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The editorial staff:
Rubtsov D.V.
Markar'jan A.V., Engels
Layout and translation into English:
Kabulin L.A., Engels
Editorial office's telephone: +7 (8453) 75-04-49

Address for correspondence:
Omsk, PO Box 1526, zip-code 644073

E-mail: topispublaw@mail.ru

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Kizilov V.V., k.ju.n., Omsk

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Redaktsionnyj sovet:
Channov S.E., d.ju.n., Saratov
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Shhukina T.V., d.ju.n., Lipetsk

Redaktsija:
Rubtsov D.V.
Markar'jan A.V., Engel's
Verstka i perevod na angl. jazyk:
Kabulin L.A., Engel's
Telefon redaktsii: +7 (8453) 75-04-49

Adres dlja korrespondentsii:
644073, Omsk, a/ya 1526

E-mail: topispublaw@mail.ru

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Aparina I. V.

TOWARDS THE QUESTION ABOUT LEGAL NATURE OF COURT PROCEDURE ON THE CASES OF DISCIPLINARY OFFENCES [1]

Aparina Irina Vyacheslavovna,
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",
irina.aparina@mail.ru

The author notes that the norms governing the activities of court on the application of disciplinary responsibility require an appropriate legal registration, and disputes under jurisdiction of the Judicial Disciplinary Tribunal should be treated according to the rules of administrative court procedure.

Argues that proceedings on cases of disciplinary offences of judges or other persons employed in public positions should possess certain peculiarities because of the special legal status of these persons.

Keywords: court procedure, disciplinary offences, proceedings on cases of disciplinary offences, disciplinary responsibility, Judicial Disciplinary Tribunal, disciplinary courts.

Disciplinary responsibility, along with other types of legal responsibility, is applied in the prescribed procedural order. In jurisprudence procedural form of disciplinary and legal coercion is characterized as extrajudicial, since measures of disciplinary impact have always been applied and are applied within the framework of official (managerial) subordination [11].

However, the analysis of the current Russian legislation and law-enforcement practice detects in the justice system the existence of judicial procedures, in which the issue of application of disciplinary punishments is being resolved.

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

In this case it is about the right of judges of garrison military courts to apply disciplinary arrest to military personnel for serious disciplinary offenses [3], as well as about individual powers of competence of Judicial Disciplinary Tribunal [2].

Possibility to apply disciplinary measures during court proceedings determines the issue on the nature of procedural form under which the courts impose disciplinary punishments.

It would seem that it is clear about the essence of court procedure, within which Judicial Disciplinary Tribunal administrates justice. According to law, this judicial body reviews:

- complaints of citizens, whose judicial powers were prematurely terminated by the decision of the Higher Judges' Qualifications Board of the Russian Federation or the decision of the Judges' Qualifications Board of a subject of the Russian Federation for committing disciplinary offences, against the mentioned decisions of Judges' Qualifications Boards;
- requests from the Chairman of the Supreme Court of the Russian Federation or the Chairman of the Higher Arbitration Court of the Russian Federation on the premature termination of the powers of judges for committing disciplinary offences in cases where the Higher Judges' Qualifications Board of the Russian Federation or the Judges' Qualifications Board of the subjects of the Russian Federation is refused to satisfy the presentations of the chairmen of federal courts concerning the termination the powers of judges for committing disciplinary offences in the manner prescribed by chapters 23 and 25 of the Civil Procedure Code of the Russian Federation [1], taking into account the peculiarities established by the Federal Constitutional Law "On Judicial Disciplinary Tribunal" and the Regulations of Judicial Disciplinary Tribunal (see part 1 article 6) [2].

Consequently, the legislator determines that the competence of the so-called Disciplinary Tribunal is implemented through civil proceedings, subject to certain procedural peculiarities provided for by the Federal Constitutional Law and Regulations [6].

Meanwhile, it is no secret that court procedure to resolve public-law disputes – is an element of administrative justice. And, therefore, it can be argued that the disputes that fall into jurisdiction of Judicial Disciplinary Tribunal should be considered according to the rules of administrative court procedure.

However, the draft Code of Administrative Court Procedure (hereinafter – CACP RF) attributes to the category of administrative cases those ones that are associated with contesting decisions of the Higher Judges' Qualifications Board and decisions of Judges' Qualifications Board of the subjects of the Russian Federation

concerning contesting decisions to suspend or terminate the powers of judges or to suspend or terminate their resignation, except for cases of termination of the powers of judges for committing disciplinary offences (paragraph 3 part 1 article 23 of the Draft [4]).

Accordingly, the cases that are attributed by the Federal Law to the competence of the Judicial Disciplinary Tribunal may not be considered under the rules of administrative administration of justice [4].

Thus, it is presumed that contesting the decisions of Judges' Qualifications Boards concerning application of such measure as premature termination of the powers of judge in connection with the commission of a disciplinary offense is not a subject-matter to administrative-legal dispute.

In this case, it is not entirely clear why contesting of the acts of Judges' Qualifications Boards, which affect the status of judge, possibly violate its rights and freedoms, must be implemented in the courts of general jurisdiction under the rules of administrative court procedure, namely in the Judicial Disciplinary Tribunal in the form of civil court procedure.

But consideration of cases on the termination of powers of judge, due to the request of the Chairman of the Supreme Court of the Russian Federation or the Chairman of the Higher Arbitration Court of the Russian Federation concerning premature termination of powers of judges for committing disciplinary offences, was left outside the framework of project regulation for obvious reasons, since the draft CACP RF was built in accordance with the concept of administrative complaint as the basis for administrative court procedure.

If to turn to the content of the Federal Law "On the Court Procedure Concerning Grave Disciplinary Offences in Application of Disciplinary Arrest to Servicemen and Execution of Disciplinary Arrest" [3], it becomes clear that the procedural form regulated by this legislative act allows one to implement substantive norms on the so-called special disciplinary responsibility of servicemen. This implementation is ensured by means of administrative- procedural norms (procedure for bringing of militarized servants and students to disciplinary responsibility is settled by administrative-procedural norms [7, 591]).

Judges of garrison military court, applying, in fact, the measures of disciplinary-legal coercion, are not subject to the disciplinary power, they administer justice according to the norms of administrative-procedural law. Gross disciplinary offense underlying a case considered by the military court – is an administrative offense, for which a serviceman, in accordance with the Code on Administrative Offences of the Russian Federation, shall be subject to disciplinary responsibility

when CAO RF for such administrative offense provides for punishment in the form of administrative arrest (see Annex No. 7 to the Disciplinary Statute of the Armed Forces of the Russian Federation [5]).

According to M. Ya. Maslennikov, detailed peculiarities have place in application of disciplinary arrest. The scientists believes that the essence, the procedure for applying and execution of disciplinary arrest in respect of servicemen – is the same administrative arrest applied in respect of so-called special subjects of administrative responsibility. This is the difference between them, but identical signs are almost all the rest:

- cases on application of administrative and disciplinary arrest (short-term deprivation of liberty) are considered by the judges of the courts of general jurisdiction;
- in both cases there is reduced length of proceedings and the status of parties to proceedings on the mentioned cases that is regulated procedural-legal norms;
- in both cases judges make decisions on the application of arrest and even presentation concerning elimination of the causes and conditions that contributed to the commission of relevant misconducts;
- in both cases the procedure for review of court decisions on the application of arrest is essentially the same [11].

The idea of establishing administrative courts that ensure the implementation of disciplinary responsibility of servicemen in the form of arrest is supported by K. S. Lihovidov [10]. In summary, it should be noted that the norms governing the activity of court concerning the application measures of disciplinary responsibility require an appropriate legal formalization. Thus, according to M. Ya. Maslennikov, the leaving of the procedures for application disciplinary arrest in respect of servicemen and citizens called up for military training as a stand-alone law is irrational [11].

The special legal literature increasingly expresses an idea about the need to create in the Russian Federation a system of disciplinary courts. In this connection, it is proposed to exclude from the competence of Judges' Qualifications Boards the powers to consider cases on disciplinary offences of judges [12, 7].

According to Sh. A. Kudashev, the resolving by not a state, not a judicial body of such important issue as premature termination of powers of a judge as a disciplinary measure, incredible as it may seem, decreases the level of independence of judges. Not always resolving of such issues by a corporate body means compliance with "the purity of staff" and the constitutional rights of citizen – judge [9].

Moreover, the right to impose certain, more strict measures of disciplinary responsibility against public servants and officials who are in special public-law relations with the state may be included into the competence of disciplinary courts.

It should be noted that the operation of such courts in the world practice is based on constitutional provisions. For example, in Germany the Basic Law of the Federal Republic of Germany (part 4 article 96 of the Constitution of the Federal Republic of Germany) establishes that the Federation may establish for any person, who is involved in public-law service relationship with it, federal courts to resolve cases in disciplinary proceedings and proceedings on complaints [8].

As you know, the Constitution of the Russian Federation does not contain provisions on disciplinary court procedure, what, in turn, is not a reason for leaving without resolving the issue on the form of justice, under which courts hear cases on the application of disciplinary responsibility measures. And, if the application of disciplinary arrest to servicemen as subjects of special administrative responsibility may be fit into the framework of administrative-judicial process, then the proceedings on cases of disciplinary offences of judges or other persons holding public office, of course, should have some special features, at least because of the special legal status of such persons.

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Demin A. A.

CRITICISM OF LEGAL POLICY OF THE RUSSIAN FEDERATION IN THE SPHERE OF CORRELATION OF CIVIL AND ADMINISTRATIVE LAW

Demin Aleksei Afanas'evich,
c.j.s. (PhD in law), Associate professor of the Chair of administrative law at Lomonosov Moscow State University,
dyomin1940@mail.ru

The author refutes the constitutional formula, according to which administrative legislation refers to the joint jurisdiction of the Russian Federation and a subject of the Russian Federation, and civil legislation refers to the jurisdiction of the Russian Federation.

Keywords: subject of the Russian Federation, administrative law, civil law, subject matter of jurisdiction.

One of the methods to evaluate the legal policy of the Russian Federation in respect of administrative law is clarification of the correlation of civil and administrative law in the analysis of the RF Constitution of 1993.

Complaints about constant violations of human rights by administration are usual. They are even accompanied by statements of the authorities to leave the management of the economy. At the same time, human rights' violations could be committed through civil law norms, which are supposedly the most democratic. We assume possible to refer to civil-law violations of human rights the conclusion of such transactions as the issuance of loans by banks, which results in the loss of a citizen of its essential conditions of living, for example, seizure of debtor's dwelling (among these real-world examples: a debt for housing payment has led to triple murder in the south of Moscow [14]). Judicial practice reveals such methods of significant violations of citizen's rights, evasion of civil-law law, as an abuse of right, violation of the principle of good faith in civil transactions and others [10].

Discarding the conditional advantages of civil law over administrative one in terms of their level of democracy, it remains fundamental to solve the issue of constitutional consolidation of civil law as one related to federal jurisdiction

(paragraph "n" article 71 of the RF Constitution) and administrative consolidation as one related to the joint jurisdiction of the Federation and its subjects (paragraph "j" article 72 of the RF Constitution). The meaning of the content of the RF Constitution articles relating to the allocation of competence between the Federation and the subjects of the Federation has already been subjected to deep constitutional check [1], the results of which in respect of degree of certainty are not inferior to the RF Constitution. The issue of correlation of administrative and civil law in this aspect has not yet been considered.

The issue of allocation of competence of the Russian Federation and the subjects of the Russian Federation, for example, attribution of licensing whether to the field of civil law, or to the field of administrative law, often arises in judicial practice. Such incidents are confirmed, for example:

- by the Resolution of the Presidium of the Supreme Court of the RF No. 23pv04 from January 19, 2005 [2] and others, in which the main legal issue was determination the competence of the subjects of the Russian Federation: whether the licensing refers to civil law, then this law can be adopted only at the federal level, or it refers to the field of administrative legislation and it could be adopted at the level of the subject of the Russian Federation;
- by the Ruling of the Judicial Board on Civil Cases of the Supreme Court of the RF No. 7-G04-17 from January 19, 2005, which challenged the competence of the legislative body of the Ivanovo Region in part of establishing the right to draw up a protocol on administrative offence by officials of the police of public safety.

Because of the regularity of disputes concerning competence among the subjects of the Russian Federation and the diversity of their grounds it becomes clear that this contradictory judicial practice, in our view, reflects a system error or system feature of Russian law, i.e. a certain legal policy.

When the Supreme Court recognized that actions of Khabarovsk State Duma were unconstitutional because the adoption of the law of the Khabarovsk region on licensing of scrap metal collection referred to the federal sphere due to civil-law nature of such law, a legal question arose to clarify the criteria concerning attribution of such subject matter of legal regulation to one or another branch of law. We have proposed a system of methods of legal regulation, with help of which it is relatively easy to do. It is an administrative-legal method with vertical subordination links and civil-law method with horizontal links of equally appointed persons [5, 13-19]. Application of these methods to the above situation reveals contradictions, the solving of which bumps into decision to retain or amend the text of the Constitution of the Russian Federation of 1993.

We support the approach that public policy is carried out in the methodological "coordination of all the actors of legal policy implementation, including the State itself, in the exercising of unified activity based on the law" [12].

Civil law. The main slogan of "free market" is freedom of goods exchange transactions in the formula "commodity-money-commodity". In most cases it is a civil law. And the RF Constitution of 1993 (paragraph "n", article 71) attributes it to federal jurisdiction, that is, it is centralized. It is possible to justify such its evaluation as a national necessity of administrative-command system to impose the principles of free market, what requires federal order of formation of civil legislation. But at the same time, it is clear that civil law as a private law can take into account private and local peculiarities of commodity turnover, peculiarities of the rules of fairs and trades, peculiarities of the status of transactions parties and their procedures. And obviously should be governed just by local law, by law of the subjects of the Russian Federation. But also in this case the centralized regulation of civil-law legal relations is an indication that civil law is completely not such a private. When civil-law relations affect the interests of third parties or the society at large, it should be clearly recognized as a public law [6, 178-186]. And such status of civil-law transactions is found almost everywhere: both in store, and in canteen, and in library, and in entrepreneurship.

Administrative law. Administration is an essential characteristic of organized society. RF Constitution of 1993 (paragraph j article 72) attributes administrative legislation to the joint jurisdiction of the Russian Federation and subject of the Federation, that is, at some uncertain form it is decentralized. It is so decentralized that it is not always clear who is authorized, what is the mechanism of exercising the joint competence of two subjects of law – the Federation and the subject of the Federation.

At the same time, the "vertical power structure" is not a random whim of the President of the Russian Federation V. V. Putin. Power in the State is objectively vertical. In the modern Russian Federation this vertical is undermined both by the federative structure of the country and by the erosion of power by various types of self-governance of population.

