration and the achievement of a compromise in part of understanding of administrative process.

As is known, in administrative-legal science processual form and administrative process for quite a long time were associated not only with the procedural activities of the bodies of Justice, but also with the activity of any of state bodies, if it evolved from a legally regulated totality of similar procedures aimed to achieve a certain substantive-legal outcome. This understanding of the processual form of activity of public administration, developed in the works of V. M. Gorshenev,

G. I. Petrov, V. D. Sorokin, for its time, was certainly of a progressive nature, because it was oriented on the processualization of public administration, consequently, reducing the risk of voluntarism and arbitrariness of administration.

Therefore, while not denying the original ideas of the managerial concept of administrative process, we believe that it should be developed exactly as a *managerial one* related to legally significant procedures of *positive proceedings*. We would take off many issues if in positive proceedings we stopped looking for administrative process, and focused our attention on their managerial nature enclosed in administrative procedure (procedures) as "technological" norms determining conditions, order, time terms and sequence of actions of an executive authority body to exercise its competence, implementation of laws and administrative acts [11, 5-41].

The Third. With all the differences of interpretations of the concepts of "administrative justice", "administrative jurisdiction", "administrative court procedure (Justice)", they are positioned primarily as a state-authoritative activity to settle administrative-legal conflicts [8, 652]. At that, A. B. Zelentsov, one of the few legal scholars, focuses on the need to develop alternative (non-jurisdictional) ways to resolve administrative disputes [8, 321].

Today, the range of application such measures is very narrow. Mediation procedures at the legislative level are provided for only for the settlement of disputes arising out of civil legal relations, including with regard to the implementation of entrepreneurial and other economic activity, as well as disputes arising out of employment and family legal relations [1]. Settlement agreements on disputes involving public-law interests did not receive wide acceptance, and even here they are considered only in the context of relations regulated by the CPC RF and APC RF. Neither mediation nor settlement agreements are applied to disputes concerning passing of public service, giving rise to numerous lawsuits on the restoration at service or remission of penalties.

With all the complexities of application non-jurisdictional methods of dispute settlement in the sphere of public administration, it should be kept in mind that recommendation No. Rec (2001) 9 of the Committee of Ministers of the Council of Europe to member states "On alternatives to trial of disputes between administrative authorities and private parties" directly orients on a widespread introduction of alternative means of resolving administrative disputes that "might promote convergence of administrative authorities with population" [19].

The Fourth. In our view, all four forms – the processual one is within the framework of administrative-justice relations; the procedural-processual one is

within the framework of administrative-tort relations; procedural one is within the framework of managerial process and positive proceedings; procedural-conciliated one is within the framework of alternative (non-jurisdictional) dispute resolution options – in addition to purely legal, have a great social significance. Logical sequence of formation the social significance of these forms we see as follows:

– *procedural form of positive proceedings* creates a normative framework of appropriate intra-apparatus, and in certain cases and external authoritative implementation of public administration, minimizes risks of delegitimization of public administration because of mismanagement, violation of the rule of law, disregard for the rights and legitimate interests of individuals and legal entities;

– *administrative justice* creates a procedural framework, as the Russian pre-revolutionary legal scholars wrote about administrative justice, "patterns of management", "prevention and suppression of administrative fib» [12, 283], forming a complete mechanism of protection of society and the State against unlawful legal acts, decisions and actions of public authorities, officials, public and municipal servants;

– proceedings on cases of administrative offences establishes an organizational and legal framework for forming *procedural-processual mode* of implementation administrative responsibility as a set of processual principles, means and methods of their achievement, processual safeguards for the rights and legitimate interests of participants to proceedings;

– *alternative (non-jurisdictional)* options for resolving disputes without an authoritative content provide the parties an opportunity, on an equal footing, to take the initiative to resolve controversies, coming to a compromise or consensus.

Thus, the different processual (procedural) forms to ensure balance of private and public interests are real administrative-legal instruments aimed at the formation of the rule of law and the quality of public administration, protection and defense of the rights and legitimate interests of citizens and legal persons, and through this at the search for social consonance between public authorities and the population.

Among these forms the special role of administrative court procedure is connected with its ability, on the background of factual inequality of authoritative and powerless subjects of administrative-legal relations, to ensure their *processual equality*, including through equal rights on the collection, presentation and examination of evidence, on the participation in the process of consideration of dispute by court, on the appeal to court of any processual decisions of the other party that, one

way or another, affect the rights and legitimate interests, as well as the equal opportunities to use legal means of processual attack and defense.

Equally important that the procedures of pleadings always reflect the bond of justice with spiritual, socio-cultural, political-legal experience in a particular society. Therefore, "in different institutional forms and types of jurisdiction (criminal, civil, administrative) a judicial ritual, which is included in the process of internalisation and exteriorization of institutes of judicial power and the process of resolving the various types of legal conflicts, is a significant element of its political-legal and socio-cultural legitimization" [4, 14].

All this, in addition to the presumed for administrative court procedure effective protection of society and the State from improper public administration, serves as a powerful instrument of forming confidence in administrative justice and judicial decisions on specific cases, facilitating the search for *consensus* in society as a state of the consonance concerning the quality of public administration, protection of subjective public rights and freedoms of natural and legal persons.

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SEPARATE PROBLEMS OF LAW ENFORCEMENT PRACTICE OF TAX AUTHORITIES, ARISING IN THE COURSE OF MONITORING OVER THE CALCULATION AND PAYMENT OF VAT

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The article gives an overview of specific problems of law enforcement practice of tax authorities arising from the conduct of control over the calculation and payment of VAT. The author attempts to identify the causes of conflict between taxpayers, payers of VAT and tax authorities and makes his own conclusions.

Keywords: monitoring, tax, VAT, conflict, tax authority, taxpayer, tax audit.

Law-enforcement practice of tax authorities in the field of monitoring over compliance with the legislation on taxes and fees in calculation and payment of VAT is the most extensive and is characterized by a high degree of conflictness and refutability. This is largely due to the complexity and contradiction of legislation on the issues of calculation, collection and payment of VAT and often requires a separate explanation by tax authorities' professionals and an interpretation by the courts of higher instances.

Monitoring of compliance by taxpayers, payers of fees, tax agents the legislation on taxes and fees in part of the calculation and payment of VAT is exercised by means of carrying out of cameral and field tax audits. Cameral tax audit is conducted on the basis of tax declarations (calculations) and documents submitted by a taxpayer, payer of fees, tax agent in accordance with paragraph 1 of article 88 of the Tax Code of the RF (hereinafter TC RF) [2]. Cameral tax inspection is carried out

by the authorized officials of a tax authority in accordance with their official duties without any special decision of the head of the tax authority. The duration of the audit is three months from the date of submission of a taxpayer's tax return (VAT calculation) in a tax authority (article 88, paragraph 2 of the TC RF). The start date of cameral tax audit is specified in an audit certificate. In carrying out of a cameral tax audit of VAT calculation, significance is represented by:

- previously submitted tax returns (calculations);
- revised tax declarations(calculations);
- documents previously received (compiled) in the course of field and cameral tax audits, other measures of tax control;
- applications and messages received from the taxpayer and third parties;
- materials submitted from law-enforcement and other bodies, from extra budgetary funds, including in accordance with departmental agreements with the FTS of Russia, regional departmental agreements, etc.;
- other documents and data received by a tax authority on legal grounds.

Cameral tax audits are carried out in the following order:

1) Entering of submitted by a taxpayer tax returns (calculations) data into an automated information system of tax authorities (hereinafter referred to as AIS "Tax"). Taxpayers can submit information both on paper and in electronic form through telecommunication channels. This stage includes an automated arithmetic control in respect of all submitted calculations and formation of errors protocols. Protocols are stored in a database and used in the work by the division for cameral audits.

2) Automated cameral monitoring carried out by the division for cameral audits in respect of all submitted tax returns (calculations).

3) Registering the results of tax audit in accordance with article 100 of TC RF.

In the event of violations of the legislation on taxes and fees in the area of VAT calculation a protocol shall be drawn up, in accordance with chapter 21 of TC RF governing the calculation and payment of VAT.

The Division for cameral audits, in respect of all submitted tax returns (VAT calculations) carries out a verification of:

1) Comparability of indicators of tax return (VAT calculation) with the indicators of tax return (calculation) of the previous reporting (fiscal) period;

2) Associativity of the indicators of an audited tax return (calculation) with the indicators of tax declarations (calculations) in respect of other types of taxes and accounting;

3) Reliability of tax return (calculation) indicators on the basis of analysis of all information available in the tax authority, etc.

4) Correctness of information in the budget settlements card of a taxpayer.

5) Correctness of calculation of a tax base.

6) Soundness of application of tax benefits, tax rates, etc.

In addition the employees of the Division for cameral audits carry out analysis between the differences protocol based on the results of arithmetic control and the protocol of verification on supervisory ratios generated when input of tax declarations data (calculations) in the AIS "Tax". And then they form and summarize protocols of comparison of tax declarations indicators (calculations) and accounting reporting and other data contained in the information resources of the tax authority, as well as the information of external sources.

If possible, employees carry out a comparison of tax returns indicators (VAT calculations) and the accounting reporting with the indicators for similar taxpayers and with industry average indicators of the calculation and payment of VAT (for the previous periods).

If the tax control over the calculation and payment of VAT is carried out in the manner of a field tax audit, a tax authority has the right to inspect the territories, premises of a person, in respect of which the tax audit. In order to clarify the circumstances of importance for the completeness of audit (paragraph 1 article 92 of the TC RF), the documents submitted by a taxpayer for a cameral tax audit (Declaration of the value added tax (paragraphs 8 and 81 of article 88 of the TC RF)) and other are analyzed.

When conducting tax control over the calculation and payment of VAT numerous problems take place. Let's consider some of them:

Problem 1. Responsibility of a taxpayer and its officials in connection with the restriction of access of a tax authority on the taxpayer's territory isn't normatively enshrined. Such a right is given to tax authorities by virtue of article 31 (subparagraph 6) of the TC RF. In accordance with the procedure provided for in article 92 of the TC RF, tax authorities have the right to inspect any production, storage, commercial and other premises and territories used by a taxpayer for the extraction of income or related to the maintains of taxable objects regardless of their location, to conduct an inventory of property owned by the taxpayer. Such access is carried out strictly on a voluntary basis with the consent of a taxpayer.

Problem 2. The law restricts the right of tax authority during a tax audit to request from the taxpayer additional documents, except: ones confirming the right to tax benefits, the documents to be attached to a tax declaration (calculation),

documents proving the legitimacy of use of tax deductions (article 172 of the TC RF) [3]. For obtaining additional information the tax authorities have to make appropriate inquiries to the executive authorities, local self-government bodies, banks, NGOs, etc. This can lead to a reduction in the time required for an audit. Meanwhile, there is a need for request additional documents from the taxpayer in case of identifying discrepancies between a document previously received by the tax authority and the actual data, identified in the course of tax audit, as well as in other cases.

In this regard, there is a proposal on the need to amend the existing legislation on taxes and fees. Article 31 of the TC RF shall be complemented by the provisions of the following content: in case of identification of contradictions or inconsistencies between the information contained in a taxpayer's tax return for value added tax, or in case of identification of inconsistencies of transactions' information contained in the tax return with the information on these transactions contained in the tax return for value added tax submitted in the tax authority by another taxpayer (a person who, in accordance with chapter 21 of the Code, is responsible for submission of tax return), or in the record book of received and issued invoiced submitted to the tax authority by a person, in case if such contradictions or inconsistencies show underestimating the amount of VAT payable to the budget, or about inflating the amount of VAT claimed for compensation, the tax authority has the right to claim from the taxpayer additional documents certifying the correctness of the calculations.

It should be noted that the failure of a taxpayer to submit documents requested during tax audit or failure to provide them on time is recognized as a tax offense and shall entail responsibility stipulated in paragraph 1 article 126 of the TC RF. In addition to the mentioned, failure to submit to a tax authority documents and (or) other information necessary for the implementation of tax control, as well as the presentation of such information incomplete or distorted forms an administrative offence and entails administrative responsibility of officials (part 1 article 15.6 of the Code on Administrative Offences).