In our view, this approach to the allocation of state power manifests itself in the structuring of the public service in the RF, where the public service is already defined as a service not only and not so much to the State (RF, or even the subject of the RF), but even to individuals in the state "elite" (paragraph 1 article 3 of the Federal Law No. 79-FL from 27.07.2004 "On the Public Civil Service of the Russian Federation"). We call this approach not federalization, but feudalization [8, 37-38],

in which the borders of the subjects of the Russian Federation that were formed by artificially established in the USSR domestic national-territorial division, in the future, when the collapse of the USSR, influenced on the claims of national governments of former Soviet republics and republics comprising the Russian Federation.

About the same characteristic of disruptive tool to the unity of the State should be given to the RF Constitution of 1993 in respect of public service organization. What for, for example, have been the Federal Public Service and the public service of republics, subjects of the Russian Federation established? Such scheme does not add smoothness to the functioning of the state apparatus, at the same time it not just creates a hardly working structure of public authorities due to the lack of legal vertical, scatters a unified state power, but, in fact, also prepares the state apparatus of the subjects of the RF for independent existence, i.e., prepares the collapse of the country into its components.

Historical example of disruptive nature of such a scheme of state apparatus is noted by V. G. Vishnyakov – when Boris Yeltsin was preparing the demise of the Soviet Union and exit of the RSFSR out of its composition, preparation had begun also from the own law of the RSFSR on public service, as opposed to the law on the public service of the USSR. He writes: “Power-hungry pragmatic Russian leadership reasonably believed that the presence of its own legislation on public service would be a significant, crucial attribute of state sovereignty of the RSFSR” [4, 25]. And concludes, that without a unified state apparatus throughout the country, without a unified public service the performance of basic provisions of the RF Constitution on national sovereignty is impossible. “Constitutional principles cannot be implemented” [4, 26]. And he provides evidence.

Correlation and methodological features of Russian law branches attract the attention of scientists, in particular, in the Soviet law system the hybrid of administrative planned task with its execution by the contract of civil type led academician V. V. Laptev to formulation of economic law with diagonal method of legal regulation, economic-legal method. Talking about the history of economic law in the USSR and execution by a firing squad of a number of supporters of this theory supposedly for commitment to this theory, Professor V. S. Martem’yanov describes as follows the main controversy between the views of these scholars and the organic needs of the national economy, expressed by academicians A. Ya. Vyshinskii, E. B. Pashukanis and others:

“Sophisticated mind of a faithful servant of the Stalinist state has long realized that the economic concept for all its half-heartedness and concessions “a special form of a proletarian state policy” poses a threat to the administrative-command

system, because attempts to justify the need for legal foundations in the field of economics, where bureaucracy has already been boundlessly dominating. Civil law as a branch serving the horizontal links of commodity exchange of national economy branches did not bothered and touched the interests of this class, because the issues of economy management were started and solved not in this field. The economic law claimed to legitimacy vertically! But administrative-command system already could not allow this" [13, 40].

Defamation of administrative law in such a way as it done by V. S. Martem'yanov, reflects both incorrect author's views about the place of administrative law in the State, and does no credit to civil law, does not lead to increasing its relevance in the management of public relations.

First, legal norms are established (or authorized) only by the State and the removal of economic law supposedly outside the administration of the State is the lack of understanding of the role and place of the State and law in life. Economic law in functions does not differ from other branches of law. Second, it is strange that V. S. Martem'yanov finds legal foundations not in the will of the State, but in the spontaneous market, while legal norm – it is the will of the ruling class, beyond of which the law does not exist at all. Because legal norm is ensured by coercive force of specially created state apparatus, police, courts, prisons, what essentially distinguishes it from morality and agreements of the parties of civil-law turnover. Third, the wording of V. S. Martem'yanov is flawed, since the presence or absence of law of a respective type, including in the field of conducting business affairs by the state, depends not so much on the view of A. Ya. Vyshinskii as on the nature of law in a state-organized society, it is always such as economic basis allows it to be. Fourth, nowadays we cannot put the question that public servants and officials are inherently representatives of wicked state centralized administrative-command system, because the question lays in quality of such servants, degree of their qualifications rather than in their historical place. If state apparatus is bad, the treatment is a simple replacement of such officials. Fifth, the folly of law is fixed not by negation of bureaucracy in general, but by reasonable correction of the situation. The State historically emerged as the economic regulator in its very essence. Sixth, class approach to bureaucracy in the country as to middle class appears to be farfetched. D. M. Shchekin speaking up about this, in our view, exaggerates the class solidarity of public servants, they do not feel themselves a special class [7, 118-122]. Unlike the dream of Russian President Boris Yeltsin, they do not constitute the middle class, like thieves that have any property cannot be called a new class. According to political economy, money, which is not invested in development, is not capital.

Seventh, the expression of V. S. Martem'yanov, as if administrative law "at its birth was destined pathetic role of the vassal of bureaucracy. ... It is not by chance that in this theory only administration possesses legal personality, but labor organizations of enterprises, associations and guilds do not. The last act here only as recipients of authoritative commands" [13, 40], methodologically and in fact reflects a misunderstanding of the creative role of power exercised by state executive apparatus under norms of administrative law. Not the vassal of bureaucracy, but its organizer! Eighth, understanding of administrative legal relationship only as directed from the top to down is incorrect, because a citizen enters into administrative relations even when it demands from the administration the compliance with its rights. V. S. Martem'yanov putting the question of the role of labor collectives in other than the socialist system of law bumps up against the right of the owner to dispose of its enterprise without the consent of staff, because the enterprising person is the owner, and not the staff.

In general, defamation by "market" reforms' supporters of administrative law as a kind of reactionary branch of law, in comparison with civil, democratic law, reflects a misunderstanding of the essence of the state and law, as well as the place of civil and administrative law in the functioning of a state-organized society.

In the light of the above, we propose to amend the Constitution of the Russian Federation.

Concerning administrative law the thought of A. S. Dugents seems to be correct: "The modern Russian legislator chose the right direction: at the federal level all the rules regulating the types of punishable misconducts and punishments, grounds and procedure for bringing to responsibility should be concentrated in a single codified legal act – the Code on Administrative Offences of the Russian Federation. Regulation of administrative responsibility by regional laws is largely of transitory nature" [9, 18]. In our opinion, this foresight of a major Russian legal scholar, and most importantly, the opinion of practitioner and one of the leaders of law enforcement sphere of state power, correctly advances an idea that administrative law as a law that governs the functioning of the executive power in the country cannot be regional. Not because of the notorious "vertical of power", but in principle. Power in the State is indivisible. Paraphrasing the words once said by V. I. Lenin, we can say that there is no power of Ryazan or Kaluga, there is only state power.

We agree with the assessment of A. V. Mal'ko, when he writes about the actual absence of full-fledged legal policy in the country. "The current policy is largely exercised in isolation from the really existing public relations, without regard to

the patterns of legal life of Russian society" [11, 11]. However, "absence of policy" is a policy too, it is just needed to correctly evaluate such absence. If in the RF Constitution of1993 it is recorded that state ideology is prohibited in the RF, it does not mean that such ideology is absent. It just has another content.

And then understating the value of administrative and civil law is quite clear – it is aimed at the creation of legal preconditions for further collapse of the Russian state. Putting administrative legislation under the authority of local self-government means to contribute to the collapse of the State.

The origin of this fundamental error in Russian policy is largely due to the efforts of foreign advisers, who proposed the text of the RF Constitution of 1993 (in addition adopted two months after the shooting of the parliament), as a result of the victory of B. N. Yeltsin in the confrontation of powers. As we believe, to defeat the potential of the former USSR was implemented the idea of referring administrative law to sectors secondary for the state (joint jurisdiction), which laid the mine under the unity of the new state – the Russian Federation.

This provision should be removed, replaced and corrected with the further strengthening of the Russian state and statehood.

It seems necessary to remove from the RF Constitution the provisions on the Federation and local self-government, to transform the state into a unitary one based on the equality of individuals, regardless of their nationality, where administrative law is the most important regulator of public relations. But as long as the Federation is preserved, administrative law and legislation cannot be decentralized, while civil law and legislation are centralized. When amending the Constitution we should swap them with respect to the subject matter of jurisdiction.

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Dobrobaba M. B.

INSTITUTIONAL FEATURES OF SERVICE-TORT LAW[1]

Dobrobaba Marina Borisovna,
c.j.s. (PhD in law), Associate professor of the Chair of administrative and financial law at Kuban State University, Associate professor,
dobrobaba_mb@mail.ru

Service-tort law is regarded by the author as a complex institute of administrative (administrative-tort) law, which takes place within the framework of service law.

The author determines specific classification of substantive norms of service-tort law by the criterion of legal content.

Considers service and material responsibility of public servants as a public form of disciplinary coercion, which lays in the application of the rights restorative sanctions for damage inflicted to the property of state (municipal) body as a result of an employee's service tort.

Keywords: administrative law, administrative-tort law, service-tort law, service legal relations, service and financial responsibility, service and disciplinary responsibility.

Intensive development of modern administrative law as a legal branch and relevant area of the Russian legislation stipulates refinement of the subject of its legal regulation, reforming of nearly all its institutes.

Recently, in the administrative-legal science have appeared works, which substantiate the existence of administrative-tort law [4, 72; 1, 256; 9] as a sub-branch or even as a branch of the Russian law [10, 10-13; 13]. But so far none of the scientists has raised the issue about the need to build within administrative law

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the institute of service-tort law, which would include the norms of service legislation, whose main purpose is to prevent deviation of service legal relations from proper implementation and which are the means of their ensuring.

Any legal institute is a part of the largest and relatively independent unit of law system – branch (sub-branch) of law. Service-tort law is an institute of service law, the existence of which was firstly substantiated by Yu. N. Starilov, who had defined service law as law of public service (state and municipal) – sub-branch of administrative law governing public-service relations that develop in public service bodies concerning its organization and functioning, implementation of competence of state bodies and bodies of local self-government [14, 445]. The idea of forming service law as a system of norms governing relations in public and municipal service has received support of a number of other scholars [18, 107].

Service-tort law is a comprehensive institute of administrative law within the framework of service law. At the same time, it must be admitted that between administrative-tort and service-tort law must be a definite relationship. Not being a supporter of distinguishing administrative-tort law as an independent branch of law, we support the position of those scientists who uphold its independent status of a sub-branch. At that, their views on the institutional content of administrative-tort law do not match.

Thus, some scholars define administrative-tort law as a specific unified complex of legal institutes that combine substantive and procedural administrative-legal norms governing the grounds and procedures for application by authorized entities of administrative jurisdiction of measures of administrative responsibility (administrative punishments) for administrative offenses.

According to Yu. M. Starilov, administrative-tort law covers: types, measures of administrative coercion and the procedure through which they are applied; determination of bodies and officials dealing with the cases of administrative offences; regulation of the principles of proceedings on cases of administrative offences [11, 65]. Special position is occupied by D. N. Bakhrakh, who has complemented the content of administrative-tort law by issues of disciplinary and financial responsibility using as the title one of the sections of the textbook on administrative law of Russia “Disciplinary Coercion as a Method of Public Administration” [3].

Given that disciplinary responsibility of public servants has administrative-legal nature and is applied within the framework of service relations governed by the norms of service law, and, consequently, to it can be applied the definition of “disciplinary administrative responsibility” [6, 65-77], service-tort law is an institute of administrative-tort law as a sub-branch of administrative law.

Thus, service-tort law within the framework of service law represents itself a comprehensive institute of administrative law, being at the same time an institute of administrative-tort law. When addressing the issue of determining the boundaries of service-tort law one must conclude that the boundaries of service-tort law should be defined by the scope of service relations that arise both in connection with the commission by officials of disciplinary offenses (service torts) associated with non-compliance with service discipline and bringing perpetrators to service and disciplinary responsibility, and in connection with infliction by them of material damage to the property of state (municipal) body. In both cases the norms of service-tort law will be aimed at ensuring service relations (see read more: Channov S. E. "Official Legal Relation: Concept, Structure, Securing") [19, 88-137].

Feature of service-tort law is its integrated nature. One of the most significant factors that substantiates the integrated nature of the institute of service-tort law is the existence of a number of sub-institutes included in the structure of the institute of service-tort law. Such sub-institutes include:

a) sub-institute of disciplinary responsibility of public (municipal) servants;

b) sub-institute of financial responsibility of public (municipal) servants for infliction damage to property of a state (municipal) body.

Another factor that confirms the complexity of the legal regulation of the institute of service-tort law is the inter-branch nature of the legal regulation of disciplinary and financial responsibility of public (municipal) servants within the framework of service relations, the application of which takes place in the case of service torts committed by servants. This is evidenced by the presence of totality (complex) of interrelated legal norms on application these measures that are contained in the various branches of law (such as administrative and labor one), which govern qualitatively homogeneous public relations.

Despite the identity of many concepts and institutes, disciplinary responsibility within the borders of labor and administrative law has serious differences that suggest that there are grounds for differentiation of disciplinary responsibility by subjects' composition and distinction between two separate kinds of legal responsibility, such as:

1) service and disciplinary responsibility;

2) disciplinary and labor responsibility.

Peculiarity of differentiation the disciplinary responsibility of public servants in the system of disciplinary responsibility and attributing it to the *service and disciplinary responsibility* is associated primarily with the circle of persons to which it applies, the sources of its legal regulation, the broader notion of disciplinary

offence, the target and the functional purpose, essence and content of legal relations in which public servants are brought to responsibility, the types of disciplinary penalties and the procedure for their application.

As for the financial responsibility of public (municipal) servants, despite law restorative (property) nature of penalties, financial responsibility itself in service law has a public nature; this, in turn, is a prerequisite for differentiation of financial responsibility, as a kind of legal responsibility, into two types:

1) service and financial one – sub-institute of service-tort law that has administrative-legal nature, which causes necessity of its detailed legal regulation by the norms of service-tort law;

2) material and labor one – responsibility of employees under labor law norms.

Service-tort law is an institute of public law, so if within the framework of service legal relations as a result of non-performance or improper performance by public (municipal) servant of its official duties a state (municipal) body suffers property damage, it means that there is a disciplinary offence (service tort), for which, along with disciplinary penalty, service and financial responsibility of administrative-legal nature should be applied to the public (municipal) servant. This type of responsibility is to be considered as a form of disciplinary coercion, a measure of additional disciplinary impact of law restorative nature.

It seems that the *service and financial responsibility* of public servants can be defined as a kind of disciplinary coercion measures of public nature, which consists in applying of law restorative sanctions for harm to property of state (municipal) body inflicted by a servant as a result of service tort, and which is an additional measure of disciplinary impact.

Given that in service and administrative-tort law, whose institutes also include service-tort law, we can distinguish both substantive and procedural norms, it can be concluded that another feature of service-tort law institute is that it contains norms of both substantive and procedural law.