In case of taxpayer's refusal or failure to provide additionally requested by tax authority documents for tax control within the time limits set out in the request, an official of the tax authority performing the tax audit has the right to execute seizure of necessary documents in accordance with article 94 of the TC RF.

Problem 3. There are problems of determination of the range of taxpayers and classification of certain categories of persons to tax payers. The range of taxpayers of value added tax is legislatively enshrined in article 143 of the TC RF.

These include: organizations; individual entrepreneurs; persons recognized as tax payers of value added tax in connection with the movement of goods across the customs border of the Customs Union, in accordance with the customs legislation of the Customs Union and the Russian Federation legislation on Customs Affairs. The notion of "organization" is legally enshrined in paragraph 2 article 11 of the TC RF, and covers both Russian and foreign organizations. Russian organizations are legal persons formed in accordance with the national legislation. The content of the notion of organization is disclosed in the Civil Code of the Russian Federation. Foreign organizations are foreign legal entities, companies and other corporate formations that have civil legal capacity, established in accordance with the legislation of foreign countries ... (paragraph 2 article 11 of the TC RF).

Foreign organization implementing activity in the Russian Federation (extracts profit) should embark on tax accounting [4] at the location of its permanent offices in the Russian Federation. Thus, a foreign organization, that extracts profit through its representative office in the territory of the Russian Federation, is a taxpayer of VAT at the place of registration of its representative office. Russian scientists in their researches repeatedly indicated that the rules on the taxation of foreign organizations through a permanent representative office in the Russian Federation initially differed by significant collisions [9, 20-27]. In subparagraph 4 paragraph 1 article 148 of t the TC RF the legislator introduces a definition of "place of business". The territory of the Russian Federation is recognized as this place, in the event of actual presence of buyers of works (services) on the territory of the Russian Federation on the basis of state registration of the organization, and in its absence – on the basis of the place specified in the constituent documents of the organization, the place of management of the organization, the place of its permanent executive body, the place of its permanent representative office (if works (services) are provided through that permanent office), the place of residence of an individual.

Paragraph 2.1 of the Order of the RF Ministry of Taxation N BG-3-23/150 from March 28, 2003 clarifies that presence of a permanent representative office of a foreign organization in the Russian Federation shall be determined on the basis of the provisions of the legislation on taxes and fees. If a foreign organization is a person with permanent residence in the State, in relations with which the Russian Federation (USSR) has a valid agreement for the avoidance of double taxation, in determining the presence of a permanent representative office the provisions of a corresponding international treaty are of priority [7].

Representative office of a foreign organization, which is registered in the tax authorities of the Russian Federation, shall draw up invoices when transactions that are recognized subject to taxation in accordance with chapter 21 of the TC RF [5].

Thus, the basic criterion, necessary and sufficient for collection of VAT from a foreign organization is presence (absence) of its permanent representative office in the Russian Federation.

The notion of permanent representative office of a foreign organization in the Russian Federation as defined in paragraph 2 article 306 of the TC RF. At that, we should draw attention to the fact that it is provided for the purposes of chapter 25 of the TC RF "Organization Profits Tax". This circumstance is directly specified in this norm. A permanent representative office of a foreign organization in the Russian Federation shall be understood to mean a branch, representation, division, bureau, office, agency or any other economically autonomous subdivision or other place of business of that organization (hereinafter referred to as "division") through which the organization regularly carries out entrepreneurial activity in the territory of the Russian Federation which is connected with:

- the use of subsurface resources and (or) the use of other natural resources;
- the performance of work envisaged by contracts involving construction, installation, erection, assembly, adjustment, servicing and operation of equipment, including gaming machines;
- the sale of goods from warehouses located in the territory of the Russian Federation which are owned or rented by that organization;
- the performance of other work, rendering of services.

A permanent representative office of a foreign organization is considered to be established from the beginning of the regular implementation of business activity through its office. At that, an activity on establishment of a division by itself does not create a permanent representative office. A permanent establishment ceases to exist after the cessation of business activity carried out through a division of a foreign organization (paragraph 3 article 306 of the TC RF) [9, 20-27].

Thus, emergence of a permanent representative office of a foreign organization is based on three prerequisites:

1) establishment of a permanent representative office exclusively for carrying out business activity;

2) place of business must be located in the territory of the Russian Federation;

3) the activity should not be of a temporary nature.

However, with the emergence of e-commerce the concept of "permanent representative office" in general has lost its relevance, writes, for example, N. M. Vasil'eva. Since it has become possible to carry out economic activity abroad without registration at the place of profit extraction. The most typical example is e-commerce, when the place of permanent representative office is the location of the server, which processes a web-site – e-commerce tool [8]. The web-site may be registered in any country and even under an assumed brand. As an example can serve the travel company Dream-Line, which is active in the dissemination of tourist products on the whole territory of the Russian Federation. Dream-Line is registered in Hamburg (Germany) and does not have permanent representation in Russia. At that, after the formation of contracts for the purchase of a tourist product customers are offered to transfer money directly into Germany on private accounts.

Respectively there is a problem of VAT tax collection from foreign organizations that have not registered their permanent representative office in the territory of the Russian Federation, but carry out activities on extracting income, and bringing them to a tax responsibility in the event of violation of the legislation on taxes and fees.

4) There are problems of collection of VAT from an individual entrepreneur. Individual entrepreneurs according to the general rules are VAT payers. Individual entrepreneurs, according to the norms of the Civil Code of the RF (hereinafter – CC RF, are physical persons carrying out activities without formation of a legal entity [1]. Such a right is guaranteed to all citizens of the Russian Federation in accordance with the rules of article 23 of the CC RF. A person engaged in entrepreneurial activity, if it is not registered as an individual entrepreneur, is not entitled to claim that it is not an individual entrepreneur (part 4 article 23 of the CC RF). So, a citizen, who rents out its real estate (flat, summer cottage) or provides rental services, is required to pay VAT. At the same time, it may not invoke the fact that it is not an individual entrepreneur, only because is not registered in a tax authority as such. This position is directly explained in the letters of the RF Ministry of Taxation N 03-1-08 / 1191/15 @ from 13.05.2004 and N 03-1-08 / 1920/16-CH127 from 23.06.2003. At the same time, in carrying out activities outside the framework of entrepreneurial activity by a natural person having the status of an individual entrepreneur, this implementation is not subject to VAT [10].

So, the FAC of the Ural district ruled that the status of an individual entrepreneur cannot change the provided by civil legislation status of immovable property belonging to it as to a natural person, even if the property is rented out by the owner as an individual entrepreneur [6]. The Court decision is based on the fact

that an individual entrepreneur uses its property not only for business but also as a personal property for personal use, so its property cannot be demarcated.

It should be noted that special tax regimes may provide for exemption from the obligation of an individual entrepreneur to pay VAT. The obligation to issue invoices is not applied to the taxpayers applying the simplified taxation system.

Individual entrepreneurs applying the patent system of taxation also are not recognized as payers of VAT, with the exception of payable VAT in carrying out entrepreneurial activities in respect of which the patent system of taxation is not applied. This circumstance forms the conflict of legal relations between tax authorities and individual entrepreneurs, and it was the basis for its resolution in the Constitutional Court of the Russian Federation.

Problem 5. The Tax Code does not provide for the obligation of a taxpayer to submit a revised tax return in connection with the violations identified by a tax authority in the course of tax audit. Therefore, when a taxpayer (tax agent) recalculates amounts of tax and submits declarations (calculation) for the subsequent tax period the results of tax audits carried out by the tax authority in that tax period, in respect of which the taxpayer (tax agent) implements recalculation of amounts of tax, shall not be taken into account. Results of tax audits are recorded only in a decision about bringing (denial of bringing) to responsibility for committing a tax offense.

The proposal of necessary corrections in the documents of accounting and tax account in the operative part of a decision on prosecution for committing a tax offence only means the right, but not the taxpayer's obligation to submit revised tax returns. Paragraph 1 article 81 of the TC RF provides for the right of a taxpayer, in case of identification the fact of failure to reflect or incomplete reflection of information, as well as errors, which lead to the underestimation of the amount of tax payable, to make necessary changes in the tax return and to submit to the tax authority the revised tax return. A taxpayer is entitled to make such changes in case of discovery by itself of inaccurate information, as well as errors not-leading to underestimation of the amount of tax payable.

Tax returns do not refer to documents of tax accounting, but are taxpayer's statements about the objects of taxation, income received and expenses incurred, sources of income, the tax base, tax exemptions, the calculated amount of tax and (or) other data which serve as a basis for the calculation and payment of particular taxes (paragraph 1 article 80 of the TC RF). Failure of a taxpayer to make changes to tax returns (calculations) leads to further distort of reporting. Consequently, paragraph 1 article 81 of the TC RF should be added by a paragraph read as follows:

"In case of violations of the legislation on taxes and fees identified in a tax control, revised tax return may be submitted prior to the adoption of decisions on tax audit of primary (previous) tax return for the same tax (accounting) period".

The right of a taxpayer to submit a revised tax return should be accompanied by the power of a tax body to check it. Checking of a revised tax return is carried out individually, on the basis of changes made to it. Revised tax return can be checked by a tax authority within the framework of a cameral tax audit, and/or within the framework of a field tax audit (if the revised declaration (calculation of VAT) were presented during the field tax audit).

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DISCUSSION ON THE INFLUENCE OF GLOBALIZATION ON EMERGENCE OF INTERNATIONAL ADMINISTRATIVE LAW

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The article analyzes the possibility of formation of international administrative law in the globalizing world.

Keywords: globalization, method of legal regulation, branches of law.

In contrast to the ideas of E. T. Gaidar that the State is privatized by bureaucracy, in real the privatization of the State was conducted not by the bureaucracy, and by a group of natural persons, entities, later pompously named oligarchs. For he who pays the piper calls the tune. The origin of the term "oligarch" is due to the growth of free competition capitalism into imperialist stage, so clearly described by V. I. Lenin in his work "Imperialism as the Highest Stage of Capitalism". One of the 4 or 6 signs of imperialism V. I. Lenin called the emergence of oligarchs concentrating in their few hands the major financial flows of monopolistic capitalist market in the stage of imperialism now called the globalism. But those oligarchs of 19th century, who are described by Lenin, are pale in comparison with Russian oligarchs. Those grew up in the process of redistribution of the surplus product produced in the country, yet went by way of concentration of labor, until its transformation into a public interest. Our "oligarchs" evolved from non-labour enrichment, through appropriation the product of someone else's work, that is, through thievish method, privatization, secondly, our oligarchs, realizing their larcenous nature that is alien to the nation and harmful for the State immediately seek to take out all acquired to Israel or to another country, and not to allow former Soviet property to be at the

service of our country. That is, they are in some ways akin to the purely subversive group of competing enemy in the camp of opposing side. In this regard, there is a relevant speech of Gleb Pavlovsky May 16, 2005 in the TV program "Vesti-details" on the RF central television. G. Pavlovsky somehow bashfully said that the privatization of the State had been conducted by oligarchs; they stood between citizens and the State and distorted the essence of the State, depriving the Russian people of the State, since oligarchs had bought up and divided the State between each other, deprived citizens of sovereignty. He found out that M. Khodorkovsky was involved in buying up political system. Essentially, Pavlovsky confirmed that the idea of E. T. Gaidar, that the State was privatized by bureaucracy, had been implemented. Further, Pavlovsky put it so that if we want to be free, people should have a State. Democracy cannot exist without a strong State. Inconsistency of Pavlovsky's thinking is that, in his opinion, the mafia is a harmless word because is translated as "friends of friends". While mafia is a merging of crime with public power. And no State is proud of its links with the underworld.

Hopes to overcome total lawlessness and disorder in the Russian system of law through turning to international law are clear, but equally in vain [9, 164-170] as hopes to get welfare through connection to or entering into "the West" without properly organized labour and high labour productivity at home. It will not be sweet for idlers there because the competitive environment does not tolerate parasites. Welfare based on oil or gas speculation is a sign of parasitism in economy, I would call such a state of economy as a stage of wildness in the history of human civilization, since the main activity at the wildness period was gathering of finished natural product, while during further progressive stages of the civilizational development man turns from homo sapiens into homo habilis, an active man, that is such, who through its work creates not existing in nature artifacts transforms the nature.