The theory of law notes that if substantive law norms define the content of rights and duties, then procedural ones regulate the procedure for the execution of the first number of norms [16, 457]. In conducting a study of administrative-tort law norms, O. S. Rogacheva determines their characteristics, what may form the basis for analysis of the peculiarities of service-tort law norms [13, 187-188].

Thus, the substantive norms of service-tort law:

- legally enshrine official duties, restrictions and prohibitions for public and municipal servants, provide rights, warn of unfavorable consequences of legal requirements breach;

- have their own functional orientation. By content, these norms are of prohibitive, as well as of binding nature, non-performance or improper performance of which is a disciplinary offence (service-disciplinary tort), which entails bringing of servant to disciplinary responsibility and, in case of infliction damage to property of state (municipal) body within the framework of service legal relation – to service and financial responsibility;
- establish general provisions and principles of service legislation that governs disciplinary and service and financial responsibility of public (municipal) servants; kinds of subjects of disciplinary and service and financial responsibility, as well as subjects of disciplinary and service and financial jurisdiction; kinds of disciplinary penalties and general rules of their imposition; as well as separate compositions of disciplinary offences.

According to Yu. M. Starilov, in accordance with legal content substantive administrative-legal norms should be classified as follows: 1) binding norms (requiring commission of certain actions); 2) prohibitive norms (which bans certain activity or actions); 3) restrictive norms (imposing restrictions on certain activity or actions); 4) permitting or permissive norms (authorizing a recipient to act on its own discretion); 5) empowering or enabling norms (provide relevant bodies and their officials public-authoritative powers to implement special functions of public administration); 6) stimulating or encouraging norms (aimed at stimulating, ensuring of proper conduct of managerial relations participants); 7) registration or notification norms; 8) advisory norms [15, 402].

Analysis of substantive norms of service-tort law allows one to distinguish their following species classification in accordance with legal content:

1) binding norms (which include norms prescribing servants to observe service discipline, to protect state and municipal property);

2) prohibitive norms (contain requirements to observe the prohibitions established in connection with passage of state or municipal service);

3) restrictive norms (establish the requirement to comply with restrictions established by service legislation);

4) authorizing norms (provide representative of employer the right to bring employees guilty of a disciplinary offense (disciplinary tort) to disciplinary responsibility).

Procedural norms of service-tort law, like, in general, procedural norms and relations, are not external in respect of responsibility form of its existence, but a necessary component of responsibility, which itself represent a unity of substantive content and procedural form [13, 188]. At that, according to R. V. Shagieva,

the specificity of procedural norms does not deprive them of constructive qualities of the norms of law, does not exclude from the group of social norms and does not change any of the mandatory properties of legal norm [18, 20].

As noted by Yu. N. Starilov, procedural norms govern relations concerning the real execution of the provisions contained in the material legal norms, and in each specific institute of administrative law can be detect specific procedural provisions and procedures [15, 400].

Procedural norms of service-tort law determine: objectives and principles of disciplinary proceedings; stages thereof; procedural deadlines; participants to disciplinary proceedings, their procedural rights and obligations; types and conditions of the use of evidence; procedural results of disciplinary proceedings.

Procedural norms of service-tort law also include similar norms governing the procedure of bringing public (municipal) servants to service and financial responsibility within the framework of official legal relations.

Despite the fact that the subject matter and method of legal regulation in each branch of procedural law have their own specifics, the implementation of disciplinary proceedings occurs within a single legal (law-enforcement) service-tort process as an integral part of administrative process, which has one-type stages, similar mechanisms and procedures for recovery of violated or disputed rights.

Being an institute of service law – sub-branch of administrative law, service-tort law has a complex inter-branch nature. As you know, a comprehensive inter-branch legal Institute brings together similar, equal norms related to various branches of law. The complex interrelation of public relations objectively defines the existence of such normative formations in the system of law. At that, the most major inter-branch (complex) legal institutes are expressed, as a rule, in a relevant complex legislation branch [5, 448].

The problem of inter-branch institutes in law is not new. Back in 1947, V. K. Reiher theorized about the existence of fundamental and complex branches of law [12, 189-190]. His theory does not coincide with the common in jurisprudence doctrine of strict sectorial structure of law. V. K. Reicher's position was supported by Yu. K. Tolstoy speaking, however, with the assertion that the complex branches of law as opposed to the fundamental ones do not have place in the system of law, and they are given a conditional place depending on the purpose of systematization in the systematics of norms [17, 42-45].

The idea of the existence of complex branches of law initially was supported by the O. S. Ioffe and M. D. Shargorodskii, who considered it beneficial from the point of view of practical applications for the systematics of existing legislation.

However, they objected to the statement of V. K. Reicher that complex branches could enter in the system of law, considering it impossible [7, 362-365]. With similar standpoints E. A. Kirimova criticizes the existence of complex branches of law asserting that on the basis of understanding of the subject matter and method of legal regulation as the sole criteria for classifying branches of law "complex branches" of law do not exist, and there are only complex branches of legislation [8, 8]. According to S. E. Channov, in these cases the denial the possibility of building complex branches is based on mismatch complex branches with traditional criteria of systematization of law – unified subject matter and method [18, 106].

In fact the service-tort law is a symbiosis of branches of public and private law, which emerges and develops at the intersection of these branches and, consequently, is a complex legal institute. This approach originates in the Russian doctrine of the general theory of law, which justifies the concept of complex branches of law and complex legal institutes that include the norms of different sectoral affiliation, are cross-cutting in the normative material of law due to the diversity and tiered nature of expression of legal norms.

This situation is due to the similarity of goals and tasks aimed at ensuring service relations. All legal norms, which form the legal institute of service-tort law, have one target purpose – ensuring service relations, which is achieved through the application of disciplinary responsibility against public (municipal) servants as the primary type of disciplinary coercion within the framework of official legal relations, as well as measures of financial responsibility aimed at compensation for damage inflicted to state (municipal) bodies in connection with the failure of state (municipal) servants to perform their official duties.

There are considerations about the existence of, along with inter-branch, also intra-branch complex legal institutes, within the framework of which occurs a kind of secondary rearrangement of the norms of this branch of law that are covered by different sectoral institutes, as well as existence of general legal complex institutes combining homogeneous norms of all branches of law [2, 156-161].

We believe that service-tort law, being a complex inter-branch institute, in the future have to become an example of *intra-branch complex institute of administrative law* that covers within the framework of official relations and at the same time within the framework of administrative-tort law the norms, which regulate the measures of disciplinary and service and financial responsibility, applied to state and municipal servants for committing service torts.

Thus, within the framework of service law the service-tort law is a complex institute of administrative law, being at the same time an institute administrative-tort

law. Factors supporting the complex nature of the studied institute are: 1) inclusion in its structure such sub-institutes as service-disciplinary and service and financial responsibility of state (municipal) servants; 2) inter-branch legal regulation of application of responsibility measures for the commission of service torts (by the norms of administrative and labor law); 3) institute of service-tort law contains provisions of both substantive and procedural law.

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Kalina E. S.

PROBLEMS OF ADMINISTRATIVE RESPONSIBILITY FOR FAILURE TO COMPLY WITH THE REQUIREMENTS OF NORMS AND RULES FOR PREVENTION AND LIQUIDATION OF EMERGENCIES [1]

Kalina Elena Semenovna,
c.j.s. (PhD in law), Associate professor of the Chair of constitutional and administrative law, South Ural State University (National Research University), Associate professor.

The author notes the ambiguity of judicial practice in cases of bringing to administrative responsibility in the application of articles 20.4 and 20.6 of the Code on Administrative offences of the RF. Emphasis is laid on the need to comply with the limits of the competence of bodies and officials involved in proceedings on cases of administrative offences.

Keywords: administrative responsibility, emergencies, prevention and liquidation of emergencies, administrative responsibility for failure to comply with the injunctions of the body of administrative jurisdiction.

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Administrative responsibility for failure to comply with the requirements of norms and rules for prevention and liquidation of emergency situations has been existing for 12 years in the Russian administrative law. This is not too little, but also it is not much. Law-enforcement practice, which has been accumulated during this period, makes it possible to reveal a number of problems associated with the difficulties of applying the mentioned norms. Let us pause only at some problems associated with the difficulties of delimitation of the compositions and procedural characteristics of the norms of the Special part of the Code on Administrative Offences of the Russian Federation (hereinafter – CAO RF) [1].

There is a problem of delimitation the spheres of application of part 1 article 19.5 and part 1 article 20.6 CAO RF. The matter is that in some cases officials authorized to draw up protocols on administrative offenses provided for by article 20.6 CAO RF do not give detected violations due legal assessment and limit themselves to issuance of instructions to eliminate the detected violations. In the next control check, after revealing that the instruction has not been executed, they draw up a protocol on administrative offense under article 20.6 CAO RF on the fact of initially detected offense. But such application of the mentioned article is often beyond the limitations period, because the time period that is provided for addressing detected violations usually exceeds the limitations period concerning this category of cases on administrative offenses. To "bypass" this difficulty, the subjects of administrative supervision try to discern a continuing administrative offense in actions of persons who have not fulfilled prescriptions, but, at that, the day of its detection, from which procedural deadlines shall begin to be calculated, is considered to be the day when non-compliance of prescription to eliminate violations was revealed.

This position is unreasonable, because, according to paragraph 14 of the decision of the Plenary Session of the Supreme Court of the Russian Federation No. 5 from March 24, 2005 "On some Issues that Arise in Courts when Applying the Code on Administrative Offences of the RF" [2], the day of detection a continuous administrative offense shall be the date when an official authorized to draw up a protocol on administrative offense reveals the fact of its commission. Obviously, that in case of non-performing of direction on a revealed offence the moment of accomplishment of the offense is not when it has been detected by an authorized official (in this connection an order to eliminate violations has been issued), but the day following the date specified in the direction.

There is a norm of the Code, which establishes administrative responsibility exactly for failure to timely perform a direction from a body or official exercising state supervision. This is part 1 article 19.5 CAO RF. It provides for a softer

punishment than article 20.6 CAO RF. I think, by this is explained the practice of bringing to administrative responsibility only under one norm, i.e., part 1 article 19.5 CAO RF.

In contrast to the officials of controlling bodies the courts, in the case of submission to them of two protocols on administrative offenses, occupying a correct position, bring to responsibility along with part 1 article 19.5 also under part 1 article 20.6 CAO RF.

So, for example, the director of the Federal State Unitary Enterprise "RTRN" of "Tomsk Regional Radio and TV Transmitting Center" was found guilty of an administrative offense under part 1 article 20.6 CAO RF by the resolution of justice of the peace of judicial district No. 1 of Oktyabrski district court of Tomsk from 26.04.2013. This deed resulted in non-compliance with the legislation stipulated duties to protect the population and territories from emergency situations of natural and man-made nature, as well as non-compliance with the requirements of the norms and regulations for the prevention of accidents and disasters in the objects of industrial purpose. This conclusion was made by an official authorized to institute administrative proceedings under article 20.6 CAO RF in the check of the performance of a direction imposed almost two years before. The court of appellate instance left valid the decision of the justice of the peace.

The following problem seems to be significant. Under paragraphs 1 and 7 part 2 article 28.3 CAO RF, officials of internal affairs bodies (police) and officials of the bodies specially authorized to address the challenges in the field of civil defense, protection of population and territories from emergency situations of natural and man-made nature are authorized to draw up protocols on administrative offenses under article 20.6 CAO RF. However, as is evident from the files of studied cases, in practice, often the functions of these officials are arbitrarily undertaken by other persons. Most frequently inspectors on fire supervision act in this role. This is contrary to the procedural norms of CAO RF and departmental legal acts of the Ministry of Civil Defense and Emergency Response, according to which the competence of officials of the state fire supervision bodies does not include drawing up protocols on cases of administrative offenses under part 1 article 20.6 CAO RF. In such circumstances, an administrative offense case under part 1 article 20.6 CAO RF must be dismissed for the lack of an administrative offense composition in actions of a person. However, the judicial practice on cases of this kind is also ambiguous. In some cases the courts take substantiated and lawful decisions based on the correct delimitation the spheres of application of articles 20.4 and 20.6 CAO RF, including in procedural aspect.. In other cases, the courts:

- wrongfully ignore the norms of legislation on administrative offenses that delimit the competences of fire supervision bodies and officials of the bodies specially authorized to address the challenges in the field of civil defense, protection of population and territories from emergency situations of natural and man-made nature associated with the implementation of norms and rules on the prevention and dealing with emergencies;
- make rulings without taking into attention the fact that protocol on administrative offense has been drawn up by improper official.

Such practice seems to be wrong, be inconsistent with the requirements of the laid down in article 1.6 CAO RF principle of ensuring legality in application of administrative coercive measures in connection with an administrative offense. According to the meaning of the norm of part 2 article 1.6 CAO RF, the requirement of strict compliance with the limits of competence of authorities and officials involved in proceedings on administrative offences must be observed not only in respect of application of administrative punishment and interim measures, but at all stages of proceedings on a case of administrative offense, starting with the initiation of proceedings that, according to paragraph 3 part 4 article 28.1 CAO RF, shall be considered initiated, including from the moment of protocol on administrative offense. This understanding directly comes from the requirement of legality contained in article 1.6 CAO RF.

According to D. N. Bakhrakh, "any real legal responsibility has three grounds: a) normative (the system of legal norms that govern it); b) actual (wrongful acts of subjects of law); c) procedural (acts of the subjects of power to impose sanctions of legal norms to specific subjects). Availability of norm establishing responsibility and deed mentioned in this norm – it is just normative and actual prerequisites of legal responsibility. … The presence of all three its grounds is needed for occurrence of real responsibility [3, 539].

To this has to be added that in cases where administrative proceedings on administrative offence are considered to be initiated from the moment of protocol on administrative offense (paragraph 3 part 4 article 28.1 CAO RF), the occurrence of real responsibility requires that judgment (decision) has been made not only by an authorized for that entity, but also on the base of protocol drawn up by a person authorized to draw up protocols about an appropriate type of administrative offense.

In the meantime, given the above, for the purposes of more proper (in accordance with the principles of legislation on administrative offenses) application of CAO RF norms establishing responsibility, including for failure to comply with rules and regulations for the prevention and elimination of emergency situations,

it is advisable to make corrective changes in the wording of part 2 article 1.6 CAO RF, and to read it as follows:

"Initiation of proceedings on a case of administrative offense by an authorized body or official, as well as application of punishment and measures for ensuring the proceedings in respect of a case concerning an administrative offence shall be implemented within the scope of jurisdiction of the said bodies or official in compliance with law".

The problems associated with the application of article 20.6 CAO RF in the practice of consideration and resolving cases of administrative offenses, connected with the nonfulfillment of requirements of norms and rules on prevention and liquidation of emergency situations, do not limit to the designated problematic moments. These problems urgently require further identification and systematization in order to improve both law-enforcement approaches and the current legislation in the field of administrative responsibility for violations of the legislation on protection of population and territories from emergency situations of natural and man-made nature.

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Kudryashova E. V.

LEGAL NATURE OF PLANNING ACTS[1]

Kudryashova Ekaterina Valer'evna,
c.j.s. (PhD of jurisprudence), Associate professor in the Department of financial law, Lecturer of Moscow Higher School of Social and Economic Sciences,
ev_kudryashova@inbox.ru

Leaving the question on the diversity of forms of plans outside the research, the author poses and answers the question of whether a plan can be an normative act, that is, whether setting goals, scheme, set of numbers, standards can be the content of a norm and whether can such a content of a norm change the rights and responsibilities of the parties of legal relations?

The author notes that the feature of a plan as a norm derives from the feature of planning as a method of management – close connection with the future.

Keywords: plans, planning acts, types of planning, planning norms, legal value of a plan.

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Legal nature of plans seems to be one of the most difficult questions for the legal science. The difficulty lies in the diversity of plans' content (plans may consist of verbally expressed goals and objectives, schemes, sets of numbers and indicators and so on), in the variety of types of planning, in the variety of plan forms, and so on. However, the issue of legal nature of planning acts is of essential significance for rule-making, management and judicial practice. In this article, leaving outside the issue of diversity of plans' forms (laws, subordinate acts, etc.), we will concentrate our attention on the substantive aspects and answer the question whether can a plan actually constitute a normative act.

First of all, we take as the basis of our arguments a previously expressed by theorists of law thought about that the issue of legal nature – is, first, the question of whether does one or another prescription have legal value, and second, whether is this prescription normative (norm of law) or individual [11, 185]. Thus, we agree that "the value of an act and its legal nature are different things" [11, 185]. The first part of the question about the legal nature of plan – it is a question about a possible legal value of plans, that is, whether can the setting of goals, scheme, set of numbers and standards be the content of norm, and whether can such a content of norm change the rights and duties of participants of legal relations. If the first part of the question is solved positively, and we can say that the scheme, set of numbers, and so on can be legally significant, then we must decide whether can a plan be a norm or it remains an individual act (set of individual directions).

A detailed analysis of the discussion of Soviet scientists on the legal nature of plans in economic management has been made, for example, by A. S. Matnenko. In his analysis the views of Soviet scientists are divided into four groups. The first group denied the fact that there was any legal content of planning acts. Plan was considered as a form of new, extremely concretized technical regulation of public relations. The second group of scientists, on the contrary, was of the view that planning acts – it is a kind of normative legal acts, and planning norms are, accordingly, norms of law. The third view was that planning acts were acts of application of law. Finally, according to the fourth view, plans had a legal nature, but were legal acts of a special kind: they were neither normative acts nor acts of application of law [8, 118-120]. A. S. Matnenko himself joined those who believed that a planning norm was an especial norm specifying the provisions "unscheduled" norms of legislation.

We will not repeat the analysis of discussions about the planning norm, we add just a few considerations.

Regarding the first position that plan is not a norm, but a form of new technical regulation it is necessary to add the following. This position echoes with the debate in legal science regarding technical norms and their value for law. This is about the rules of operation, standards, etc. Some authors believed that technical norms along with legal ones were of social nature and themselves had a legal value [9, 13]. However, these authors remained in minority, and it was recognized that technical norms themselves did not have legal value. "Technical norms govern not relations between people, but determine how we handle the instruments and means of production" [1, 59]. As a result of scientific discussion about technical norms, several scientists formulated a number of differences of technical norms from social norms [3; 10]. A. S. Sirotin [10, 152-159] singles out the following signs that distinguish technical and social norms,

Norms of law are always abstract, as opposed to technical norms that contain precise instructions on the parameters of the products of labor, conditions of production, operation and storage (temperature, humidity, etc.).

The scope of legal norms is reduced to the interaction of people. Technical norms apply to the relationship between man and nature (objects of the material world, etc.) "Legal norms, as well as other social norms can only function in society. Technical norms can also operate out of society. If an individual has been temporarily isolated from others, even in these circumstances it would have to comply with the technical norms, for example, when working with tools. Legal norms regulate the behavior of people in their social relations, technical ones -human behavior in their attitude to nature" (see footnote 38, Sirotin A. S. "Interaction of Legal and Technical Norms in the Socialist Society" [10, 159]).

Direct objective of legal norms is the streamlining of behavior of people in public relations; technical norms streamline the behavior of people in their attitude to nature. Consequences of non-compliance with legal rules are the negative reaction from the State and society. Consequences of non-compliance with technical norms are failure to achieve the desired production and technical result.

Based on the proposed by A. S. Sirotin criteria for comparison of technical and legal norms, we can talk about the fact that those plans that connect people and nature (for example, a map of the area) may be considered as technical norms. Other plans, which streamline the behavior of people in society, are social and in case of giving them legal form – are legal norms. Indeed, the general plan of a city is intended to streamline the living together of the residents of the city, city planning, etc. The Scope of socio-economic development plans, of course, includes social relations.

In Soviet literature, in parallel with the debate about the legal value of plan, was no less lively debate concerning an assumption whether the plans were a norm of law, or they consisted of separate individual directions? Very detailed analysis of normativity has been done for purposes of scientific substantiation of legislation systematization [11, 54-85]. Different authors put different content to the concept of "general direction", "universally binding nature" of norm: the uncertainty of addressee, multiplicity of application. All of these separate components were rejected and scientists agreed on the following: "Norm of law as a regulator of social relations differs from individual directions that also in a certain sense "regulate" public relations by the fact that its object is not an individual-specific relation, but a group of public relations distinguished by one, two or more common signs. The size of this group in each case depends on many circumstances" [11, 60].

The main difference of a norm of law as the regulator of public relations from the directions of individual nature the authors of the scientific work on systematization of legislation perceived in object, namely: the norm of law always focuses not on specific relations, but on "the kind of relations taken from any one party: the subjects of these relations, the social and economic purpose of these relations, the interests of their participants and material and other values and benefits underlying these interests, conduct of subjects required or approved by the State and so on" [11, 59].

The authors of work on systematization of legislation recognized normative – universally binding nature of plans with the following justification. Every separate direction of plan appears to be aimed at individual-specific relations. However, each of these directions apart does not form an independent norm of law. Norm of law consists of a totality of such directions that relate to the same subject matter – including "the scope and qualitative indicators of development of material production. At that, each of the subject matters represents a kind of public relations, and the existence of such complex norms is due to the very nature of relations. National economy plans form complex forms of Soviet law. Plan remains a plan, a guide to action, only when it provides for all the necessary factors [11, 61-62].

We present here a discussion of Swiss scientists (materials in German language that are used in this article were collected by the author with the support of the German Academic Exchange Service (DAAD) and Martin-Luther University Halle-Wittenberg), who argued that potentially any plan (digital expression, scheme and other plans) can be replaced by a verbal description (quoted from Imboden M. Der Plan als Verwaltungsrechtliche institute. / Veröfentlichungen der Vereinigung der Deutschen Staatsrechtslehrer. Heft 18. Berlin: 1960, page 117

[15, 64]). Thus, the verbal expression of plan will not differ from other normative acts and will consist of individual directions. Others disagreed with this statement and insisted that in planning, particularly in the planning of territories, a specific description of boundaries, etc. does not give a complete picture, which is sought to be achieved by a legislator or managing entity presenting its decision in the form of holistic schema, plan as a unity [17, 76-77; 16, 119].

Joining the scientific discussion of scientists from different countries and different eras, first of all we pay attention to the peculiarities of plan addressee: it is either too abstract (plan of socio-economic region) or too specific (budget line for the allocation of funds to a particular person, specific ownership named in scheme, etc.), and sometimes both together.

It seems to us that the legal regulation in this case is focused on holistic object (subject matter). Indeed, the legal effect of norm applied to an individual subject (recipient of funds, owner of a land plot, economic entity, etc.) is different from the legal effect of a planning norm, which is aimed at regulating of budget as a totality of relations of all subjects; a territory as a whole; economy as a totality of economic relations, etc.

We must assume that here we are faced with two levels of regulation, the first one is the regulation of generalized object, and the second one is the regulation of relations of a particular individual within the framework of already established relations of the first level. For example, socio-economic development plan establishes norms on the integrated view on the socio-economic field after a certain period of time, which are then embodied into specific norms on economic promotion of required conduct.

The concept of two levels of legal regulation has a serious impact on the system of institutes within a branch of law. In particular, in the German system of law they distinguish planning law (or the law on planning) and construction law. The first one is a set of norms of the first regulation level – aimed at a generalized object of regulation, and the second one addresses issues of specific construction permits, approvals, etc. At that, all approvals and permits within the framework of construction law should be made on the basis of planning law norms (the law on planning) [14; 20, 942].

Plan as a norm has its own characteristics. Planning norm really does not fit the traditional structure of norm: hypothesis – disposition – sanction. In the studies of the Soviet author S. A. Bertsinskii we find the reasoning about the structure peculiarities of planning norm. In particular, he writes that there is no hypothesis in planning norms, and it is unconditional, there is a disposition, which is the "core"

of such a norm, and he admits the existence of sanction [2, 113-117]. German literature indicates that a planning norm enshrines goals and program [13, 641-647], but, at that, continues to remain a norm.

Legal norms should be distinguished from tips, calls to action, recommendations, address to, etc. [4, 130]. We can read in the Soviet legal literature that address to, calls to action, recommendations relate to some special category – legal rules [12, 145]. There were objections based on the fact that such legal rules were not ensured by state coercion and sanctions, respectively, had no legal value. At the same time, in the Soviet literature was written that the possibility of "application, where necessary, of state coercion was preserved also in respect of these "norms"" [5, 31].

Assertion that the compulsion nature of Soviet law decreased as we moved society towards communism was an argument in favor of including address to, calls to action, recommendations into socialist law. "Address to, calls to action, recommendations are extremely important for understanding by the participants of public relations the meaning and the objectives of appropriate acts or have an important educational and mobilizing value. However, they do not constitute the main content of legal acts, even in those cases where they constitute most of an act. Their role is of service nature, and they serve that in a legal act is the principal, namely: directions that express the mandatory will" [11, 45]. On the basis of this quote we can offer a criterion of separation political calls to action and recommendations from the plans of legal value, namely the mandatory will of the State. The mandatory will of the State, implemented through a holistic mechanism of legal regulation, is formulated in the socio-economic development plans [7].

A feature of plan as a norm also follows from the peculiarity of planning as a method of management – close connection with the future. About the connection of planning norms with the future we can also read in German studies [19, 321-326, 414-420]. Some German scientists even considered plan as "a norm in the future", according to them, the plan transferred a specific solution forward in time [17, 76-77; 14, 117].

At the same time, the defining of plan as conditional norm, which has the structure "if the plan is executed, then..." [19, 321-326, 414-420], had been criticized and scientists agreed that plan was not a conditional norm and had binding force from the moment of its issuance [18, 5].

Being based on the analysis of multiple views of scientists on the problem of the legal nature of plans, we answer in the affirmative to the question – whether can a plan be the content of norm? Plan may be the content of a binding norm, at that, plan is not a technical norm linking the subject of law and the object intangible

world, but it is a full-fledged norm linking the potential participants of legal relations.

We can say that under a general rule plan can be a normative act of universally binding nature. Moreover, the fact that plan contains indications of specific objects or subjects (the location of a particular object on a scheme with indication of its owner, the budget line on the financing of a specific subject, the indication of development of a specific industry branch, etc.) does not affect the normative nature of plan. The legislator does not need to invent new phenomena of legal life, such as "planning documents" [6, 72-77] to indicate plans – a plan can be given legal force and in this case it can be a full-fledged normative act, though it also has a number of features.

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Kuyanova A. V., Yuritsin A. E.

CIVIL SOCIETY IN RUSSIA: TOPICAL POLITICAL AND LEGAL PROBLEMS OF FORMATION AND DEVELOPMENT

Kuyanova Arina Viktorovna,
c.j.s. (PhD in law), Senior lecturer of the Chair of administrative law and administrative activity of internal affairs bodies at Omsk Academy of RF MIA;

Yuritsin Andrei Evgen'evich
c.j.s. (PhD in law), Senior lecturer of the Chair of administrative law and administrative activity of internal affairs bodies at Omsk Academy of RF MIA.

Proceeding from the position that without a developed civil society it is impossible to build a constitutional democratic state in the Russian Federation, the authors have identified the essential signs of civil society.

They argue that an indicator of the maturity of civil society is the existence of a class of owners; only economically free citizens are able to provide effective, independent, real control in public administration.

The need to limit state power by civil society and the civilized distribution of national income between citizens of Russia are noted in the article.

Keywords: civil society, constitutional state, state, civil society signs, citizens, human rights, public associations, democracy, legal consciousness, legal culture.

True personal liberty is possible only in a democratic society, where not the political power, but the society itself in priority to the State. It is clear that the transition to such a society is a historically slow process. It is associated with the formation of a civil society.

Formation of the civil society in the Russian Federation is inextricably linked to the establishment of a constitutional state. Civil society in a special way conjugated in its development with such phenomena, as citizen, the state, law, politics [2, 6] is possible only in a democratic political regime, so it cannot function properly in totalitarian and authoritarian regimes.

In the definition of the concept of "civil society" G. G. Diligenskii puts the essence of "relations of autonomous individuals (citizens – voters) and autonomous social entities (citizens – political parties) who function independently from political power and are capable to influence on it" [6, 5]. This concept characterizes a specific stage in the development of human society; it cannot be reduced only to a totality of non-state organizations, and especially to organizations in opposition to the State. Taking power by the last often leads to establishment of even stricter state regimes [14, 23].

Ideally, civil society is "a society, in which the State and society form two clearly separated spheres, at that, the State has a purely instrumental nature, controls individual interests in their extreme manifestations, it itself is under control of the institutes that have a base" [4, 214]. A developed civil society contributes to the awakening of the self-consciousness of its members, is a fundamental prerequisite for genuine democracy. Its primary task is the most complete satisfaction of the material, social and spiritual human needs, development of social activity of subjects. It is no mere chance that in the Message of the President of the Russian Federation noted that "...we need to support the growing desire of citizens, representatives of public and professional associations, political parties and business class to participate in the life of the country..." [12].

In our opinion, the most essential signs of civil society are: self-governance; pluralism and freely forming public opinion; guarantee of the rights and freedoms of man and citizen enshrined in the RF Constitution and current legislation; implementation of life in civil society on the principle of coordination; competition of its constituent structures and different groups of people; information awareness, the real implementation of the human right to information.

Modern Russia is at initial stage of civil society development, this is manifested in a rather weak development of its most important institutes: political parties and public associations, independent media, private property and market economy, lack of social responsibility among many citizens etc. In this connection, it is necessary to draw attention to the current political and legal problems of formation and development of civil society in modern Russia.