N. A. Vlasenko offers comprehension of modern state of legal superstructure in the world: "The signs of the decline of international law in the context of postmodernism are uncertainties of prospects of some international formations (European Union, CIS); inactivity of a number of organizations; the UN's institutional stagnation; vulnerability of some institutes in terms of legitimacy (International Criminal Tribunals); dominance of functionalism concept" [6, 46].

A big destabilizing influence on the world order is carried out by the hegemon of the contemporary world – the United States. According to the V. D. Zor'kin, the crisis of the international justice system is associated with "the spread of the norms of Anglo-Saxon case law to the sphere of international relations".

"American and British legal systems increasingly allow themselves to go beyond national boundaries, using national judicial precedents to prosecute suspects outside the national territory" [11].

The Russian administrative-legal science has set the issue of finding an adequate response to globalization through the development of a "global administrative law" (GAL). Professor A. B. Zelentsov thinks that the task of our science is "to understand, obtain and streamline spontaneously rolling processes of legal transnationalization (globalization) and to rationally manage them with taking into account the Russian legal identity" [10, 26]. N. I. Pobezhimova encourages representatives of the science of administrative law to develop the concept and principles of "international administrative law (IAL)", its subject matter, sources, mechanism of international administrative-legal regulation "taking into account processes of globalization and integration taking place in the world" [18, 160], in particular the countries of the CIS.

It would seem, economic basis under the new legal superstructure in world administrative law already is already being created in the form of "free market", the Internet, the Eurasian Common Free Market Zone, but in reality, whether is this so? Whether does it give an excuse to talk about the emergence of international administrative law, whether does not other characteristics of States (choice of social way, socialism, beliefs and just nationalist associations of foreign citizens on the territories of other sovereign States: Huaqiao, colonies, for example, of the Jews, the Circassians in other States, the Indians in reservation areas, etc.) serve as opposable reality of the concept of integration? Hopes to get rid of corruption in the country, with the assistance of international administrative law, if there are not such forces inside the State – it is a wrong road.

Definition of the subject matter of international administrative law is the most difficult issue, if to discuss the formation of such a branch of law.

Whether does the institution of a case against Mr. Timchenko, millionaire and friend of Vladimir Putin [30], or Mikerin in November 2014, directly relate to the sphere of "international administrative law" [29, 31]? Or the announcement of the Investigative Committee of the RF November, 2014 about initiation of a case on the fact of shelling of school in Donetsk in November 2014 year [28], which has resulted in the deaths of schoolchildren? After all, in both cases initiation of a case required the possession of a particular authority, competence of a public authority for such action on initiation proceedings against citizens of not their jurisdiction. Or is this is unfounded claims of persecution any citizen of any country, even outside the borders of their State, outside their jurisdiction, what would not have a difference

with the international banditry. At the end of the 20th century in Western European countries such a power of own States was actively promoted, Israel pretends to administer its justice in the same way against citizens of any country, if Israel suspects such person of the genocide of the Jews. How far such claims are justified and whether are they relevant to the so-called "international administrative law"? Maybe application to Russia by a number of Western countries sanctions in protest against the policy of the Russian Federation in Ukraine also belongs to this type of emerging law? Or are all of these actions wrongful? It is known that the President of the Russian Federation advised to Russian billionaires suffering from Western sanctions to appeal against them in a court. And, do the activities of Interpol to trace criminals relate to the same international administrative law? Let's ask ourselves which of the mentioned incidents would relate to the proposed international administrative law?

Many provisions of this concept, for example, the term of "global management", in regard to administrative law require the highest attention and scientific discussion. Because there are enough examples of the least critical dancing to "West's" tune in the legal practice of the Russian Federation. That does not necessarily lead to harmony in corresponding relations. One day a correspondent of the radio station "Ekho Moskvy" O. Zhuravleva in conversation with Eugenia Albats, Editor-in-chief of the magazine "The New Times", held a long-standing assessment of the situation: "The world is unstable, everybody have their own interests. We just like do not understand our place and maybe that is why we have such a difficult relationship with everybody" [26]. In addition, we must also consider the possibility, in the presence of international administrative law, of emergence legal relations when "international administration" will apply the quasi authoritative powers to both individuals and legal entities of the Russian Federation abroad and to the entire State in general. That is, there will be the methods of authoritative impact on the Russian Federation like sanctions of the European Union countries and the countries of the American continent, the United States and Canada. In practice of the United States has long seen such traits of their sense of Justice, when they are actively referring exclusively to the provisions of their internal law apply detention and conviction of Russian citizens having their business outside of the Russian Federation (the case of But, arrest of accounts of Russian officials, etc.). And leaders of the breakaway states, for example, the Islamic State of Iraq and the Levant (ISIL), applying their own rules of administration and vision of public order, carry out executions of infidels, including citizens of the Russian Federation.

Some semblance of international administrative law is found by A. A. Ageev in the study of legal regime of the spaces not under state sovereignty, for example, high sea, and I would also add the specific legal regime on international space station. He writes: "Under the legal regime of high sea we will understand the system of legal means provided by all the sources of international law and the adopted, in accordance with them, acts of national law, which defines a set of permissions, prohibitions and positive obligations of subjects of international law with regard to ensuring their rights and legitimate interests in particular area of maritime spaces". To determine, first of all, the limits of "the permission of implementation national jurisdiction and its volume" [3, 77]. In fact, these dispositions of international public law are also implemented by the apparatus of a sovereign State, thus denying the existence of an "international administrative law", where "Greenpeace" hardly fits on the role of its custodian.

Speaking about the interdependence of states in all areas of their economic, social and political ties, A. B. Zelentsov writes: "...supranational regulation generates still poorly manifesting itself, but a very important and growing array of norms, which in the foreign literature is called "new administrative law" or "supranational administrative law" and most often "global administrative law". This new normative complex is designed to service management processes associated with the implementation and protection of public interest in the new trance national space and this differs it from "traditional domestic law" [10, 12-13].

Here we are forced to once again refer to the concept of subject matter of administrative law, as its scope in the given interpretation is uncertain, this time in relation to administrative legal relations involving a foreign element.

It is recognized that matter should be attributed to administrative law under two criteria: subject matter and method. The subject matter is a range of social relations governed by administrative law, and the method (in my definition) is a nature of the ties of legal relation subjects. Among the definitions of the subject matter of administrative law the position of L. L. Popov draws our attention, he writes: "The subject matter of administrative law is a system of social relations governed by administrative-legal norms" [19, 33], but I prefer more the view of D. N. Bakhrakh, who writes: "The subject matter of administrative law is a totality of social relations arising in the implementation of imperious activity of state administration and administrative court procedure" [4, 32]. It is important that in the subject matter of administrative law they distinguish such its characteristic as "administrative and coercive activity" [2, 28]. After all, the law is different from other forms of regulation of social relations (the rules of morality, intraorganizational norms, and tribal

customs) exactly by the ability of coercive exercising of legal norm with the help of specially created State apparatus. From this point of view, the actions of the authorities of the United States in August, 2013 aimed to punish Syria by intervention for alleged violation of the norms of international law (mistreatment of its own people and foreign mercenaries who want to overthrow the legitimate Government of the country, and the use of chemical weapons to suppress them) is a coercive activity, and, taking into account the position of A. B. Zelentsov, is a supranational administrative activity.

Euphoric notes of A. B. Zelentsov, who already foresees occurrence in some of its outlines "global administrative law", attract the attention. Alexander Borisovich writes: "…A legal space where national public administration operates is no longer confined to specification of national political directives and priorities, and is coupled with the sphere of normativity of supranational nature that streamlines management relations within the framework of national legal space" [10, 15]. In my opinion, A. B. Zelentsov puts down in the basis of his reflections a criterion of subjective composition of administrative legal relation: there, where there is a foreign element it is a supernational administrative law. Moreover, by analogy with the domestic administrative law, where legal relations are built between an authoritative subject of administrative law and subordinated one, A. B. Zelentsov believes that in global administrative law (GAL) or transnational administrative law we can find "the application of norms of this law as to private entities, and to public ones – states" [10, 17]. That is, the question of the sovereignty of such states cannot be raised, they are put on the level of a private subject of law, citizen and any other corporation. It seems to me that this is a bad basis for reflection. Although the current legislation in the RF gives reasons for this. V. G Ul'yanishchev estimates the already existing RF legislation as such, where the State is reduced to the level of a trading entity, one of a number of subjects of civil law: "...the State as a system of safety mechanisms, as the carrier of economic function... is reduced to the level of an ordinary subject of civil turnover, before which the citizens (carriers of inalienable natural rights) obtain widespread advantage" [22, 204].

Not a subject, but authoritative nature of legal relations is a specificity of administrative law. The criterion of subjective composition of a legal relation cannot be adopted unconditionally even in domestic law. In my opinion, a more stable criterion for structuring of law by branches is the adoption for basis the nature of the ties of subjects of legal relations, that is, the method of legal regulation. In international law, such a method is the method of "consensus" [12], the consent of sovereigns. And for administrative law is typical method of power and subordination,

the method of authoritative orders, administrative-legal method [8, 13-19]. That is, horizontal and vertical linkages of subjects of legal relations. It is quite clear that they are not compatible.

The issue of globalization and formation of a world State, in principle, is not new [5, 9-13; 13; 15; 24, 411]. Each new organizer of global world most often turns to it. And the Empire of Alexander the Great was a world one, however, until the demise of its organizer. And Roman Empire united all the space known by that time. Desire of modern imperialist states for the universalization of the world, both in terms of administration, and enforced by them own rules and values is quite tangible. This includes attempts to unite Europe. But why, then, in the age of globalization and integration such a great state as the Soviet Union in the context of globalization so inopportunely goes out of the common and is split into many pieces? Is it just the result of the machinations of imperialist competitors for the dispersion of enemy for further absorption it in parts or globalization should not be overestimated in the sense of an integrating factor for the population of the world? The same answer must be received in respect of international administrative law.

The attitude of the United States to norms of law made within the framework of the United Nations is known: they neither have ratified the Kyoto Protocol nor recognized it mandatory, nor other facts such a property, not to mention their understanding of international law as law only in interpretation the interests of the United States [23]. They even in case of use of chemical weapon to Syria in August 2013 saw a threat to the national interests of the United States. That is in the reality in the new integrated global community of former sovereign states, supranational law may occur only in the form of hegemony of a separate state that does not actually give an opportunity to create new administrative law of the world community in the interpretation of A. B. Zelentsov. Estimation of A. B Zelentsov, that "all this provokes dichotomy "traditional administrative law – new administrative law" [10, 14] is hardly correct.

The enshrining in the RF Constitution of the principle of primacy of international law over national law, the Russian Federation law, does not change the case not only because the text of the Constitution of the Russian Federation was written with help of American advisers. But also because the text directly refers international law to supranational, the main subjects of which are states, as sovereigns. In other words, a national State, as an institute for the protection of human rights and the protection of the rights of its people, seeking for shelter against the injustices of the competitive world, is not outdated. Time for the World State is constantly

growing, but it is doubtful whether it has come. At least, the Constitution of the Russian Federation that has proclaimed the primacy of international law over national law of the RF is still a document of national law, and recognition of the quality of international law is an own will expression of the sovereign State, therefore, such a sovereign State always has the authority to change the wording to any other. By virtue of the same sovereignty.

So globalization of administrative law is a destiny of weak and compelled to obey. And there is no heaven for a weak. As well as fair legal procedure. Gorbachev's globalization lead into breaching of national interests, the defeat of one nation in favor of another, the revision of outcomes of the Second World War and the surrender of Yeltsin. When French President Nicolas Sarkozy in 2010 evicted itinerant Roma, United Europe shouted slogans to stop discrimination [32], but the deportation took place.

Here's how carefully M. V. Nemytina writes about globalism: "It should be noted, that in the modern world, which continues the struggle for geopolitical influence, the borrowing of someone else's experience of legal development, the building of legal system and the legal regulation may turn out to be not so innocuous. In the context of globalization and international integration any State, on the one hand, has to enjoy the advantages of legal development of civilization, on the other hand, not to lose a sense of their own national interests, to keep their legal traditions. Therefore, there are two growing, competing among themselves trends in the modern world: one is associated with globalization and international integration, accordingly with the unification of legal orders, the other with the countries' pursuit of national identity, maintaining their historical state and legal institutes and peculiarities of legal system" [17, 21]. The impossibility of mechanical transfer of characteristics from one country to another country is vividly described by G. I. Muromtsev [16, 17].

There, where a state was weakened, human rights have always been under threat, because the State both establishes the norms of law, and defends them, there are no rights without a state. In modern conditions, acceptance of the presence or even need for international administrative law – is a position of surrendering national sovereignty and national interests for the sake of an imperialistic competitor. For example, the use by the United States of America of military suppression of Government of a sovereign state, Syria, could be seen as an application of administrative power to quell another country. And this situation does not add arguments in favor of world administrative law; it just shows a crisis of the system of international law, which is generally accepted to be based on consensus, voluntary consent

of subjects of international law, consent to join or not to join in relations with equal sovereigns on the political map of the world.

May be in the actions of the United States, you can see the beginnings of international administrative law? It's not so. When administrative law will become a world one, it will no longer qualify for the definition of "international". Since the concept of "international" applies only to relations between sovereign states, and not to any authoritative legal relation involving foreign element as one of its parties.

The theory of A. B. Zelentsov has appeared in conditions when also inside of a state the credibility of administrative law with its law-enforcement function fell. Because citizens resort to lynching, direct coercion of opposing party [20, 27] and do not rely on the effectiveness of the state system of administrative coercion to comply with norms of law. That is, deny either monopoly of the State on the established rights, or the monopoly of the State on court and use of violence. Examples of ignoring the state can include numerous "skirmishes" that substitute coercive function of the state, and sometimes in the absence of "political will" in the country, inaction of state administration institutes, private groups undertake events to restore territorial order in the country [21; 25].

By analogy. There is a known discussion of scientists concerning international private law (IPL), in which the very term is criticized, when some scientists recognized that international private law is not international, not private and not a law. Others included the relations of IPL in the subject matter of international public law. The first scholars are conventionally called "nationalists" (L. A. Lunts, I. S. Pereterskii), second ones – international jurists (A. M. Ladyzhenskii). "Nationalists" tried to prove that each state itself sets the norms of the so-called international private law and therefore it was not international, but domestic. "Its private-law nature is challenged on the ground that it not so much directly regulates legal relations between private individuals, but rather determines what norms public authorities should apply. The legal nature of the norms of international private law is negated because it does not regulate directly the powers of subjects of legal relations, doesn't create or delimitate rights in subjective sense of word, and provides guidance, what law norms of such a State should be applied on a particular case" [14, 15]. The scientific debate had a direct projection on the legislation: Higher Attestation Commission adopted as a criterion for structuring the branches of the Soviet, and now Russian law, the fact among legal sciences the specialty 12.00.03 refers to civil and international private law [1], i.e. IPL is moved to the category of domestic institutes of law.

While in Soviet times, specialty 12.00.10 included both international law and international private law.

The limits of the subject matter of the branch of law "international administrative law" are also affected by the judgment of A. M. Ladyzhenskii: "But if you stand on the point of view that L. A. Lunts and I. S. Pereterskii outline in respect of private international law, then the enumerated new branches of international law (international criminal, international administrative, international financial law) need to be considered as the embranchments of respective domestic branches of law, at that, each State could has its own international criminal international administrative law and so on. From this point of view, the prosecution of Nazi criminals by the International Tribunal would be nothing other than the trial of vanquished enemies under domestic laws of winners" [14, 11].

The projection of this debate on international administrative law may also lead to a methodological conclusion on insolvency of the term of international administrative law due to the blending of the spheres of international life with domestic law. About international administrative law, you can also say that it is not international, not administrative and not a law. Not international, since, in accordance with the existing today concepts, "international" means presence of sovereigns as the main actors of this law, and the proposed theory assumes that the norms of this administrative law will be binding for the States on an equal basis with individuals. The equation of a natural person and a State directly negates the idea that this law is an international one. It is not also an administrative one, since in this case the administration should mean a specialized apparatus for a coercive enforcement of law. And there isn't one. And not a law, since there is no subject that forms norms of this law.

The introduction by the Federal Law No. 97-FL from May 4, 2011 chapter 29.1 of the Code on Administrative Offences of the RF "Legal assistance in cases on administrative offences" regulating procedures for requesting foreign authorities for legal assistance does not make these procedures international. These are only procedures in legal relations with foreign element, although they are exercised by authorities of a corresponding state. To turn them into international ones they lack the quality of sovereign will of a subject of law. However, even an official acts on behalf of a state, otherwise it does not have independent authority. Sharing the stated opinion that managment relations are undergoing their evolution, and supranational bodies have been already created within the framework of the Eurasian Economic Community and Customs Union (the Eurasian Economic Commission, the Court of the EurAsEC), N. I. Pobezhimova still comes to the conclusion that

"we should not state this and make a conclusion that, thus, the content and nature of administrative law have changed. The modern science of administrative law has not yet formed the understanding of the legal nature of either the European or international administrative law" [18, 153].

In conclusion, we must think over the paradoxical conclusion of E. T. Gaidar: "There are authors, who believe that the trend of further development of the process of globalization is inevitable. There are those who believe that the world stands on the threshold of deglobalization. Both options cannot be proven" [7, 811]. However, the institute of a state remains unchanged, as the most important form of implementation the interests of publicly organized people. The time has not still come for the withering away of a state and the substitution of a national administrative law by international administrative law of a trans-state, the sovereignty of a publicly organized people still protects particularly small nations from abusing their alleged rights by some imperialist states.

Yes, without the activity of administration the norms of other branches of domestic law and norms of international law also hang in the air. But this hardly create a branch of law "international administrative law", and in the World State an administrative law will become not an international law, but a national law of a new World Association. Since an international law exists only between sovereigns, participation of a foreigner does not make such a transaction international, and only a transaction with foreign element under national law.

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Knyazeva I. N.

IMPROVEMENT OF THE PROCEDURE OF RECONSIDERATION DECISIONS AND RULINGS ON CASES OF ADMINISTRATIVE OFFENCES THAT HAVE ENTERED INTO LEGAL FORCE

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The article deals with problems of correlation of administrative court procedure in arbitration courts with the procedure of reconsideration of rulings and decisions on cases of administrative offences that have entered into legal force in the Supreme Court of the Russian Federation. In order to ensure the constitutional provision for the protection of human and civil rights and liberties the author offers to enshrine the principle of collegiality in supervision proceedings on cases of administrative offences.

Keywords: administrative court procedure, legislation on administrative offences, supervision proceedings, court of general jurisdiction, arbitration court, appeal, collegiality.

Effective organization of the judiciary is an absolute attribute of a modern constitutional state. The effectiveness of the normative legal framework of the judiciary, clarity and consistency in the choice of procedural mechanisms to protect the rights and legitimate interests of private and public entities, embodiment in practice of democratic principles of court procedure – the ideal components of any judicial system [9, 2-5; 10, 32-39; 13, 2-3].

In the Russian Federation the choice of vector of the judiciary development is determinated by basic constitutional provisions which specify that human rights and freedoms are the supreme value. The duty of the state is recognition, observance and protection of human and civil rights and freedoms (article 2 of the Constitution of the Russian Federation [7]). That is why even before the adoption of the Federal Law No. 240-FL from December 3, 2008, "On Amendments to the Code on Administrative Offences of the Russian Federation", when the order of revision of decisions on cases of administrative offences, protests and decisions based on the results of complaints consideration, which came into legal force, was regulated by only a single article 30.11 of the Code on Administrative Offences of the Russian Federation (hereinafter – CAO RF), the Constitutional Court of the Russian Federation stated the following legal position: "pending the introduction to the Code on Administrative Offences of the Russian Federation corresponding additions the limits and grounds for checking, powers of the judges of the Court of supervisory instance, time limits for appeal (contesting) of a court decision entered into legal force and the order for consideration of complaint (protest) in the Court of supervisory instance can be determined by the courts of general jurisdiction under the norms of chapter 36 of the Arbitration Procedure Code of the Russian Federation (hereinafter – APC RF) that governs proceedings on the revision of judicial acts of arbitration courts by way of supervision, with taking into account the peculiarities of resolved issues and general principles of court procedure" [3].

Thus, the Constitutional Court of the Russian Federation recognized that the arbitration procedural legislation had used a better pattern for consideration of cases on administrative offences by way of supervision, containing elements of collegiality, establishing the possibility of interested persons to be directly involved in the process of case settlement, including optimal procedural mechanisms, which is especially important today when the law enforcement practice proves that there is a need for better ways of supervision proceedings arrangement, while respecting the balance of interests of the State and its citizens.

It should be recalled that the APC RF provided for rules for reconsideration of cases on administrative offences other than those contained in the CAO RF

(currently chapter 36 of the APC RF "Proceedings on the Revision of Judicial Acts by Way of Supervision" has lost its force due to the adoption of the Federal Law of No. 186-FL "On Amendments to the Arbitration Procedure Code of the Russian Federation"). As the sole supervisory instance for all categories of court cases was the Higher Arbitration Court of the Russian Federation, which at the meeting of the Presidium decided on reconsideration judicial decisions that had entered into legal force. "Supervision proceedings, being the last "lever" in solution of an arisen dispute in an arbitration process, has a very meaningful and useful to society and the State function of consideration cases by way of supervision through the use of and compliance with the adopted by the legislation of the Russian Federation rules and conditions for the implementation of entrepreneurial and other business activity" [11]. Supervision proceedings in the arbitration process had a single for all categories of court cases normative legal framework. The Presidium of the Higher Arbitration Court of the Russian Federation after a statement by the applicant applying for reconsideration of a judicial act by way of supervision, other persons involved in a case and present in the trial, was taking the decision at a closed session. Resolution of the Presidium of the Higher Arbitration Court of the Russian Federation was taken by a majority of the judges [8].

Pursuant to the decision of the Constitutional Court of the Russian Federation, but still having deviated from the given by the Constitutional Court of the Russian Federation vector of development of the legislation on administrative offences in part of the revision of orders and decisions on cases of administrative offences that came into force, the legislator has recognized void article 30.11 of the CAO RF and added articles 30.12 - 30.18 to the chapter 30 of the Code [4]. Meanwhile, the issue of consideration cases collectively in the hearing was never resolved in the mentioned norms. Moreover, in the Supreme Court of the Russian Federation by the order of the President of the Supreme Court of the Russian Federation or his deputies a judge of the Supreme Court of the Russian Federation has the powers to review judgments on a case of administrative offence, decision based on the results of consideration of complaints, protests that have entered into legal force [5].

Split-level models of normative legal regulation of administrative court procedure led to the existence of quite different approaches to regulating the procedural rules for the administration of Justice on cases of administrative offences, including within the framework of the supervision proceedings, in the system of arbitration courts and courts of general jurisdiction. E. V. Slepchenko rightly notes: "...the separation of norms concerning administrative court procedure between the Civil Procedural Code of the RF, Arbitration Procedure Code of the RF

and the Code on Administrative Offences of the RF is not justified and creates problems in practice" [12, 51].