Building of a developed civil society is impossible without recognition of freedom as the most important absolute value in each person's life. Only free State can ensure the security and well-being of its citizens. In turn, liberty cannot survive in a society that does not strive to justice. Such a society would inevitably tend to split between those whose liberty is materially supported (they are in absolute minority) and those for whom it is synonymous with extremely low standards of living (vast majority). The consequence of this split can be either social convulsions, or political and economic dictatorship of a small privileged class.

Indicator of the maturity of civil society is the existence of a class of owners. The greater the number of people-owners, the stronger civil society, the less the sphere of state domination. Many experts believe that the proportion of persons belonging to the "middle class" shall be 60-70% of the population (according to some estimates, the proportion of middle class in Russia is no more than 8-10% of the total population). These persons are the least dependent upon the State, since they are financially autonomous and independent. In modern Russia, where budgetary scope is very significant, the only source of material existence is wages. So, the talk about the mass nature of civilian relations can be very tentative.

Material foundation of civil society is formed from small and medium-sized business that in developed countries is up to 70-80% of the economy. Its representatives mainly constitute the so called "middle class", which is only slightly dependent upon the State. Economic organization of civil society is civilized market relations, which are impossible without the development of individual entrepreneurship aimed at generating income.

In today's Russia small and medium-sized enterprises are often absorbed by larger enterprises, which are often linked to the State apparatus or financial and industrial groups. That is why they often do not stand tax and financial pressure by the public authorities. The consequence is the destruction of competition in the sector of "small" economy, as well as consolidation of monopoly in the field of economic and political power. Freedom of enterprise in the Russian Federation is declared, but really is not exercised by public authorities because of the dictat of corrupt bureaucratic apparatus.

Most acute in the moment in the social sphere is the problem of mass poverty – preservation of miserable existence occurs among almost one sixth of the population. At the same time, it is axiomatic that only economically free citizens are able to provide an effective, independent, real control in the sphere of public administration.

Civilized allocation of national income between the citizens of Russia should be a priority of the state policy. In the Russian Federation, the ratio of wages paid to

10% of the highly-paid layers to the wages of the rest of the population in 1992 was 16:1, in 1993 – 26:1, in 1995 – 29:1. For comparison, in various countries this ratio is from 5:1 to 8:1, and 4:1 in Sweden.

As for material inequality among the population – 1% of the population owns 71% of all cash in the country [11, 5]. And after all, G. V. F. Hegel noted that in cases where the gap formed between an untold wealth at one pole of society and poverty on the other, the life of many people became below the required level of existence. This, in turn, leads to the loss of feeling of ability to ensure existence by own labor and engenders parasitism and social dependency [3, 234].

Efficiency of the process of formation of political foundation of civil society in our country is markedly reduced due to the presence of such negative phenomena in society as legal nihilism, low level of legal consciousness and legal culture; significant scale of corruption that has hit our state; distrust of citizens and society as a whole to the government, etc.

Experts of the Institute of Psychology of the RAS having estimated the changes in psychological state of Russians from 1981 to 2011 concluded that over the past 30 years Russians have become angrier, more conflictual. In amount of killings, Russia nearly 4 times exceeds the United States and about 10 times – the countries of Western Europe [5, 7]. It appears that one of the factors that has led our society in such a state is ideological shortcomings of the State. One should realize that the competent authorities of the State must put a durable barrier against advocating violence, anger, aggression in the media and on television.

Civil society is always a democratic society. The difficulties of the emergence of democracy in our country can be attributed to "a lack of political culture of democratic (civil) type, since both our politicians and ordinary citizens and institutes largely adhere to the imperatives of undemocratic political culture rooted in the past" [10, 18].

The current legislation of the Russian Federation through specification of the fundamentals of constitutional order of the Russian Federation and constitutional (political) rights and individual freedoms significantly reduces the mechanisms for their implementation. A striking example is the adoption in June 2012 of the Federal Law "On Responsibility at Rallies, Demonstrations, Processions and Picketing" [13]. It is obvious that financial levers, which provide for significant fines, hamper the exercising of not only political rights and freedoms of citizens of Russia to hold rallies, demonstrations, processions and picketing, but also impede the process of democratization the political life of society by citizens and their associations.

Another important issue that needs addressing is the need to restrict state authority by civil society. The importance of people's monitoring over officials and rulers of the State was mentioned in the works of Aristotle, who considered it one of the conditions for political stability and prosperity of the State [1, 547-548]. According to fair opinion of Sh. Montesquieu, "every person, who has authority, is inclined to abuse it, and it goes in that direction until it reaches the limit" [9, 289]. Therefore, ideally, the power must always have a certain barrier that restricts its arbitrariness. Such an effective barrier is a developed civil society. It is known that "in most cases the restriction of power by law has a high price of hard struggle between the various elements of society" [8, 204].

Civil society is intended to become one of the most important levers in the system of "checks and balances" limiting the striving of political power to the absolute domination. It has to protect citizens and their associations from unlawful interference of public authorities. To perform this task, it does have a lot of means: participation of citizens in elections and referendums, acts of protest or support etc. At the same time, the broad involvement of citizens in the solving of state affairs must be accompanied by preliminary training of people about the rules to conduct in a civil society, advocacy of civil responsibility for the commission of certain socially significant deeds.

Development of civil society in Russia should be carried out simultaneously with the strengthening of the institutes of state power, weakening of which, as well as the underestimation of organizational state foundations, is fraught with negative consequences. But if the state power does not work for the interests of social development, focuses mainly on servicing individual privileged groups, bureaucratic apparatus, it creates the conditions for a conflict of interests of society and government.

Formation of civil society in Russia should be encouraged. However, "the development of civil society should be not spontaneous, but gradual and strictly regulated by the State with the endowing public organizations growing powers in the administration of the State along with the developing of legal and political self-consciousness and responsibility for the country and for its future" [5, 49]. Civil society, being the highest form of self-realization of individuals, strives for perfection in the fairway of the economic, political state development, growth of culture, self-consciousness and well-being of citizens. Building a constitutional democratic state in the Russian Federation is impossible without a developed civil society, since only free, responsible, initiative, and concerned citizens are able to create the most rational forms of human society aimed at achievement of social justice and public compromise.

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Lapina M. A., Karpukhin D. V.

LEGAL RISKS IN PUBLIC ADMINISTRATION: INVITATION TO DISCUSSION

Lapina Marina Afanas'evna,
Doctor of law, Professor, head of the Department of "Administrative and Informational Law" at Federal State Budgetary Educational Institution of Higher Professional Education "Financial University under the Government of the Russian Federation",
LapinaMarina@inbox.ru

Karpukhin Dmitrii Vyacheslavovich,
PhD in History, Associate professor of the Department of "Administrative and Informational Law" at "Financial University under the Government of the Russian Federation", Associate professor.

The authors examine interpretation of public-law risks as a potential danger, the probability of events that have negative consequences for social relations, which are the subject of legal regulation of certain publicly-law branches in view of approval, implementation and interpretation of legal prescriptions.

Examine the reasons that cause the emergence of public-law risks, among which there are legal gaps, imperfection in constructions of legal prescriptions, subjective mistakes of law-enforcers, as well as political factors driving adoption of authoritative decisions motivated by political expediency.

Keywords: public administration, legal risks, constitutional-legal risks, criminal-legal risks, environmental-legal risks, essence of legal risks, risks of law-enforcement nature, administrative-legal risk.

The notion of "legal risks" is immature and not included in the scientific vocabulary. However, due to the fact that its scope is expanding, there is an actual problem of analysis of the methodological and theoretical aspects of this category.

Study of legal risks in the system of public administration is a principally new scientific direction in all areas of public law. The first studies that appeared several years ago in the scientific literature focus on the wording of the legal notion of "legal risks" and determining its essential signs.

The authors of this article consider it necessary to analyse the existing scientific research results on the subject and to propose their own notion of legal risks in public administration – administrative-legal risks.

One of the first studies on the issue of legal risks in the system of public management was the article of V. V. Kireev "Constitutional Risks: Issues of Legal Theory and Political Practice" [11]. Initial theoretical and methodological precondition of determination the essence of constitutional risk, according to the author, is the postulates of the general theory of risk concerning the fact that constitutional risks arise due to the unfavorable development of public relations, which are the subject of constitutional law [11]. V. V. Kireev focuses on the fact that risky situations arise when the prevailing political environment in the sphere of authorities' relations is not included in the scope of the constitutional-legal impact, i.e., in fact, one of the main causes of constitutional risks is legal gaps arising from the lack of regulatory prescriptions governing the authorities' relations [11].

The scientist distinguished few signs of constitutional-legal risks, among which he included:

first, the constitutional-legal sphere of their occurrence, i.e. norm-making, enforcement and interpretative activity in the field of constitutional law;

second, the specificity of existing historical realities that stipulate the uniqueness of constitutional situations, within which certain actions have been performed in risk conditions;

third, the relationship between the constitutional-legal and economic, political, spiritual and cultural achievements and shortcomings [11].

V. V. Kireev distinguishes two forms of the constitutional-legal risks embodiment. On the one hand the constitutional risks affect the subjects of constitutional legal relations, on the other hand, the risks may entail negative phenomenon in all areas of public life (politics, economy, culture) [11].

As a result, the scientist formulates the concept of constitutional risks as "specific historical characteristics of adoption, maintenance, implementation, including interpretation, of the norms of constitutional law, which express the correlation between the conditioned by these factors legal and eventually economic, political, spiritual, cultural and other social acquisitions and losses" [11].

The problem of "criminal-legal risks" was analyzed in the monograph A. E. Zhalinskii "Criminal Law in Anticipation of Changes: Theoretical and Instrumental Analysis" [10]. The author treats criminal-legal risks as "the risk of being criminally prosecuted without lawful substantive reasons for this or undergoing various restrictions associated with provisional or final, entered in force or repealed

valuation of deed as a crime" [10]. According to A. E. Zhalinskii, criminal-legal risks are generated by criminal law, but "they are implemented in criminal-procedural decisions and amplified by them" [10]. Therefore, according to the scientist, one must consider criminal-legal risks in the widest sense as everything that is stemming from the criminal law, and, as a matter of fact, criminal-legal risks as those that are associated with enforcement practice of criminal legislation and its interpretation [10].

In fact, the researcher when considering criminal-legal risks emphasizes that their theoretical understanding and methodological aspects lie in the plane of law-enforcement forms of public management, as well as in judicial interpretation of criminal and criminal-procedural legislation.

The exploration of environmental-legal risks can be found in article A. P. Anisimova and O. E. Novikova "Environmental Law-protective Risks: Issues of Theory and Practice" [9]. The authors rightly point out that the legal structure of environmental risk was embodied in the environmental legislation. So, article 1 of the Federal Law No. 7-FL from January 10, 2002 "On Environmental Protection" explains the concept of environmental risk as "the probability of an event, which has adverse effects on the natural environment and is caused by the adverse effects of economic and other activities, natural and man-made emergencies" [9]. According to researchers, from the standpoint of legislative aspect the category of legal risk is most fully developed in the sphere of environmental insurance. In accordance with paragraph 1 article 18 of the Federal Law from January 10, 2002 "On Environmental Protection", environmental insurance is to protect the property interests of legal entities and natural persons in the case of environmental risks [9]. Normative-legal regulation of environmental risks, according to the authors, is reflected in the environmental expertise, one of the main principles of which, in accordance with article 3 of the Federal Law No. 174-FL from November 23, 1995 "On Environmental Impact Assessment", is a "presumption of potential environmental danger of any intended economic and other activity" [9].

The authors formulate the concept of environmental risk as "a complex inter-industry category designed to forecast and mitigate the adverse effects of environmentally hazardous or other activity on the state of human rights, including the human right to a healthy environment" [9].

It should be noted that the author's wording of the notion of environmental risk is in conflict with formally legal outlining of the specified category, set out in the law, because researchers have focused on the prediction and mitigation of consequences of negative human activity, rather than on the potential threat and

probability of adverse events resulting from the implementation of economic activity.

Thus, having analyzed the above conceptual provisions relating the essence of legal risks in public management, we should note a number of methodological nuances that are used by researchers specializing in various areas of public law in the interpretation of the corresponding category.

1. The scope of occurrence of public-law risks lies in plane of social relations that are the subject of legal regulation of certain public-law branch. Researchers distinguish different kinds of public-law risks depending on the affiliation to the branch of law – constitutional-legal, criminal-legal, environmental-legal, financial-legal informational-legal, etc.

2. Common to all researchers is the interpretation of public-law risks as a potential threat, the probability of events that have negative consequences for the public relations, which are the subject of legal regulation of certain public-law branches.

3. Classification public-law risks is not the subject of authors' consideration, but presented judgments show that public-law risks are divided into: standard-setting ones, i.e., arising from the structure of legal regulations; enforcement ones related to the implementation of legal regulations, as well as interpretive ones arising from the interpretation of law norms.

4. Among the reasons for the occurrence of risks the authors include legal gaps, inadequate structures of legal regulations, human errors of enforcers, political factors stipulating the adoption of authoritative decisions by the motives of political expediency.

Administrative-legal risks have a number of distinctive features in contrast to public-law risks occurring in other areas of public law, because of the nature of the regulated public relations.

Thus, specific features of relations regulated by administrative law are their public-managerial and executive-administrative nature. Specific subjects of the mentioned relations are state executive authorities, which, by virtue of entrusted to them functions, on the one hand are lawmaking entities, i.e. adopt by-laws governing the management of the various areas of public relations, and on the other hand they carry out enforcement activity related to the resolution of specific legal cases.

At the federal level, the subjects of subordinate law-making are the Government of the Russian Federation and the federal bodies of executive power (usually federal ministries). The mentioned public-authoritative structures can act as

subjects adopting legal regulations, which in some cases pose a risk situation of adoption of potentially dangerous public-managerial decisions. This category of administrative-legal legal risks is of standard-setting nature. Among the reasons for the emergence of standard-setting risks should be distinguished human errors in the development of normative legal acts, juridical collisions arising from conflicts of law norms and subordinate legal acts; between normative legal acts issued by federal bodies of state power and public authorities of the subjects of the Russian Federation; between normative legal acts issued by public authorities on matters of joint jurisdiction (in accordance with paragraph "j" part 1 article 72 of the Constitution of the Russian Federation, matters of joint jurisdiction include administrative, administrative-procedural, labor , family, housing , land, water , forest legislation, legislation on subsoil and on environmental protection) .

Activity of executive bodies in exercising of law-enforcement functions for adoption of individual legal acts aimed at resolving specific cases and taking specific managerial decisions involves the taking of managerial decisions that bear the risk of causing adverse effects to the established management order in a certain sphere of public relations. Consequently, this category of administrative-legal risks can be characterized as risks of law-enforcement nature.