Within the framework of development of judicial reform, in order to ensure the unity of approaches to the consideration of cases, both in respect of citizens and legal persons, the Higher Arbitration Court of the Russian Federation and the Supreme Court of the Russian Federation have been merged since August 6, 2014 [6]. The competence of the Higher Arbitration Court of the Russian Federation to review cases under its jurisdiction, including by way of administrative court procedure, went to the Supreme Court of the Russian Federation. Currently, under part 4.1 of article 30.13 of the CAO RF, decisions of arbitration courts on cases of administrative offences, decisions taken by them on the basis of results of consideration of complaints, protests (petitions), which are entered into legal force, are reviewed by the Supreme Court of the Russian Federation if all the means of their appeal in arbitration courts provided for by arbitration-procedural legislation have been exhausted. The mentioned decisions may be considered in the Supreme Court of the Russian Federation by the President of the Supreme Court of the Russian Federation, his deputies or a judge of the Supreme Court of the Russian Federation by the order of the President of the Supreme Court of the Russian Federation or his deputies. The mentioned decisions shall be reviewed in the Supreme Court of the Russian Federation in accordance with the rules established by the CAO RF.

Thus, the revision procedure of entered into legal force orders and decisions on cases of administrative offences considered by arbitration courts has changed radically, and the parties to a case on administrative offense have lost the right to oral proceedings through collegiate court. This is not consistent with the legal position of the Constitutional Court of the Russian Federation and points to the need to find new ways of improving legislation, elaboration new procedural standards, continuing scientific and law-making work on the further development of legislation on the supervision proceedings on cases of administrative offences.

Existing sole taking decisions on complaints and protests against entered into legal force orders and decisions on cases of administrative offences is inconsistent with the objectives of the supervision proceedings, is not conducive to the full implementation of the general functions of case reconsideration [14, 69-80]. In addition, there is the possibility of reflection of subjective opinion of judge on the merits of a considered case on administrative offense.

The implementation of the principle of collegiality allows you to resolve a case on administrative offence by a definite panel of judges, to take into account

their different views and identify the most appropriate legal mechanisms for resolving cases by lower courts. Exactly such approach creates a powerful effect of legality, validity and finality of a judicial act.

It is noteworthy that the branches of criminal-procedural and civil-procedural legislation, if there are grounds for revision judicial acts, refer settlement of supervisory complaints, protests to the competence of the Presidium of the Supreme Court of the Russian Federation, further emphasizing the importance and liability of supervisory instance in correction of fundamental judicial errors [1; 2].

Supervision proceedings on cases of administrative offences also need similar procedural forms of consideration of cases. Establishment of the principle of collegiality in supervision proceedings on cases of administrative offences in the Supreme Court of the Russian Federation will contribute to: 1) formation of an agreed position of the court of supervisory instance when resolving court cases; 2) consideration of the views of different judges on the merits of a case on administrative offense and the order of application of norms of legislation on administrative offenses; 3) rise of the credibility of the judiciary and legal positions formulated by it.

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Kondrat'ev S. V.

ANALYSIS OF CONTEMPORARY CONDITION AND PROBLEMS OF EXERCISING ADMINISTRATIVE RESPONSIBILITY FOR OFFENCES IN THE FIELD OF TAXES AND FEES IN ECONOMIC LEGAL PROCEEDINGS

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The author carries out identification of problems of exercising administrative responsibility in the field of taxes and fees and determines possible ways to resolve them on the basis of the proposed by the author legal measures aimed at the streamlining the system of administrative prohibitions and the unification of application measures of administrative responsibility for offences in the field of taxes and fees.

Keywords: administrative responsibility, administrative prohibitions, offences in the field of taxes and fees, differentiation of tax and administrative offences.

Currently, it is indisputable fact that over the past three decades in Russia there was an intensive development of the system of administrative law: the financial law detached from the administrative law; in the financial law were formed virtually autonomous sub-branches: budgetary, tax, currency ones; the entrepreneurial, banking, commercial and other detached out from the civil law; the social security law – out of the labor law. Such intensive development path, of course, has certain legal effects, which can include the fact that the legislation in the newly emerging branches of law has outpaced the development of relevant scientific concepts (theoretical foundation), and a certain gap between the legislation and its scientific basis is reflected in the quality and content of the very legislation. In addition, this imbalance is at the heart of emergence of numerous theoretical concepts that have enough contentious nature.

Thus, in the conditions of transforming system of law of the Russian Federation, there is an acute need of theoretical reflection and formation of a legal framework designed to ensure financial stability and economic security of the State.

The relevance of this research relates exactly to the fact that at present there are no comprehensive studies, based on the application of comparative-legal method of study of different groups of social relations, for the regulation of which there should be a uniform approach to the legal regulation on the part of the legislator. We believe that the results of this comprehensive study will identify problems of both practical and theoretical nature, existing in the financial system of the State, as well as the legislative framework, and identify possible ways of overcoming them to form a stable tax system and the achievement of objectives defined by the Concept of long-term socio-economic development of the Russian Federation up to the year 2020.

These issues are also important to the day-to-day activity of various bodies of state power of the Russian Federation, whose functions include monitoring and oversight in the tax system of the State, and, consequently, detection and suppression of offences, as well as for judicial bodies that provide follow-up assessment of the legality of law enforcement activity.

This work aims at differentiation of tax and administrative offences that are committed in the area of taxes and fees and serve as a ground for administrative responsibility. The applied goal of the work, in turn, is identification of the problems of realization of administrative responsibility in the area of taxes and fees and determination of possible ways to resolve them on the basis of offered in this study legal measures aimed at the streamlining the system of administrative prohibitions and the unification of administrative responsibility measures for offences in the studied area. The problem still exists, and it remains unresolved.

It is well known, the legal basis of state administrations' activity in the area of taxes and fees, the backbone of law enforcement in the studied area is the Tax Code of the Russian Federation (hereinafter – TC RF) and the Code on Administrative Offences of the Russian Federation (hereinafter – CAO RF). It seems appropriate to consider some of the issues related to the identification of the role and importance of these fundamental laws governing the legal relations in the considered by us area.

It is well known that CAO RF was elaborated in course of two convocations of the State Duma of the Federal Assembly, almost eight years. It should be appropriate to note that the current CAO RF is focused on protection of constitutional human and civil rights and freedoms, property regardless of its organizational forms, conditions of normal life of Russians. The role of this codified law can hardly be overestimated.

Firstly, it shields a wide range of public relations; they are fundamental

human and civil rights and freedoms, property, public safety, economic interests of natural and legal persons.

Secondly, CAO RF is almost for all citizens, officials and entrepreneurs, organizations, lawful conduct of which is associated with the observance of prohibitions enshrined in the Code.

Thirdly, CAO RF specifies the scope of legitimate activity of state bodies and their officials on the application of norms of administrative responsibility, as well as a democratic procedure of consideration of cases relating to administrative offences [1, 5].

In 2012, the scientific community summed up the results of ten-year validity period of CAO RF. This period of formation of the Russian Statehood, which has embarked on the path of building a democratic state, was characterized by high intensity of development in all areas of public administration, at that the dynamism of improvement of CAO RF was certainly associated with the accelerated development of modern public relations. Attention should be drawn to the fact that if in 2002 just 5 Federal Laws amending the Code were adopted, in the year 2003 – 8, 2004 – 11, 2005 – 18, and in 2006 their number already reached 28 Federal Laws. Up to 2010, the number of laws which amended CAO RF ranged from 17 to 25. However, years 2010 and 2011 brought surprises to legal scholars in the form of 46 and 48 legislative amendments to CAO RF. For the year 2012, there were adopted 37 laws, which amended the chief administrative-tort law of the country. However, as rightly pointed out by Professor A. P. Shergin "there is an important issue for the legislator and law enforcers concerning the stability of legislation on administrative responsibility" [4, 83-84].

Thus, if to talk about the dynamics of changes for 10 years, about 250 Federal Laws were adopted during this time, and today their number has exceeded 350.

According to official statistics, administrative offences were and still are the most common types of wrongful conduct. According to the official data of the Ministry of Internal Affairs of Russia only in 2013 year they revealed 68.4 million administrative offences, of which more than half (51.3%; 2012: 44 %), [6] were recorded with the use of special technical means of photography and video recording, working in automatic mode.

Thus, the scope of administrative delinquency, the diversity of its manifestations and inflicted damage determine the need to counter administrative offences, lower the threshold of danger to interests protected by law. In this approach, there are objective reasons for the significant adjustment of the administrative law doctrine with taking into account the features of modern development in our country.

To this end, the state improves the legislation on administrative responsibility. Nowadays, there is a task, on the basis of new realities, as well as the analysis of implementation of the current CAO RF, to implement the third codification of administrative-tort legislation. New codification of administrative legislation, which is held by the expert group of the Committee for Constitutional Legislation and State Construction of the State Duma of the Federal Assembly of the Russian Federation, at the present time, is a significant milestone in the development of the theory of administrative-tort law. Realization of this task involves the study and analysis of the problems of legal regulation of administrative responsibility, sectorial identification of administrative-tort norms, the role of administrative-legal prohibitions in the modern Russian legal system and etc.

In this context, it appears appropriate to draw attention to some of the conceptual issues associated with the new codification of administrative-tort legislation.

In the legal doctrine the provision that tort law norms containing, in addition to legal prohibitions, norms of responsibility for their violation i.e. sanctions, are concentrated in a single codified act (for example: Criminal Code, Civil Code and other codified laws) has been rather long time and already has confirmed its validity. At the same time the procedural order of bringing to responsibility or a trial is enshrined in a special code (in particular the Code of Criminal Procedure – CCP RF, the Civil Procedure Code – CPC RF and other). So, in the current CAO RF the substantive norms of administrative responsibility are prescribed in sections 1 and 2 of the Code, the bodies competent to consider cases on administrative offences, the order of proceedings under this category of cases, as well as the execution of judgments on cases of administrative offences are prescribed in sections 3-5 of the codified law.

Thus, the proposals of a number of scientists about the delimitation of administrative-tort law, administrative-jurisdictional process presuppose the usefulness of separate codification of substantive and procedural norms of administrative responsibility. We should agree with the position of A. P. Shergin, "that the development of issues of administrative responsibility should be based on the theoretical concept of administrative-tort law and the recognition of administrative-jurisdictional process as an independent kind of legal process" [5, 89-90].

The joint codification of substantive and procedural norms of administrative responsibility in one normative act, as it is done in CAO RF, is not the most optimal variant of regulation of its normative framework [2, 37]. One of the priorities, in our view, should be the development of two independent codified laws of the Russian

Federation: Administrative-tort Code governing the substantive relations of this type of legal responsibility and Procedural Executive Code on Administrative-tort Cases governing the procedural relations of exercising administrative responsibility. This idea was not only supported in the scientific literature, but also was implemented in author's projects of the named codes of the Republic of Kazakhstan, in adoption of the Procedural Executive Code on Administrative Offences of the Republic of Belarus, as well as in the legislation of other states.

Here we should note that within the legal status of subjects of legal relations we should distinguish its components such as rights, duties and responsibility. With regard to the considered by issue, special mention should be made of such its element as the duty to pay legally established taxes and fees arising from article 57 of the Constitution of the Russian Federation and paragraph 1 article 3 of the Tax Code of the Russian Federation.

Failure to perform duties, of course, leads to legal responsibility. In the theory of State and law the legal responsibility is understood as the duty of an offender to undergo negative consequences provided for by a sanction for violation of a law norm. With this approach, in the legal doctrine there are five main types of legal responsibility: criminal-law, administrative-legal, civil-law, disciplinary and material responsibility. Thus, a person, who commits violation of a norm of tax law, may be punished only in accordance with these kinds of legal responsibility.

In our view, conduct of a comparative-legal analysis of various types of legal responsibility for violation of tax law norms provided for in CAO RF, the Tax Code and, in some cases, the Criminal Code of the RF, is of great interest, both for the theory and practice of law enforcement. The interest is due to the similarity of compositions of these offences.

Based on the study of normative legal acts, as well as the analysis of other sources of law in the investigated area, it should be noted that there is absence of a legal definition of the concept of administrative responsibility, including in CAO RF, as well as the concept of tax responsibility in TC RF. However, there is an interpretation of the concept of corresponding offences in these codified acts. Thus, according to article 2.1 of the corresponding code, "a wrongful, guilty action (omission) of a natural person or legal entity which is administratively punishable under this Code or the laws on administrative offences of subjects of the Russian Federation shall be regarded as an administrative offence". In accordance with article 106 of TC RF, "a tax offence shall be understood as a wrongfully committed unlawful (in violation of tax and fees legislation) deed (action or inaction) of a taxpayer, a tax agent or other persons for which responsibility is established by this Code".