Among the reasons for the emergence of law-enforcement risks should be noted the potential possibility for law-enforcer in the face of an authorized body of public administration to make a decision within "administrative discretion", i.e., the possibility to select a specific, optimal model of managerial decisions within the framework of alternative disposition formulated in a legal regulation. Selection of optimal model of managerial decision is fraught with subjective costs and does not exclude negative consequences.

It should be noted that, according to sub-paragraph "c" paragraph 4 and sub-paragraph "d" paragraph 5 of the Decree of the RF President No. 314 from March 09, 2004 "On the System and Structure of Federal Executive Bodies", federal service and federal agency does not have the right to exercise normative-legal regulation in the assigned area of activity, except for cases stipulated in decrees of the President of the Russian Federation or resolutions of the Government of the Russian Federation [4]. Therefore, in cases where the agencies and services are entrusted with standard-setting functions, along with law-enforcement risks, standard-setting administrative-legal risks can take place.

Public authorities having standard-setting competence possess the right to issue official acts of interpretation of law (letters, explanations, methodical recommendations and instructions, etc.) aimed at clarifying of previously adopted by

them normative legal acts. The risk of applying these official acts of interpretation lays in the fact that the substitution of interpretation of legal regulations by the normative content of a document, the provisions of which are realized by lower public-authoritative instances as legal norms, may occur. The mentioned group of administrative-legal risks can be characterized as interpretation risks existing in administrative-legal sector of public relations

Interpretation risks arising in administrative-legal relations may include interpretation of the competence of state bodies of executive power by judicial instances. While not questioning the legality of judicial interpretation of normative legal acts that clarify the competence of administrative public authorities we should draw attention to the potential adverse effects which may occur in the administrative activity of law-enforcers in the face of state bodies of executive power on the basis of acts on interpretation of law initiated by the judiciary.

There are often problems of opposite assessment of similar factual circumstances of cases and, as a consequence, taking opposite judicial decisions in judicial practice. Illustrative in this regard is the interpretation by arbitration courts the circumstances of cases within the signs of "extreme necessity", as defined in article 2.7 of the Code on Administrative Offences of the Russian Federation (hereinafter – CAO RF)[1].

For example, the Fourteenth Arbitration Appellate Court took Decision from March 11, 2011 on the case No. A05-13775/2010, according to which the court rejected the arguments of applicant (organization) concerning commission the offense in a state of extreme necessity [7]. The organization, which is the only company in the area to carry out activities on the collection and disposal of solid household waste, has been brought to administrative responsibility, under part 2 article 14.1 CAO RF, for the implementation of entrepreneurial activity without a special permit (license), if such a permit (license) is required. The legal position of the Court was that the person who had committed an administrative offence shall be released from administrative responsibility if it was trying to avert the danger that threatened the national interests or the legitimate interests of subjects of private law. Where the danger could be eliminated only through the commission of an administrative offence. In this case there were not such circumstances. The organization was carrying out the activity subject to licensing, without an appropriate license.

The Court explained that, in this case the defendant's guilt of the implied offences was that it had an opportunity for compliance with legislation, but it had not taken all the measures to comply with the legislation. Case file has no evidence that the Organization has requested the licensing authority for a license to operate

on the collection, transportation and disposal waste of 4 and 5 classes of danger, however, for reasons beyond its control, such a license has not been issued to it.

Opposite decision on a similar composition of administrative offense was taken by the Seventeenth Arbitration Appellate Court by Decision from April 22, 2011 No. 17AP-1922/2011-AK (case No. A60-43164/2010) [8].

In proceedings against the enterprise on an administrative offense under part 2 article 14.1 CAO RF arbitration court of first instance concluded in actions of municipal unitary enterprise "Hot Water Supply of settlement Atig" composition of an imputed administrative offense, however, being guided by provisions of article 2.7 CAO RF, found it possible to release the enterprise from administrative responsibility.

Refusing to meet the requirements on bringing to responsibility, the court of first instance was guided by the provisions of article 2.7 CAO RF. The Court took into account that the enterprise was an organization that provided services for heating, water supply of dwelling stock and socially significant institutions located in the settlement, and the operated by the enterprise boilers were the only objects with which it was possible to implement this activity.

Lack of heating and water supply could inflict negative social consequences, threat to the health and lives of the population of the settlement. These circumstances enabled the Court to describe the activities of the Organization in the absence of the necessary licenses as committed in the presence of extreme necessity.

Thus, based on the above, it is possible to offer the following broad interpretation of the notions of public-law risk and administrative-legal risk.

Public-law risk is a potential threat of adverse development of socially significant, public-law relations as a result of the adoption, implementation and interpretation of legal regulations.

Administrative-legal risk is a kind of public-law risk associated with standard-setting, law-enforcement and interpretive activity of executive authority bodies, which may inflict adverse effects for the established order of management in various areas of public administration.

The proposed concept of public-law risks corresponds with the concepts of "danger" and, consequently, "safety", "ensuring security" and so on, which are normatively defined in a number of laws and by-laws. So, the National security strategy of the Russian Federation describes the procedures and measures to ensure national security [5].

In accordance with paragraph 4 of the analyzed Decree of the President of the Russian Federation this strategy is "the basis for the constructive interaction

of public authorities, organizations and public associations to protect the national interests of the Russian Federation and to ensure the security of individuals, society and the State".

It should be noted that paragraph 6 of the Decree of the President of the Russian Federation from May 12, 2009 No. 537 formulates the concept of "threat to national security" that is defined as "direct or indirect ability to damage to constitutional rights, freedoms, decent quality and standard of living of citizens, sovereignty and territorial integrity, sustainable development of the Russian Federation, the defense and security of the State".

The main priorities of national security, in accordance with paragraph 23 of the Decree of the President of the Russian Federation from May 12, 2009, include national defense, state and public security.

Along with the main priorities, the paragraph of the Decree sets priorities of sustainable development, which include:

- increasing the quality of life of Russian citizens by guaranteeing personal safety, as well as high standards of living;
- economic growth;
- science, technologies, education, health and culture;
- ecology of living systems and environmental management
- strategic stability and equal strategic partnership.

The Concept of Public Safety in the Russian Federation, approved recently by the President of the Russian Federation [6], formulates the main sources of threats to public safety in the Russian Federation. The importance of the considered document for the analysis of the set theme is that there are key areas of the public safety and identification of potential risks, prevention and neutralization of which should be in focus of the public authorities' efforts.

Thus, in accordance with subparagraph "a" paragraph 6 of the Concept of public safety, the threat to public safety is understood as "direct or indirect ability to inflict harm to the rights and freedoms of man and citizen, material and spiritual values of society".

The main sources of threats to public safety, in accordance with the provisions of section II of the the Concept of public safety, include:

- ordinary crimes;
- extremist and terrorist activity;
- alcoholism and drug addiction;
- corruption;
- illegal migration;

- deteriorating of the technical condition of transport infrastructure and its runout;
- condition of nuclear facilities;
- economic human activities that threaten the environment;
- fires;
- hydrological regime of water objects;
- seismic hazard.

In this document, public safety is closely linked to environmental safety of economic activity. For example, in paragraph 20 section II of the Concept of public safety in the Russian Federation "The main sources of threats to public safety" it is noted that "analysis of the situation in various areas on ensuring biological and chemical safety leads to the conclusion that there are serious risks of infliction harm to people's life and health, the environment. New biological and chemical threats to public security have appeared against the background of the significant deterioration of ensuring the sanitary-epidemiological, veterinary-sanitary, phytosanitary and environmental safety, as well as the decline of the biotechnological and chemical industry".

In fact, the definition of "public-law risk" and "administrative-legal risk" proposed in this article and the concepts of "threat to national security", "threat to public safety" are close in semantic content, as they have a common methodological approach that lays in their interpretation as potentially adverse phenomena. However, there are also fundamental differences. The sources of "threat to national security" and "threat to public safety" are defined in plane of events and actions entailing negative consequences, but the concept of "public-law risks" includes a law-making context – adoption, implementation and interpretation of legal regulations.

The authors of this article invite all those wishing to respond to this article, to offer its own vision of the issue of public-law risks and constructive discussion with the aim of developing a fundamentally new scientific direction in science of administrative law.

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Makarova E. G., Kryuchkov V. G.

THE PRINCIPLES OF INTERACTION OF POLICE WITH EXECUTIVE AUTHORITY BODIES OF THE SUBJECTS OF THE RUSSIAN FEDERATION AND LOCAL SELF-GOVERNMENT OF THE RUSSIAN FEDERATION

Makarova Elena Grigor'evna,
c.j.s. (PhD of jurisprudence), Associate professor at the Department of administrative law and administrative activity of Internal Affairs Bodies at Omsk Academy of RF MIA, Omsk,
omnivores2010@mail.ru

Kryuchkov Vyacheslav Gennad'evich,
Deputy Chief of police (for operations) of the Directorate of the Russian Ministry of Internal Affairs in Omsk region,
KVG5507@gmail.com

The authors allege that the task of principles of interaction of police with executive authority bodies of the subjects of the Russian Federation and local self-government is to provide from all variety of possible interrelations exactly the interaction as a prerequisite to optimize and improve the effectiveness of managerial activity of public authorities, which include police and executive authority bodies of the subjects of the Russian Federation and local self-government.

The basic principles of interaction of police with executive authority bodies of the subjects of the Russian Federation and local self-government are disclosed in the article.

Keywords: principles of interaction, police, executive authority bodies of the subjects of the Russian Federation.

Interaction between the police and executive authority bodies of the subjects of the Russian Federation and local self-government is based on certain principles, which are determined by the following factors:

- what should be the relations between the police and local self-government bodies;
- what should be the pattern of conduct in the relations of these bodies with each other;
- what ideas should underlie them [1].

The complexity of the problem lies in the fact that there is a need to distinguish between the principles of organization and activity of the police and executive authority bodies of the subjects of the Russian Federation, local self-government bodies, and those principles, on the basis of which their interrelations should be arranged. There are some similarities, but also there are differences.

The principles of interrelations are derived from the first ones, closely connected with them, but at the same time have their own distinctive characteristics, their own content. Their feature is that they are manifested in the process of interaction of the police with executive authority bodies of the subjects of the Russian Federation and local self-government.

As a matter of fact, their goal is to provide from the variety of possible interrelations namely the interaction as a prerequisite to optimize and improve the effectiveness of the managerial activity of public authorities, which include the police and executive authority bodies of the subjects of the Russian Federation and local self-government.

Thus, we can formulate the basic principles of interaction of the police with executive authority bodies of the subjects of the Russian Federation and local self-government [2].

1. The principle of legality. The principle of legality is fundamental in the interrelations of the police with executive authority bodies of the subjects of the Russian Federation and local self-government. Only in strict compliance with the principle of legality we can speak about Legal Administration. This activity is only possible if the detailed legal regulation of public relations that occur during interaction of the police with the public authorities of the constituent entities of the Federation.

2. The principle of appropriateness. The second most important principle of interaction is the principle of appropriateness.

It is clear that any interactions must have some sense, be aimed at the realization of nationwide goals. This principle includes the separated in some normative

acts principle of compliance with nationwide interests, relating to it as general to private. Violation of the principle of appropriateness in the interaction of the police and local self-government, for example, in case of an unfounded delegation of certain state powers to local self-government bodies, which they cannot successfully implement, should be the ground for cancellation of relevant legislative acts and agreements.

3. The principle of autonomy of the police bodies and executive authority bodies of the subjects of the Russian Federation within the limits of their competence. Police and territorial forms of government autonomously implement their powers within the framework of their jurisdiction, without intervention of other bodies.

The principle of autonomy, however, does not preclude monitoring over their activity by other bodies. Autonomy means their legal, organizational and financial autonomy. Within the limits of their competence the bodies autonomously plan and organize their work, make decisions and ensure monitoring of their implementation.

4. The principle of equality of the police and public authorities of the subjects of the Russian Federation. The essence of this principle is that the police and territorial forms of government enter into interrelations as equal subjects of law. Ensuring of this principle allows minimizing the differences in determination the scope of competence of each body.

Thus, the equality implies a guaranteed minimum of equal rights and duties of the local community and the ability to acquire and exercise the same amount of powers when their delineation. Equality of rights between the police and executive authority of the subjects of the Russian Federation, local self-government is nothing but a creation of a regime of their equal legal, institutional and financial abilities.

5. The principle of coordination of interests. Compliance with the principle of coordination of interests is consistent with the limitations of their competence, because each of them has to reckon with the rights and interests of other, is obliged to contribute to the normal functioning of both the police and local self-government bodies, and to exercising of their powers. Among all the principles this principle is to the greatest extent subjected to legal regulation and on its basis one can create a mechanism of interaction, since the basis of mutual actions can only be voluntary consent of participants to relations.

The semantics of the word "coordinate" means to discuss, develop a unified opinion about something, get consent to anything. Securing of such unity and

consent through legal means will contribute to the effective collaboration of the police and local self-government bodies, i.e. to their interaction [1].

In practice, this is achieved by informing each other about plans for work, performed activities, developed documents, as well as through coordination of plans, actions of public authorities and their structural units in order to solve common tasks. To perform these functions, the police and local self-government bodies create special conciliatory or coordination commissions, or themselves undertake their implementation. And a very important role is played by monitoring over the progress of implementation of agreed activities, during which exercise assessment of done work and determine the compliance of done work with taken decisions and agreements. Deviations from the specified status are eliminated or the decision that defines this status is adjusted on the base of monitoring results.

6. Principle of resource endowment. It is aimed primarily at satisfaction of their needs for implementation the powers assigned to these bodies both delegated to them state powers and powers relating to their jurisdiction. This principle is usually enshrined in all the laws of the subjects of the Federation on the transfer of certain state powers to local self-government bodies. At that, it should be borne in mind that it is not only concerning the allocation of the necessary financial resources, but also concerning the availability of other resources: material, human, legal and so on.

7. The principle of mutual responsibility. In the interrelations between the police and local self-government bodies there should take place not only the responsibility of local self-government bodies to the police, but also the responsibility of the police.

8. The principle of publicity. The principle of publicity of entering into contracts, agreements means the guaranty of protection the rights of a municipal formation, since the full information makes it impossible to unilaterally change contractually established mutual rights, obligations and responsibilities.

It appears that in order to enhance the effectiveness of state and municipal management these principles has to be enshrined in at the legislative level [3].

The principles of interaction between the police and local self-government bodies are, as has already been noted, the foundation, on which all interrelations between these bodies, legal forms and mechanisms of their interaction have to be built. At the same time, in the absence of specific norms, the police and local self-government bodies must be guided by the general principles.

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Pliev A. L.

LEGAL AND TACTICAL ASPECTS OF THE INSPECTION OF A TRAFFIC ACCIDENT SCENE IN PROCEEDINGS ON CASES OF ADMINISTRATIVE OFFENCES[1]

Pliev Alik Levantievich,
head of criminalistics laboratory, Senior lecturer of the Chair of criminal law at Vladikavkaz Institute of Management,
pliev-1969@mail.ru

Argues that the use of advances in criminalistics and other sciences in the sphere of administrative process can improve the quality of proceedings on cases of administrative offences.