Thus, proceeding from the analysis of these concepts content, it follows that such signs as wrongfulness, guiltiness and punishability are common to both compositions of offences. Seemingly, the difference lies in the subject of offence. In the first case, the subject of offence is natural and legal persons, and, in the second case – taxpayers, tax agents and other persons to whom the Tax Code establishes responsibility. However, article 107 of TC RF establishes provisions that physical and legal persons also carry responsibility for these offences. The main difference is the procedure of bringing to responsibility. In the case of an administrative offence, proceedings are conducted under chapters 24-30 of CAO RF, in the case of a tax offence, proceedings shall be conducted in accordance with chapters 14 and 15 of TC RF.

In any case, in the process of bringing to responsibility we should keep in mind the note to article 15.3 of CAO RF: "The administrative responsibility, established in respect of officials in this Article, in Articles from 15.4 to 15.9 and in Article 15.11 of this Code, shall apply to the persons specified in Article 2.4 of this Code, safe for the citizens exercising business activities without forming a legal entity". That is, the officials of organizations can be brought to administrative responsibility. However, we should not forget that one of the major innovations of CAO RF was the administrative responsibility of also legal persons, and that essentially distinguishes it from the previous Code on Administrative Offences of the RSFSR. However, the legislator disregarded it in the sphere of tax relations.

It should be noted that TC RF to date includes 9 compositions of administrative offences (articles 116, 119, 120, 126, 128, 129.132-134), for which, according to paragraphs 3 and 4 article 108, there comes administrative responsibility. In more detail the reasoning of the stated assertion will be given by us in further study.

Also it should be noted that currently there is also a problem, which is that there are independent compositions of delicts in article 128 and 129 of TC RF, which provide for responsibility, in *the first* case, of a witness for non-appearance or evasion of appearance without good reason of a person who is summoned as a witness in connection with a case involving a tax offence, in *the second* one – for refusal by an expert, translator or specialist to participate in a tax audit or willful giving of a false report by an expert and or willful making of a false translation by a translator.

Comparative analysis of legal provisions contained in articles 90 part 1 of TC RF and 25.6 of CAO RF shows that the interpretation of the concept of "witness", contained in CAO RF, involves an extensive semantic interpretation of

the said term, because any law-enforcement proceedings are focused on consideration specific legal cases and taking decisions on them. Therefore, the concept applies to cases arising from tax legal relations. The provisions of article 129 of TC RF (refusal by an expert, translator or specialist to participate in a tax audit, willful giving of a false report by an expert and or willful making of a false translation by a translator), in fact, duplicate article 17.9 of CAO RF (knowingly false testimony of a witness, explanation of a specialist or intentionally incorrect translation) in part of the prosecution of an expert. Thus, in our view, it is also appropriate to exclude these compositions of offences from TC RF [3, 14-20].

Note that when the adoption of CAO RF the relevant norms were removed from TC RF and consolidated in a separate chapter of CAO RF with the extention to regulate these relations of general procedural order (chapter 16 of CAO RF), the separate regulation in the field of tax relations has been being exercised so far. Moreover, a number of substantive and procedural norms of CAO RF and TC RF duplicate each other, that makes confusion in law enforcement, misguides citizens and legal persons who are taxpayers, and entails a lot of negative consequences.

Therefore, law enforcers get problems in the legal qualification of offences identified in the field of taxes and fees and, accordingly, in bringing offenders to justice: either according to TC RF – to tax responsibility, or on the basis of CAO RF – to administrative one, or in some cases – to criminal one, on the basis of Criminal Code of the RF. To address these and many other problems of legal regulation of bringing to responsibility for offences in the field of taxes and fees, it seems the most important to identify the legal nature of offences in the investigated area. These aspects will be discussed later in this study.

To ensure the representativeness of the research and credibility of the author's proposals and recommendations both of theoretical and applied nature, we have studied the experience of law-enforcement activity for 2011-2013 of the Federal Tax Service of the RF, DFMS (Department of the Federal Migration Service) for Moscow, DFMS for Moscow region concerning bringing to responsibility for offences relating to taxes and fees, as well as the practice of pre-trial settlement of disputes both at the stage of examination of audit materials and at the stage of consideration of complaints (appeals and statements) from taxpayers.

Let us turn only to law-enforcement activity of DFMS for Moscow region.

Table 1 shows summarized information about law-enforcement activity of DFMS for Moscow region regarding bringing to responsibility under TC Rf and CAO RF for 2011-2014.

Table 1

Norm of TC RF	Similar norm of CAO RF	Bringing to tax responsibility	Bringing to administrative responsibility	percentage ratio of applied norms of TC RF and norms of CAO RF
A violation by a taxpayer of the established time limit for the submission of an application for registration with a tax authority (paragraph 1 article 116 TC RF)	A violation of the established time limit for submission an application for registration with a tax body (part 1 article 15.3 CAO RF)	607	524	92,22%
A failure by a taxpayer (levy payer, tax agent) to submit to the tax authorities within the prescribed time limit documents and (or) other information (paragraph 1 article 126 TC RF)	A failure to submit within the prescribed time limit, established by the legislation on taxes and fees, or refusal to submit to tax bodies any documents, which are necessary for exercising tax control (part 1 article 15.6 CAO RF)	50823	11918	16.79%
A failure to file a tax declaration to the tax authority at the place of registration within the deadline established by the legislation on taxes and fees (paragraph 1 article 119 TC RF)	A violation of the time limit established by the legislation on taxes and fees for submitting a tax declaration to a tax body at the place of registration (part 1 article 15.5 CAO RF)	115280	17848	19.55%
A gross violation of the rules for accounting for income and (or) expenses and (or) objects of taxation (paragraph 1 article 120 TC RF)	A gross violation of the rules of bookkeeping and of submission of accounting statement, as well as of the procedure and time limits for keeping accounting documents (article 15.11 CAO RF)	118	162	118.88%
A violation by a taxpayer of the time limit, which is established by this Code, for the submission to a tax body of information on the opening or closure by the taxpayer of an account with a bank (paragraph 1 article 118 TC RF) (became invalid, Federal Law No. 52-FL from 02.04.2014)	A violation of the established time limit for the submission to a tax body of information on the opening or closure of an account with a bank or other credit organization (article 15.4 CAO RF)	6679	727	5.27%
	TOTAL: 2011-2014	**173473**	**31178**	**17,97%**

On the basis of analysis of law-enforcement activity of DFMS for Moscow region for 2011-2014 regarding bringing to responsibility under TC RF and CAO RF, it was determined that the largest number of offences – 115280 was committed for failure to file a tax declaration to the tax authority at the place of registration within the deadline established by the legislation on taxes and fees (paragraph 1 article 119 of TC RF), respectively 17848 officials were brought to administrative responsibility for violation of the time limit established by the legislation on taxes and fees for submitting a tax declaration to a tax body at the place of registration (article 15.5 of CAO RF). Also, based on paragraph 1 article 126 of TC RF – a failure by a taxpayer (levy payer, tax agent) to submit to the tax authorities within the prescribed time limit documents and (or) other information, 50823 culprits were brought to responsibility, at the same time for almost the same offence – A failure to submit within the prescribed time limit, established by the legislation on taxes and fees, or refusal to submit to tax bodies any documents, which are necessary for exercising tax control (part 1 article 15.6 CAO RF), only 11918 culprits were brought to responsibility.

The reasons for non-application of the norms of CAO RF, in our view, are, first of all, in a small limitation period for bringing to responsibility – article 4.5 of CAO RF. A decision on a case of administrative offence cannot be taken after two months (as to a case of administrative offence considered by a judge, after three months) from the date of commission of the administrative offence, for violation of legislation of the Russian Federation, including in the field of taxes and fees. It should also be noted that there is smaller duration of collection period and a more complicated procedure of implementation penalties, because decisions are taken by court.

Procedure for prosecution of officials under article 15.4 of CAO RF is connected with the limitation of time required to draw up a protocol, as well as with the impossibility of personal delivery to an official of a notification on the need to appear for drawing up the protocol. Notifications sent by mail to the address of residence of heads return back due to the absence of the addressee. Accordingly, there is a failure of an official of an organization to appear for drawing up a protocol on administrative offence. There are a number of other reasons and conditions, which we will study in more detail later.

Despite the fact that the norms of tax and administrative legislation practically duplicate each other, however, the delimitation of compositions is made under the subject of offence, i.e. if an offence has been committed by an official of enterprise or organization, the offenders are brought to administrative responsibility pursuant to CAO RF, in other cases, accordingly to tax responsibility under TC RF.

Thus, there is an urgent need for synthesis and analysis of the current state of legal regulation in the field of taxes and fees in order to streamline legal relations arising in this sphere, as well as to unify bringing to responsibility for offences.

Based on the above, it appears appropriate to draw some conclusions.

Analysis of current state, as well as consideration of some problems in implementing of administrative responsibility for offences in the field of taxes and fees shows that the system of legal responsibility in the field of taxes and fees in domestic legislation, which prevails to the present time, is not logical and coherent. First of all, question about the legal nature of tax responsibility remains controversial; there are overlapping systems of legal sanctions.

Currently, a paradoxical situation has occurred, when for the same offence in the tax sphere the legislation in force provides for several kinds of responsibility – administrative or fiscal, and in some cases criminal one.

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LEGAL REGULATION OF RISKS MANAGEMENT

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The article analyses normative legal acts and other official documents governing risks management in management and in public administration, justifies the necessity of adopting a unified normative act governing a science-based management of legal risks in the system of public administration.

Keywords: risk, risk management, legal risks, management, public administration, risk assessment, risk minimization, managerial process.

Russian legislation is steadily moving towards the implementation of the mechanism of legal means to minimize risks in the system of administration. Mention should be made of the priority development of legal management of risks in the system of corporate management. At that, earlier normative acts dealt with the issues of risk management in the institute of technical regulation.

For the first time legislative definition of risk is presented in the Federal Law No. 184-FL from 27 December 2002 "On Technical Regulation", "risk – the probability of harm to life or health of citizens, property of individuals or legal entities, state or municipal property, environment, life or health of animals and plants in view of the gravity of the harm" [2].

N. A. Ageshkina and B. Yu. Korzhov correctly point to the indissoluble unity of the concepts of "risk" and "safety". Commentators of this law have stressed that "even after all the security measures, there will always be some risk, usually referred to as a residual. This risk is considered to be acceptable... in a particular country and in particular time" [15]. Taking into account the degree of risk of harm, in technical regulations shall be the minimum necessary requirements that ensure the types of safety listed in article 7 of the Law [2].

For comparative-legal analysis of risk management regulation in corporate management it is important to take into account that national standards and preliminary national standards, unlike technical regulations, are applied on a voluntary basis and supported by a mark of conformity to the national standard [2].

Many norms of national standards of risk management can be used for legal regulation of risks minimization in the system of public administration.

Terminology adopted in the National Standard "GOST (State Standard) R 51897-2011 / ISO Guide 73: 2009. National Standard of the Russian Federation. Risk Management. Terms and Definitions" seems important: "Risk: the consequence of influence of uncertainty on achievement of set goals". At that, the consequence of influence of uncertainty is considered as a deviation from the expected outcome or event (positive and/or negative). Risk is often perceived in the form of the consequences of a possible event and the corresponding probability [14]. In the quoted standard there are definitions related to risk management (risk management, risk management structure, risk management policy, risk management plan) and related to the risk management process, including those related to risk assessment.

In the Russian Federation there has been developed and is operating another important document: "GOST (State Standard) R 52806-2007. Risks Management of Projects. General Provisions" [13]. In accordance with the Order Federal Agency on Technical Regulation and Metrology of Russia N 422-st from 27.12.2007, this document was entered into force for voluntary application on January 1, 2010. It outlines the decision-making algorithm in the field of risk management in perspective (temporal) and structural (institutional) plan. In the perspective plan the decision-making in the field of risks management occurs at three levels: strategic, tactical and operational. In the structural plan the decision-making can be considered at the levels of commercial activity (business level), project and subproject. These levels are generally correspond to the adoption of long-term, medium-term and short-term decisions.