It is noted that the Code on Administrative Offences of the RF does not contain a clear determination of goals and objectives of inspection in a separate specific article, and thus creates the basis for mixing the concepts of inspection (27.8 CAO RF) and examination (27.9 CAO RF).

The methods of fixing a traffic accident scene, which is carried out in the framework of inspection, are reviewed in the article.

Keywords: traffic accident, inspection of traffic accident scene, proceedings on the case of administrative offence concerning the fact of a traffic accident, methods of fixing a traffic accident scene.

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In paragraph 1.2 of "Traffic Rules" road traffic accident (RTA) is defined as an event that occurred in the course of movement of a vehicle with participation of this vehicle when as a result people are wounded or deceased, transport vehicles, structures and cargoes are damaged or some other material damage is inflicted. From this definition it follows that a prerequisite for the attributing an event to traffic accident is the presence of a moving vehicle, a road and occurring harmful effects to human life and health or infliction of material damage.

Case on administrative offence on the fact of a traffic accident is instituted when as a result of this event slight or moderate damage to human health has been caused (articles 12.24, 12.30 of the Code on Administrative Offences of the RF (hereinafter – CAO RF) [1]), in other cases (if the accident causes serious harm to human health or leads to the death of a person) criminal proceedings are instituted. Such incidents often result in material and moral damage to a private or legal person. To address the issues arising from an RTA CAO RF provides for the drafting of a protocol on administrative offence at the accident scene (28.1.1 CAO RF) and, if necessary, administrative investigation proceedings (article 28.7 CAO RF).

The circumstances to be clarified in cases of administrative offences are enough clearly formulated in article 26.1 CAO RF. Such circumstances on the cases of RTA are mostly identified in the course of inspection of the place where the offence has been committed. CAO RF provides for the conducting of various kinds of inspections as a measure to ensure proceedings on cases of administrative offences (article 27.8 CAO RF), as well as the procedure for drafting up a protocol of inspection of the place of committing an administrative offence (article 28.1.1 CAO RF).

Inspection as a procedural action is envisaged by both CAO RF and the Criminal Procedure Code of the Russian Federation, the Federal Law "On Operational Investigative Activity", as well as by other laws and subordinate acts. Inspection is uniquely understood in all cases, but the goal, form and procedure of inspection is different, and from this standpoint a clear definition of goals and objectives of inspection in a separate specific article of CAO RF would be justified. CAO RF does not contain such definitions, thereby setting up a framework for mixing the concepts of inspection and examination. Although the procedural order of conducting examination and inspection are formulated as various procedural actions, their goals and objectives are not defined by the Code. It is known that in practice, inspection and examination as procedural actions are often substituted by each other. Unlike CAO RF, the Criminal Procedure Code of the RF does not have such gap. Article 176 of the Criminal Procedure Code of the RF (hereinafter – CPC RF) clearly

states the goals and objectives of inspection, as well as special kinds of inspection, for example, article 178 CPC RF "External Examination of Corpse. Exhumation".

Given the nature of the spheres of application the norms of administrative law, it seems advisable to formulate such objectives and tasks of inspection, which would correspond to the needs of administrative proceedings in general.

The purpose of the inspection the scene of administrative offense can be formulated as follows – identification and fixation of data about the committed offense. Such data can be displayed in material medium in the form of traces-images, traces-items, traces-substances, as well as in non-material form of information, in memory to witnesses, victims and perpetrators of an incident. Data identified at the scene of administrative offence can later be used as evidence in proving concerning the case of administrative offence. About peculiarities of proving in administrative process, in particularly, is written by N. V. Sidoryak [5, 37-39]. She emphasizes the problematic aspects of the use of evidence in administrative proceedings.

Inspection of traffic accident scene like any other kind of inspection is very important procedural action. Exactly inspection allows determination of the mechanism of occurred event, receiving of primary information through the identification evidences, their preliminary study and analysis. Versions are built and further actions are planned on the base of such primary information. In parallel with inspection may be conducted other procedural actions, which are also aimed at obtaining evidence about an occurred event.

Based on inspection purposes, we can distinguish the following tasks that need to be solved by an official, who carries out this procedural action in accordance with CAO RF:

- determine the time and place of collision (rollover, automobile-pedestrian accident) of a vehicle;
- determine the location of RTA participants prior to the accident;
- identify the speed of vehicles;
- find out the mechanism of RTA and marking formation;
- determine exactly what road rules have been violated;
- determine the condition of the road surface at the scene of traffic accident;
- find out weather conditions of the moment of accident;
- determine witnesses to event;
- presence of road signs;
- possibility to prevent RTA;
- other circumstances.

While inspection of traffic accident scene as a procedural act has enough significant features in administrative process, in general, its direct procedure has similarities to inspection provided for by CPC RF. From this point of view, for its efficient carrying out and solving the above mentioned tasks may be useful to use tactical techniques (recommendations) of inspection elaborated by forensic science, which are aimed at optimization of carrying out of this kind of procedural action. In addition, a new branch "Vehicles Science of Traces or Clues" develops in the structure of Criminalistics, whose developments can provide substantial help in solving issues that arise in investigation of road traffic offences. Artificial limiting of forensic means and techniques only to criminal procedure sphere is not justified, and their effectiveness for the purposes of administrative proceedings is obvious.

One of the major tactics recommended by forensic science is phased inspection. This approach allows you to arrange all activities, comprehensively explore the place and get as much evidence of investigated event. It is proposed to divide this procedural action into three phases: preparatory (initial actions upon arrival at the scene of accident); working (identification, fixation, and seizure of evidence); final (summarizing the work done).

Inspection must be carried out immediately after receiving information about the RTA. The delay means the loss of valuable evidence available at the accident scene, because the more time passes since the moment of accident, the more changes are made into the situation.

In the preparatory phase, on arrival at the scene of accident, the person authorized by CAO RF to conduct inspection and draw up the protocol, first of all, must provide first aid to victims, as well as their immediate hospitalization if necessary. Determine the boundaries of inspected territory and ensure its protection. Find a temporary bypass road for vehicles and arrange traffic. Estimate the volume of upcoming work, and if necessary to attract professionals and other persons to assist, as well as attesting witnesses. In addition, the head of inspection, has to find out whether there have been any changes in the circumstances of the committed offence, if yes, which ones? V. N. Kutafin indicates this important point of inspection: "Upon arrival to traffic accident scene one should first clarify whether all the previous requirements have been met, and only then with the help of witnesses, victims and persons who have arrived first on the scene find out circumstances of the RTA, any changes in situation, location of vehicles, victims, and taking into account the gathered data determine the boundaries, procedure and objects to be inspected" [3, 12].

Before start of inspection, if necessary, one should prepare technical means. Use of technical means in the course of inspection provides you more detailed and full exploring of traffic accident scene. Domestic specialized enterprises, such as, for example, “Svema-SIB”, “Soyuzspetsosnashchenie» produce kits for Traffic Police officers, which contain the means necessary to work at the scene of traffic accident. Technical means should be kept in good order and preparedness, since inspection should always be performed immediately and moreover promptly in cases of RTA.

Working phase of inspection the place of road traffic offense involves identification and fixing of all kinds of traces formed as a result of the incident. For the most detailed carrying out of search works it is advisable to turn to forensic science, which has a number of useful recommendations on this occasion in the form of tactical techniques of inspection. Such tactical techniques should be applied depending on the situation.

If an inspected area has a significant extent, it is recommended to use such tactic as “inspection by squares”. The essence of this technique is that the inspected territory mentally divided into squares and each square is examined separately. In such a case a large number of specialists should be involved in the inspection. Such specialists can be called from the body conducting the inspection, if there are any, or from Criminal Expertise Centre to assist in detection and fixing of evidences.

The use of this tactical technique creates the conditions for a more thorough study of accident scene and eliminates the possibility of losing any of the evidence that may be essential to clarify the circumstances of a committed offence and ultimately determine the perpetrator.

If the situation allows inspectors to limit inspection only to one side of carriageway, it is advisable to apply a “linear inspection”. This tactic involves inspection of territory along a mentally planned trajectory (line). This creates an opportunity not completely restrict the movement of cars, that is rather important on roads with a great flow of vehicles.

In cases where as the result of RTA the vehicles involved in accident are at a considerable distance from each other and from the factual point of collision, and if there is no need to examine the whole area, you can apply such tactic as “node inspection”. In such a case certain areas (nodes) of the place of committed offence are inspected. For example, the area around the vehicle is inspected separately, separately inspected the particular place of collision, separately inspected a plot with the wreckage (parts) of the vehicle body.

Not rare, there is a need for inspection of territory near the scene of RTA. In such cases “spiral inspection” may be effective. The essence of this tactical technique

lies in the fact that inspection is carried out starting from the center, where a collision has occurred, further to the periphery along the spiral line and thereby inspectors capture land located near the scene of the offense, where also can be found traces of various kinds, which will help in clarifying the circumstances of the event. In this case, you can use another tactical technique such as "inspection on concentric circles".

All of the above tactical techniques of inspection are carried out in various ways, using methods such as, for example: eccentric (inspection from the center to the periphery); concentric (inspection from the periphery to the center); frontal (full inspection); detailed (inspection of individual items, fragments of vehicle body, and traces of chassis), etc.

Tactical techniques of inspection can be applied individually or in combination, depending on a specific situation.

During the working phase of inspection of RTA scene, except for actions on search and detection of evidence, there is provided a fixation of the place of offense, as a whole, and also separate traces detected at the place, items, the very vehicles, as well as testimony of witnesses and victims.

Main method of fixation during the exploring of RTA scene, according to article 28.1.1 CAO RF, is the description of committed offence in corresponding protocol. In addition, other fixation methods can be used, such as, for example: photography, video recording, mapping, etc.

Measurement is an important element of inspection the scene of offence. Data obtained by measurements allow us to recreate a picture of an occurred event, its dynamics and ultimately as evidential information can be used in proving concerning administrative case.

Photographing as a secondary method of fixation is the most common practice and a great help in its effective carrying out can be provided by photography techniques that have been developed by the branch of criminalistic technique of forensic photography. Such methods applied in criminal proceedings in the conduct of investigative actions allow producing of high-quality visual images of an explored place, and there is reason to believe that in administrative process and, in particular, during fixation of RTA scene, these methods can be very useful.

When photographing the place of commission of a traffic offence the following types of photographing can be used:

1. Orienting photographing. This method of photographing captures the traffic accident scene in such a way that you can navigate the terrain where

the event occurred using a photo, i.e. near objects (marks) allow generally determine this place (as such marks may be buildings, crossing roads, river, etc.);

2. Overview photographing. This method of photographing allows you to capture directly the accident site as a whole (close-up);

3. Node photographing. It is intended for the capturing of separate areas (nodes) of RTA scene with the nearby orienting points. For example, the images of a vehicle next to a tree or piece of bumper near the vehicle. These photographs allow you in the future to visually explore specific moments of collision or rear-end collision, broadly determine the mechanism of emerging of traces, approximate distance between objects, etc.

4. Detailed photographing. This method of photographing allows you to capture separate traces, items, substances and other objects at RTA scene. This method of photographing should be implemented with a graduated scale for the indicative determination the size of objects.

The above mentioned types of photographing are carried out through various methods of capturing. Orienting photographing may be carried out by method of panoramic shooting. In addition, this method can also be applied in cases where separate vehicles, traces and other objects are captured and if they cannot be placed in one frame. Overview and node photographing is advantageously carried out through application of opposite and crosswise photographing to capture all aspects of RTA scene and its separate areas, as well as vehicles themselves. In the detailed photographing in addition to the mentioned methods, when you need to capture small sized objects close up, you can use the method macrophotography. This method of photography should be implemented through using reproductive mount or tripod. It should be emphasized that today's digital cameras have panorama features and macrophotography.

Another way of fixation RTA scene during inspection is the mapping of the place where the offence has been committed. For this purpose there is a special paper with millimeter grid. The schema can be written either true to scale or with drawing all the necessary measurements. The problem of such schemes is that often they are not of high quality and hard to read. A person carrying out inspection is not obliged to be familiar with mapping and therefore it may contain errors or not fully display the peculiarities of an occurred offence. In order to get a quality scheme of RTA scene, such work should be entrusted to a specialist.

Data about committed offence obtained during inspection should be correctly fixed from a procedural standpoint; otherwise they lose their probative value. Protocol of inspection of the place where an offence was committed shall be drawn up

in strict conformity with the requirements of CAO RF, and the nature of contained in it information must be entirely factual, and in no way probabilistic.

Tactical techniques will prove to be useful, only when bring real positive results, when be applied with taking into account a specific situation. The conditions and situation, in which inspection is carried out, are factors influencing the choice of a particular tactical technique. Excluding these factors, the above recommendations may be ineffective. One cannot but agree with V. Paulauskas who gives a considerable importance to the situational peculiarity of RTA. In particular, he notes: "In our opinion, during the investigation of traffic accidents that occurred in the dark, the situation is one of the most important elements. …it is necessary to professionally and objectively recreate the situation before, during and after the accident" [4, 21].

In addition to the general requirements and tactical recommendations mentioned above, a crucial point in the inspection of RTA scene is it operative carrying out. Such important requirement is noted by A. G. Gamzikov, "Location of traffic accident is often the carriageway of the road (highway, street), where in a rapidly changing environment it is difficult to keep unaltered the original situation. Sometimes it is impossible to fence about an accident scene and arrange bypass for the flow of traffic, and if it possible then only within the limits of the minimum period of time. Therefore, inspection is expeditiously carried out, without any expectation of re-inspection, because it is obvious that after the restoration of traffic all traces and evidence, which have not fall into the field of view at the first inspection, will be destroyed by the flow of vehicles and pedestrians"[2, 14]. The aim is to conduct quick inspection, as quickly as possible to release the carriageway from the cars involved in traffic accident and resume the normal flow of vehicles, and, at that, gather enough evidence needed for the proper resolving of such cases. With each passing day this problem becomes more urgent not only for big cities, but even for small ones, since the number of cars on the roads grows every year, and interruption of dense flow of vehicles means the creation of traffic jams and accidental situations.

Choosing the optimal tactics of inspection may significantly reduce the time of its carrying out, but that is not enough, because most of the time when inspecting RTA scene is spent for conducting measurements. Modern technologies can help in such a situation. In Europe, for example, already use terrestrial laser scanning method for the fixation of RTA scene. Such devices (for example, Riegl VZ-400 is used by the police in Switzerland), terrestrial laser scanners are able in a short period of time to create a 3D computer model of RTA scene in general, as well as

of individual objects in high definition, and automatically perform all necessary measurements. Today such devices are tested also in Russia. There is no doubt that in the near future terrestrial laser scanners, as well as other modern technologies will expand the tool base of institutions carrying out proceedings on administrative offences, which will significantly improve the quality of work within the framework of administrative proceedings in general, and inspection of RTA scenes in particular. However, before applying these or other means and methods, in accordance with the requirements of CAO RF, they must be tested and recommended for use by appropriate state specialized agencies. A separate issue is the training of specialists, who will use such means. In addition, with the introduction of modern technologies, the necessity of further procedural regulation of their application may arise.