Unlike corporate management the issues of minimization risks in the system of public administration are lesser resolved. Although the "Administrative Reform Concept and Action Plan for Administrative Reform in the Russian Federation in 2006 – 2010" clearly defined the need to introduce a system of regular risk assessment in the executive branch and its subordinate institutions. Only by the present moment legal means of risk management in state and municipal administration begin to take normative-legal outlines. In the recently adopted Federal Law No 172-FL from June 28, 2014 "On Strategic Planning in the Russian Federation", article 3 contains a conceptual apparatus that enables us to assess and

manage risks [4]. So, the strategic forecast of the Russian Federation is understood as a "strategic planning document that contains a system of scientific views on the strategic risks of social and economic development and on threats to the national security of the Russian Federation". It was developed under the instructions of the President of the Russian Federation for twelve or more years by the Government of the Russian Federation, taking into account data submitted by federal bodies of executive power, bodies of executive power of the constituent entities of the Russian Federation and the Russian Academy of Sciences. The adjustment of the strategic of forecast of the Russian Federation is carried out every six years. The strategic forecast of the Russian Federation contains:

1) risk assessment of the socio-economic development and threats to the national security of the Russian Federation;

2) phased predictive estimates of probable state of socio-economic potential and national security of the Russian Federation;

3) the best scenario to overcome risks and threats with taking into account resolving the issues of national security of the Russian Federation;

4) assessment of the competitive positions of the Russian Federation in the world community;

5) other provisions under the decision of the President of the Russian Federation or the Government of the Russian Federation [4].

Appears to be that risks management, including legal risks, should be carried out not only at all stages of public administration, but also on the relevant levels of management (both under subject composition and under administrative-territorial principle).

The most important part of the identification, analysis, assessment, prediction and minimization (prevention) of legal risks is an expert assessment, prediction of possible risks and threats at the stage of law-making, their identification during the examination of draft laws and normative by-law acts [7; 9], including by means of public consultation [5]. There are currently several different expertises used in lawmaking activity of the public administration bodies. So, there is an expertise of the Ministry of Justice of the RF for compliance with the higher legislation, anti-corruption expertise [3; 6], there are techniques for the procedure of assessment the regulatory impact (ARI) of draft normative legal acts, which are used by Russian Ministry of Economic Development in expertises [10; 11]. Departments additionally identify risks. Order of the Russian Ministry of Economic Development No. 159 from March 26, 2014 "On Approval of Methodological Recommendations on the Organization and Conduct of the Procedure for Assessment of Regulatory

Impacts of Draft Normative Legal Acts of the Constituent Entities of the Russian Federation and Examination of Normative Legal Acts of the Constituent Entities of the Russian Federation" is very useful for analyzing of risks management. The analyzed document in fact duplicates Regulatory Impact Assessment Methodology that is contained in the annex to the order of the Russian Ministry of Economic Development No. 290 from May 27, 2013, regulates the conduct of expert assessments on the level of the constituent entities of the Russian Federation. Paragraph 7.8 of the analyzed document provides guidance on the compilation of a summary report "Assessment of the risks of adverse effects of application the proposed legal regulation". This paragraph contains a list of risks of resolving an identified problem by the proposed way of legal regulation. Assessment of probability of adverse effects should be conducted for each identified risk.

Russian Ministry of Economic Development has developed these guidelines in accordance with the requirements of paragraph 3 article 26.3-3 of the Federal Law No. 184-FL from October 6, 1999 "On General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation" [1] and proposes an algorithm to identify and assess risks at the level of subjects of the Russian Federation. In our view, there is a need for comprehensive unified technique for risk assessment, including legal risks, both at the federal level and at the level of the constituent entities of the Russian Federation, and in the first place, this concerns draft federal laws and laws of the constituent entities of the Russian Federation.

Nowadays there are several expertises at the Federal level of lawmaking activity in the RF, which include not only lawmaking activity, but also by-law departmental rule-making [16]. Is it enough or not? Which way to go? Maybe do a unified expert assessment, because various agencies in implementation of expert risks assessment in the system of public administration has different goals and, as a result, getting of a single solution, for example, concerning the adoption of a by-law normative legal act, is problematic. Large scale, and the result is hard to predict. Is there a need for merging expertises in one complex expertise, including with involvement of civil society to monitor law enforcement (exchange of information and public consultation)?

In establishment of the situation of the need for legal regulation in various areas of public administration a significant role belongs to the political will of the President of the Russian Federation. It is noteworthy that the Federal Law "On Strategic Planning in the Russian Federation" refers RF President's annual address to the Federal Assembly of the Russian Federation to strategic planning documents

developed at the federal level [4]. Article 13 of the Law provides for public consultation of draft strategic planning documents. The law does not give a clear answer whether this rule will apply to the addresses of the President of the Russian Federation or not.

There is a need for a science-based transition to consolidated planning of law-making activity. Certain prerequisites for the transition to such a planning have been created. For example, the Institute of Legislation and Comparative Law under the Government of the Russian Federation annually develops very important strategic documents – the Concepts of development of the Russian legislation, in which there is a systemic, programmatic approach to law-making that binds development trends of basic, integrated and process ensuring branches [17].

We need a unified universal technique for identifying, predicting and minimization of risks at the stage of law-making, we need a federal law "On Normative Legal Acts" [12], which should include norms on risks assessment.

Legal means of minimizing risks in public administration at the stage of law enforcement is a legal experiment (approbation of a law or by-law in a particular area, and in the case of a positive result its introduction throughout the territory), monitoring of law enforcement, including statistical and analytical information on the delivery of public services and implementation of state functions, including control and supervisory functions.

For example, the Decision of the Government of the RF No. 694 from August 19, 2011 approved the Methodology for monitoring law enforcement in the Russian Federation, which allows you to consistently identify legal risks and contribute to their minimization and prevention in law enforcement and interpretative activity [8].

Monitoring of law enforcement helps to conduct assessment of legal risks, on the basis of which we can correct (to offer a new vision or change) a normative legal act, and thereby contribute to the achievement of ultimate goals of public administration.

Methods to prevent corruption risks are the most fully developed [8].

The shown comparative legal analysis of norms existing in the Russian Federation, which govern risks management, has clearly demonstrated unsystematic and inadequate nature of legal regulation of risks management, including legal risks in the system of public administration.

The focus of further researches should be put on the issue of legal adjustment of normative legal acts as a way of minimizing and eliminating legal factors that contribute to risks emergence. These shall include legal gaps, legal collisions and

imperfection in structure of legal prescriptions. The legal adjustment is carried out through amendments and additions to existing normative legal acts, through legal correlation, which lies in the introduction to existing normative legal acts of reference rules that make it possible to correlate the sanctions of legal norms contained in the duplicate structures of codified normative acts and, finally, through interpretative adjustment, the examples of which are court decisions and, above all, the decision of the Constitutional Court of the Russian Federation.

Legal means of minimizing risks in public administration will contribute to the sustainable development of Russia in the modern global changing world.

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SUPERVISION PROCEEDINGS AS A KIND OF FEEDBACK IN THE PROCESS OF LEGAL REGULATION

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The article contains the theoretical study of control and supervisory powers, an attempt to delimit them. The conducted analysis of supervision proceedings revealed the signs of feedback that allowed the conclusion about the importance of the supervision proceedings in the process of legal regulation.

Keywords: control function, res judicata, supervision proceedings, feed-back, legal regulation.

Problems associated with upgrading the system of public administration are at the heart of both social-political sphere and administrative-legal regulation of administrative relations. As a result of their resolving there is supposed the establishment of such administrative legal norms, institutes, sub-branches, which guarantee: openness and accessibility of public administration; bringing public administration into proper form, giving it the form in response to new requirements and standards; respect for and protection of the rights and freedoms of a man and citizen, legitimate interests of organizations and legal entities; public awareness on managerial activity; substantiation of every measure and administrative act adopted by public administration and its bodies; legality of public management and elimination of excessive administrative management; public confidence in the administrative authority; creation of a reliable and friendly public administration turned to citizens [26, 87].

The science of administrative law is involved in the modernization of public administration. It covers some non-legal forms of public relations, with a view to resolving the existing problems (certain principles, management techniques, structure of administrative apparatus, etc.) through their regulation by administrative-legal means and methods.

Legal scholars pay special attention to the issues related to the formation of theoretical bases of state control and supervision in accordance with modern political, economic and social realities. They are aimed at ensuring the sustainable development of the national economy, the definition of the powers of control and supervisory authorities, the establishment of modern forms of coordination of control and supervisory activity in order to use the abilities of control and supervisory function to improve public administration [22, 27-28]. The practical implementation of these provisions will bring the process of public administration from the "manual" mode to self-regulation; will make it more transparent, reliable, and less expensive.

Before starting to review the issues relating to the powers of the control and supervisory authorities, it should be noted that the term of "control" is derived from the French word "controle", which was used to designate a counter, repeated record in order to validate the first one [24, 72]. Over time the content of this concept has undergone substantial changes.

S. I. Kotyurgin defined control as implementation of a specific function in the activity of authorities and management bodies. He believed that under the control function in the activity of police we need to understand the determination of the degree of compliance of a real situation in a police apparatus with a predetermined direction and adoption in connection with this measures aimed at the elimination of detected and recorded flaws [18, 44].

V. V. Kardashevskii also defines control as a way of getting information on the implementation of a taken decision by comparing really achieved intermediate or final results and tasks that are provided for by a managerial decision [20, 536].

Thus, the control is an activity related to the getting of information and its subsequent analysis in order to obtain a conclusion on the conformity of taken decisions, which have managerial nature in administrative law, to the results obtained in the course of their implementation.

It should be noted that, at present, administrative-procedural formalization of managerial relations is actively being carried out at the legislative level [17, 3].

As an example of such regulation may be considered the established by the Disciplinary Statute of the Internal Affairs Bodies of the Russian Federation

procedure for giving orders and their monitoring. An order may be given in writing or verbally, including by the use of technical means of communication, to a subordinate or a group of subordinates. An order, given in writing, is the main administrative internal document (legal act) issued by a director (head) on the rights of one-man management. In accordance with the requirements of this normative legal act the director (head) is obliged to check the accuracy and timeliness of execution by subordinates of the received from him orders and instructions [2].

As stated by the Constitutional Court of the Russian Federation in the decision No. 18-P from December 1, 1997, control function is inherent to all public authorities within their competence, which implies their autonomy when implementation this function and forms of implementation specific to each of them. However, the freedom of discretion in determination specific types of state control (supervision), reason, forms, methods, techniques, procedures, dates is limited to the general constitutional principles of organization of the system of public authorities, the provisions of federal laws [5].

Implementation of the control function is not a sole prerogative of state power. It is implemented by local self-government bodies, as well as by other management structures within the limits of their competence in the performance of their tasks.

On this basis, in the framework of held administrative reform, it was proposed to consider control as an exercised in tests, measurements, examinations function that can be implemented by market actors, who are credentialed in executive authorities in accordance with the established procedure [9].

The control function is of universal nature. In its implementation there are conclusions on the compliance of exercised activity with set parameters of both legal and non-legal (technical) nature. Depending on subjects implementing control function, taken decisions can be informative, suggestive or overbearing – binding.

The jurisdictional activity of executive authorities exercised in the process of legal qualification of offences can, in our view, be considered as a particular case of exercising control function for the implementation activities of legal nature. At that, the object of legal qualification of illegal actions (inaction), as stated by P. P. Serkov, is the comparison of conduct provided for in a legal norm with actions (inaction) really carried out by the subject [25, 81]. Exercising of control function allows the law to serve as a criterion for evaluating the legality of deeds.

The results of control activity are exercised by executive authorities in implementation of managerial actions, including by issuing administrative acts. It should be noted that along with the term of "administrative act" different concepts are

used, for example, "legal act of management", "administrative-legal act", "administrative-legal act of public administration", "act of state administration". Each of them describes a particular facet of this legal phenomenon, but the most popular are the terms "legal act of management" and "administrative-legal act". Looking at the content of these concepts, it is important to note that the administrative law of Russia implements a vast concept of a legal act of management. Here we are talking about an administrative decision issued by a state body relating to the structure of the Federal Executive Branch within its powers, or by local self-government body that establishes a unilateral act of binding nature; at that, it refers to an act of general application, and to a specific, individual act [27, 6].

Legal acts of management are subject to the principle of legal certainty (res judicata). In law enforcement practice and doctrine this term refers to a final nature of an act, its irrefutability and enforceability. So, "presumption of legality of normative legal acts" should be applied in respect of normative legal acts of management adopted in accordance with the Decree of the Government of the RF No. 1009 from August 13, 1997 [3]. Its provisions suggest that a normative legal act is a lawful and valid, therefore is subject to mandatory application, until its illegality and invalidity is proven in court and the act is declared inoperative [13, 15].

In the Russian Federation normative acts of any state or other body are subject to assessment by way of supervision for compliance with the law (normative decrees of the President, decisions of the Chambers of the Federal Assembly of the Russian Federation, decisions and orders of the Government of the Russian Federation, local government acts, orders and regulations of ministries and agencies, heads of institutions, enterprises, organizations, etc.). An example of such an assessment is the decision of the Plenum of the Supreme Court of the Russian Federation No. 8 from October 31, 1995. In accordance with paragraph 7 of this decision, if during consideration a specific case the court finds that an act of a state or other body, which is subject to application, does not comply with the law, it, by virtue of part 2 article 120 of the Constitution of the Russian Federation has to take a decision in accordance with a law governing these legal relations. In the application of a law instead of a corresponding act of a state or other body, the court may issue a private ruling (decision) and to draw the attention of the bodies or its official, who adopted the act, to the need to bring it into conformity with the law or cancel [4, 6].

Along with the oversight activity to verify the legality of normative legal acts in the Russian legal system there is an institute of judicial appeal of specific (individual) acts. The legality of particular individual acts is ensured, by generally accepted rules, through two stages of review of a taken decision.

Accordingly, this institute is the most important guarantee of state protection for human and civil rights and freedoms. For example, the legal basis of appeal sentences for administrative offences is provisions of chapter 30 of the Code on Administrative Offences of the Russian Federation (hereinafter – CAO RF). At that, it should be noted that the provisions of this chapter have been repeatedly examined by the European Court of Human Rights. As the result of analysis the concern of the High Court was raised by the impact of the review procedure by way of supervision of entered into legal force decisions on a case of an administrative offence and decisions based on the results of consideration of complaints and protests on the conventional rights of applicants [8].

M. V. Kurpas, reviewing the decisions of the European Court of Human Rights related to the reconsideration of court decisions by way of supervision, said that the cancellation of a final and binding decision, which had entered into legal force, having the property of res judicata, was contrary to the principle of legal certainty, which was one of the fundamental elements of the rule of law. According to the legal position formulated by the European Court of Human Rights, supervision proceedings are an emergency procedure, application of which is justified only in "exceptional circumstances". In addition, this procedure is not an effective means of legal protection of human rights because of providing to an official the ability, without time limits, to initiate it and directly participate in it [19, 7].

Thus, the legal positions formulated in the decisions of the European Court of Human Rights demonstrate the shortcomings of the domestic system for the protection of human rights and freedoms in the Russian Federation and necessitate amendments and additions to the legal regulation of reconsideration by way of supervision of entered into legal force court decisions.

Decisions of the European Court of Human Rights were taken into account in the work of the Constitutional Court of the Russian Federation. In the ruling No. 113-O from April 4, 2006 on the complaint of the citizen V. V. Ovchinnikov, the Court emphasized that the consideration of the case, in respect of which the decision came into force, should be exercised in order to correct a miscarriage of Justice, and not on the merits, i.e. not in full. Therefore, supervision proceedings must be significantly different from prior stages of revision in terms of limits [4, 90].

It should be noted that the Federal Law No. 143-FL from June 4, 2014 introduced amendments to CAO RF that excluded review by way of supervision entered into legal force decisions on a case of administrative offence [10]. Nowadays it is implemented on the basis of the Federal Constitution Law No. 3-FCL from February 5, 2014 "On the Supreme Court of the Russian Federation" [1].

In accordance with the amendments, in implementation of supervision proceedings the Court, being guided by the standards, principles, legal norms embodied in normative legal acts that have, as a rule, supreme legal force, should investigate the contested limitation of rights and freedoms applied in a case and determine whether it was proportionate to the legitimate aim pursued, whether the motives, on the basis of which the limitation was exercised, were relevant and sufficient.

T. M. Neshataeva believes that entered into legal force court decisions are reconsidered by way of supervision in cases of detection of conflicts of a legislative act of the Russian Federation with the generally recognized principles and norms of international law or the legislation of the Russian Federation contains a lacuna in the legal regulation. The courts, using an analogy, resolve similar disputes in different ways. Lack of uniformity violates the rights and legitimate interests of an indefinite number of persons or other public interests, resulting in amendments to the current legislation [21].

Thus, the supervisory activity is of legal, state and overbearing nature. Final, binding decisions are reconsidered by way of supervision. In the course of supervision activity they identify legal norms, which do not correspond to the current system of legal regulation, i.e. "fundamental breaches" of law, which served as the basis for the adoption of revised decisions, take measures to bring them into line with the legislation. It should be noted that in the course of supervision proceedings, along with the elimination of "defective" law norms, they take measures to identify and punish officials responsible for making a decision knowingly contrary to the law, adopt measures for the compensation of moral damage inflicted to persons as a result of an unlawful decision, etc.

Supervision proceedings regulate public relations, in the course of which a court, body or official shall inform representative bodies or bodies competent to implement the legal regulation in the sphere of their jurisdiction about legal norms that do not meet the requirements of the current legislation. This feature of judicial law enforcement was noted by Soviet scientists. So, A. B. Vengerov in the most general form pointed out that in the process of legal regulation judicial practice played the role of a form of feedback, signaled the social efficiency of legal regulation, and showed the impact of public relations on legal norms [14, 6]. S. S. Alekseev pointed out that exactly the practice through a feedback mechanism determined the further development of legal regulation [12, 88].

For the first time the role of feedbacks in the organization and operation of self-managed systems was examined in the works of N. Winer, who understood it

as property, which allowed one to regulate future conduct by the past performance of orders, defined as a method to control system by inclusion in it the results of the earlier performance by it of its tasks [15, 45; 16, 71].

Among the works of domestic scientists we can distinguish the work of N. T. Abramova, where she identified in feedback the mechanism of accounting the difference between the target of action and its result [11, 116].

L. A. Petrushenko devoted a special work to the principle of the feedback, who saw its essence in the fact that any deviation of management system from the specified state is the source of emergence of a new movement in the system, always designed in such a way as to maintain the system in a specified state [23, 67].

In terms of administrative law the feedback mechanism is a system of legal norms, by means of which they exercise control function (the difference between the target of action and its result), supervision proceedings allowing one to identify and develop proposals to improve the "defective" legal norms, application of which leads to the entropy of legal system (the maintenance of system in a specified state), as well as directions of developed proposals to the representative bodies or bodies competent to implement legal regulation in the sphere of their jurisdiction.

These norms form the legal means of supervision proceedings, which belong to the competence of the Supreme Court of the Russian Federation. Thus, in order to implement the granted powers to implement in procedural forms of judicial supervision over the activity of courts, the Supreme Court of the Russian Federation summarizes the law enforcement practice, develops proposals for improving the legislation of the Russian Federation on issues of its jurisdiction and exercises the belonging to it, in accordance with part 1 article 104 of the Constitution of the Russian Federation, right of legislative initiative on the issues of its jurisdiction [1].

As an example of exercising the supervisory powers of the Supreme Court of the Russian Federation we can take the initiated by the Court and introduced to the State Duma of the Federal Assembly of the Russian Federation draft federal law "On Amendments to Article 30.11 of the Code on Administrative Offences of the Russian Federation". The draft was designed to bring the legislation on administrative offences in line with the Constitution of the Russian Federation, aimed at clarifying the procedure for reconsideration by way of supervision of entered into legal force decisions on a case of administrative offence, decisions based on the results of consideration of complaints and protests [7]. Its adoption has led to exercising the function of feedback, implementation the process of impact of public relations on legal norms.

Thus, supervisory activity allows, on the one hand, to ensure in the course of revision of judicial acts the rights and legitimate interests of persons concerned, on the other, to improve existing legislation by removing fundamental breaches of law identified in the administration of justice. The exercising of legislative initiative by the subjects of supervisory activity allows us at the qualitatively new level to effectively implement the future legal regulation of social relations, allowing the supervision proceedings be a kind of feedback in the mechanism of self-organization of legal system.

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LIST OF ARTICLES PUBLISHED IN THE MAGAZINE FOR 2014

Adamenko I. E.

c.j.s (PhD in law), Professor of the Chair of criminal process at Krasnodar University of the RF MIA, Honored Lawyer of the Kuban, Associate professor, Krasnodar

- Towards the question of conflictness of the right to punish as a basis of criminal-procedural activity, No. 6, November 2014, pp. 3-7;

Aparina I. V.

c.j.s. (PhD in law), Head of the Chair "Theory of state and law" at Municipal Budgetary Educational Institution "Volga Institute of Economics, Pedagogy and Law", Volzhski

- Towards the question about legal nature of court procedure on the cases of disciplinary offences, No. 2, February 2014, pp. 3-8;

Aratova A. A.

Head of corporate legal management of law firm "ELKO profi", degree-seeking student of Moscow University of the RF MIA, Moscow

- Delimitation of insult from related administrative offences and crimes, No. 3, March 2014, pp. 3-10;

Belokon' A. V.

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Bobrova O. G.

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Doctor of law (LLD), Professor, Head of the Department of service and labor law, P. A. Stolypin Volga Region Institute of Management of Russian Academy of National Economy and Public Administration, Saratov

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Davydov K. V.

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- Judicial control over discretionary administrative acts and procedures in the RF: legal problems and possible ways of their resolving, No. 4, April 2014, pp. 3-14;
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- Correlation of administrative court procedure and administrative process: theory of the issue, No. 4, April 2014, pp. 15-27;

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Kalina E. S.

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- Problems of delimitation of civil-law and public-law risks in jurisprudence (in co-authorship with Lapina M. A.), No. 3, March 2014, pp. 76-84;

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- The concept and evolution of legal and social essence of «guiltiness» and «innocence» (in co-authorship with Dzhabbarov E. B. and Frolov V. A.), No. 1, January 2014, pp. 45-55;

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- The issue of the freedom of discretion in state planning, No. 4, April 2014, pp. 41-46;

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- Topical issues of using the technology of profiling in activity of transport police as means to ensure anti-terrorist security on transport (in co-authorship with Yuritsin A. E.), No. 6, November 2014, pp. 14-21;

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Ostroushko A. V.

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Ponkin I. V.

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- Towards the question about the place of administrative contract in the system of administrative law, No. 2, February 2014, pp. 71-80;
- The problems of consideration of disputes arising from administrative contracts within the framework of administrative court procedure, No. 4, April 2014, pp. 58-65;

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Shmakov E. V.

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- Disciplinary responsibility of judges for judicial errors in proceedings on cases of administrative offences (in co-authorship with Shmakov N. E.), No. 6, November 2014, pp. 30-44;

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Shurukhnova D. N.

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Solov'ev A. A.

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Sosnina S. V.

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- The efficiency of a judge assistant in economic legal proceedings, No. 6, November 2014, pp. 45-50;

Stepanenko Yu. V.

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Vasilenko G. N.

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- Administrative-legal regulation of declarational relations, No. 5, October 2014, pp. 65-68;

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- Civil society in Russia: topical political and legal problems of formation and development (in co-authorship with Kuyanova A. V.), No. 2, February 2014, pp. 41-46;
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- The control functions of the Federal Tax Service in the sphere of registration of legal entities, No. 5, October 2014, pp. 69-73.