The use of advances in criminalistics and other sciences in the field of administrative process can improve the quality of proceedings on cases of administrative offences, and we believe that this issue has to be given more attention.

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Popov A. I.

TOWARDS THE QUESTION ABOUT THE PLACE OF ADMINISTRATIVE CONTRACT IN THE SYSTEM OF ADMINISTRATIVE LAW[1]

Popov Aleksandr Ivanovich,
c.j.s. (PhD in law), Senior lecturer of the Chair of operational-investigative activity at Ryazan Branch of Moscow University of the RF MIA,
popov_62@mail.ru

The author argues that contractual regulation penetrates into the branch of administrative law, becoming an independent legal phenomenon, designed to be an auxiliary means of regulating social relations within the framework of executive-managerial activity.

Insufficient elaboration of the theoretical aspects of the theory of administrative contract and the need to determine what approaches to determination of the place, role and essence of administrative contract have been formed in the legal literature are noted in the article.

Determining the external expressions of administrative contract, the author emphasizes that administrative contract, first and foremost, is a comprehensive legal relation that is based, as opposed to an administrative act, on bilateral will expression of the parties.

Keywords: administrative law, administrative contract, public administration, administrative-legal regulation.

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The development of interdisciplinary research leads to the interpenetration of forms and methods of legal regulation. This fact confirms the possibility of using contractual forms, based on the principle of optionality, in such branch as administrative law, which has traditionally been based on mandatory methods of legal impact.

Administrative contracts issue today is not in the second tier of administrative-legal science, and is at the forefront of it. And this is conditioned not only by various socio-economic, political and other socially significant aspects, but also by the need of administrative-legal science to determine the place, function and role of contractual regulation in administrative (managerial) relations. Application and use of administrative contracts in the sphere of public administration has the closest connection with the practice of public administration, which feels the need for appropriate legal regulation. And, as you know, a prerequisite for the formation of a legal framework is certain theoretical exploring.

Modern trends in the science of administrative law allow saying that the theme chosen for the study has not only theoretical, but also practical significance, because it allows you to identify the causes that affect on the place of administrative contract both in the system of administrative law and in the system of public administration.

Pretty much, legal scholars still have not carried out fundamental researches concerning the place and role of administrative contract in the system of administrative law. The solution to this problem will define administrative-legal nature of this phenomenon, which, as we know, has a quite multifaceted nature.

It should be noted that contractual relations in general are alien to managerial relations. Recently, however, there is an objective need for the existence of conciliation procedures, which stipulate the application of contractual form of regulation of managerial activity. There is also no need, which is dictated by socio-economic aspects, to reduce administrative law exclusively to the methods of administrative and authoritative impact on public relations.

Development of understandings of about administrative contract is associated with the expansion of scientific researches within the framework of administrative law. Problematic of administrative contract extends not just through new research, but also through comprehensive study of the subject on several fronts.

In our view, it is necessary to eliminate a gap formed in the administrative-legal science by determination the place and role of administrative contract in the system of administrative law.

Traditionally, the use of the term of "contract" is characteristic of civil law. However, due to the above-mentioned possibility of application of this legal category in administrative law, as well as the importance of this concept for administrative-legal regulation, the use of the sectorial concept of "contract" to the terminology of management is not quite justified. In terms of the understanding of this term in administrative law, it must be adapted to managerial relations.

This fact gives rise to the need to operate a large number of categories, not specific to administrative law, reflecting the essence of civil-law relations going beyond administrative-legal regulation. Features of administrative-legal regulation in different spheres and sectors of the public administration require the use of special terms and concepts, as well as explanation of these terms. All of the above together causes some difficulties for legal-scholars.

However, as the experience of the administrative-legal researches shows, certain administrative-legal categories and concepts have penetrated from other branches of both public and private law. In connection with this, one should agree with the point of view of the Yu. E. Avrutin about that it is difficult to give even an approximate list of the concepts that "have come" in administrative law from other branches of law [1, 5].

Within the framework of administrative law you cannot unequivocally accept civil doctrine as the basis when the study of the category of "administrative contract". Of course, you will need to use the civil-law researches of contract, but it is not advisable to apply concepts that have been developed within the framework of private-law regulation. Here we cannot support the view of I. A. Ostapenko that to enter into and perform administrative contracts it would be appropriate to use, though in specific limits, stipulated by the civil legislation general requirements of contractual law [11, 37].

The author also points out that administrative contract in the system of legal relations takes an intermediate position between administrative act and contract of private-law nature. In this, administrative contracts are subject to the general principles of contractual law, with certain restrictions, due to the peculiarities of administrative-legal regulation [11, 39-40]. However, it is not entirely clear towards what sectorial affiliation does contractual law gravitate? If from the point of view of civil law, then the application of the general provisions is considered to be inappropriate.

We believe that in considering administrative contract, one must be rely on research carried out in the framework of the general theory of law, which determine the place and role of contract in the system of legal regulation as a whole.

It should be noted that there is a "chaos" in administrative law science, which is caused by the existence of different concepts, scientific ideas, opinions, doctrines, views and opinions on the nature of administrative contract. However, there is no a unified theory of administrative contract. The mentioned forms of views about the concept and essence of administrative contract are very close to each other in content, since they are fundamentally based on the ideas of two-three scientists made back in the early 90-ies of the XX century. In subsequent studies the concepts are formulated through complementing existing views by actual materials. Terminological diversity of definitions of administrative contract is due to a lack of legal consolidation of this notion in the current legislation.

In recent years there has been a sufficient number of works devoted to the specific issues of administrative contract. This indicates a positive dynamic and allows you to talk about the transformation of views on administrative contract in the process of their case study.

However, in our subjective opinion, perhaps only dissertation research of L. V. Shcherbakova devoted to administrative and contractual obligation [16] significantly enriched the administrative-legal science, although the study has touched only one aspect of administrative contractual theory.

The attempts that have been taken by the scientific community on the proposal of legislative enshrining of unified provisions concerning administrative contracts [9, 209-214] have not led to the emergence of real normative legal acts. This, in our view, is due to inadequate study of the theoretical aspects of the theory of administrative contract.

Regulatory framework for administrative and contractual practice at present is represented by the norms of administrative law that are contained, usually, in different sources.

We should agree with the point of view of L. V. Shcherbakova that, as a matter of fact, the European model of administrative and contractual obligations with a minimum level of adaptation to the domestic legal realities has been shifted into the Russian legislation, what will not allow to develop and enrich the theoretical base of administrative contract [17, 288].

There is no a unified doctrinal approach to the definition of the place and role of administrative contract. Therefore, it seems to us that it is necessary first of all to focus efforts of legal scholars and move from the discussion to offering real definitions, which subsequently could be legally enshrined. Only in this way it will be possible to eliminate a gap formed between administrative-legal science and practice.

However, hard as legal scholars try, in the field of view mainly remains only the contract itself. It seems to us that the extension of the subject matter of raised problem would make it possible to comprehensively explore the legal nature of administrative contract.

On the other hand, we should mention the fact that most of the main administrative-legal categories are also enough debatable to date.

As rightly pointed out by Yu. E. Avrutin, interest towards the conceptual apparatus of administrative-legal science is quite high and is aimed at understanding the prospects for consolidating the doctrinal judgments into legal interpretation in normative legal acts [1, 6, 7].

For the task you need to determine which approaches have developed in the legal literature to determine the place, role and nature of administrative contract.

To solve this task one need to determine what approaches have developed in the legal literature concerning determination the place, role and essence of administrative contract.

So, Yu. N. Starilov attributes administrative contract to one of the administrative-legal forms of realization of managerial actions [5, 401]. Most authors of modern textbooks on Russian administrative law [4, 159-164; 7, 142-148; 6, 294-296; 2, 263-266; 3, 155-158] also attribute administrative contract to one of the form of public administration.

O. S. Rogacheva and E. A. Koshevarova correlate administrative contract with the form of public administration that allows regulation of public relations on the basis of will and expression of will of administrative law subjects, who have volunteered to take on certain obligations in order to achieve a public good [13, 42].

Certainly, the forms of public administration play an essential role in the mechanism of realization the powers of public authorities. You must also take into account, as rightly pointed out by N. G. Kanunnikova, that forms of public-managerial activity of executive authorities and their officials are defined by law, enshrined in the laws and other normative legal acts governing the activities of these bodies. Therefore, in the public administration public authorities and their officials are obliged to use only those forms of activity that are established by the norms of administrative law [8, 12].

Specified author by giving the notion to the form of public administration argues that it is an outwardly expressed kind of action of a public authority, which fills executive branch by state-legal content, represented by administrative-legal acts that promote the goals, objectives and functions of public administration and generate legal effects [8, 12]. As follows from the definition, administrative contract

does not refer to the external form of expression of a public authority action, that is not uncontroversial.

In turn, I. A. Ostapenko, considering the issue of place of administrative contract in the system of contractual law, notes just the fact that the administrative contract is an institute of administrative law [11, 39-40], without giving proper attention to the problem of correlation of administrative contract with other institutes of administrative law, and not pointing to its place among other institutes.

There is also a point of view on the possibility of attributing administrative contract to the legal form of expression the method of regulation of public relations [14, 53-72]. A. I. Stahov also regards the contract as a special legal tool aimed at ensuring of execution [15, 23].

In our view, such interpretation of administrative contract also has the right to exist, since it seems possible to talk about contractual method as about a separate method of administrative-legal regulation of managerial relations, or contract as about a separate element of administrative-legal regulation.

Thus, contractual regulation also penetrates the branch of administrative law, becoming an autonomous legal phenomenon designed to be an auxiliary tool of regulation of public relations within the framework of executive-managerial activity.

In turn, A. Yu. Melehova rightly notes that so far there is no a unified concept of administrative-contractual regulation in the existing Russian legislation [10, 55]. In support of the specified author's point of view you must also emphasize that the theory of administrative law lacks of not only a unified understanding of administrative regulation, but also of well-established view about the possibility of existence of such regulation.

Also the legal literature indicates that the relations concerning the conclusion, execution and termination of administrative contract are regulated by substantive and procedural norms, the totality of which should be considered as an independent institute of administrative law [10, 55-56]. And once again, we emphasize that there is no mention of the place of this institute in the system of administrative law.

Moreover some authors [5] transfer the problem of the administrative contract into administrative-procedural plane, saying about a special administrative-contractual procedure. In this connection one has to point out that, of course, the procedural aspect of administrative contract has the right to exist, but, in our view, it is not completely justified to move it beyond substantive law without a precise determination of its place and role in the system of administrative law,

while being based on the Western-European model of administrative-procedural legislation.

Also, it is not clear about place of administrative-contractual proceedings (or procedure) within the framework of the administrative process in general. This applies to issues dealing with disputes that may arise on the basis of concluded administrative contracts. So, in the light of the draft Code of Administrative Court Procedure of the Russian Federation [12] it is difficult to determine whether will the disputes arising between the parties of an administrative contract be settled in the course of administrative proceedings.

Criticizing the concept of administrative-contractual proceedings (procedure) it is fair to say that categories such as conclusion, amendment and termination of administrative contract is broader than the concept of "administrative proceedings", because the dynamics of administrative contract must be also included into the content of such proceedings. Within the framework of administrative proceedings or administrative procedure set out exclusively procedural actions that do not reflect the essence of a contractual obligation. It is necessary to make a reservation that our position on this issue is also not indisputable.

Numerous and quite dynamically developing views on of administrative contract tell us about enough high interest in the subject. However, as we have noted above, this fact only notes the relevance, and it is early to say about sufficient elaboration of this issue.

A critical look at the existing ideas about the place and role of administrative contract in the system of administrative law may lead to the conclusion that this issue is not resolved from a theoretical point of view.

Thus, administrative contract has a complex legal nature. It is often considered as a form of public administration and as a method of state-legal impact. However, these are only the external manifestations of administrative contract. But we must not forget that administrative contract, in the first place, is a complex legal relation, which, unlike an administrative act, is based on bilateral expression of will of the parties.

Current trends suggest that the theory of administrative contract develops within the framework of theoretical problems of the forms and methods of public administration. These directions, in our deep conviction, have a right to exist, but are not fully justified because they do not give a full explanation of the essence of administrative contracts.

At first sight it might seem that administrative contract must be seen as a form of expression the activity of participants of managerial relations arising in

connection with the implementation of their subjective rights and responsibilities in the area of public administration. For a number of reasons it is impossible to fully agree with such an approach:

First, in the legal sense the contract should be understood as a form of exposition of these or those relations, that is, as a kind of administrative legal relation based on mutual expression of will of the parties.

Second, administrative contract can be characterized as a legal relation of a regulatory nature.

And, finally, third, administrative contract can be called complex administrative-legal relation having a complex legal nature, characterized by the possibility of legal regulation by the various branches of public law.

It seems to us that the theory of administrative contract must evolve within the framework of the substantive part of the theory of administrative-legal regulation mechanism, and administrative contract, respectively, can be its independent element, acting as a kind of administrative legal relation.

There are serious prerequisites to identification the institute of administrative contract as a complex legal institute that requires system study from the point of view of different approaches.

The above thoughts and opinions give a reasonable right to talk about the formation of the institute of administrative contract within the framework of administrative law, which has its own legal regulation.

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ANNOUNCEMENT

Within the framework of International scientific and practical conference organized in March 2014 by the Law faculty of the Financial University, Department of "Administrative and informational law" and faculty "Risks analysis and economic security" (Departments: "Risks analysis and economic security", "Safety of Living", "Information security", "Strategic and anti-crisis management") organize a section:

LEGAL RISKS IN THE SYSTEM OF PUBLIC MANAGEMENT

The organized section invites to discuss the following issues:

1. Methodological approaches to the determination of the concept of "legal risk":

- the concept of "legal risk": the issues of structuring and determination;
- problems of classification of legal risks in the system of public management;
- problems of delimitation of legal risks in public and private law.

2. General-theoretical issues of legal risks in the system of public management:

- legal risks of norm-setting in the system of public management;
- legal risks of administrative and administrative-procedural legislation;
- legal risks in public service;
- legal risks of formation shadow corrupt environment in the system of relations of power;
- legal risks of making managerial decisions;
- legal risks in the sphere of informational relations.

3. Legal risks in various areas and fields of public management:

- legal risks in the field of national defense, state security and public safety;
- legal risks in the field of information security;
- legal risks in the field of sustainable development and economic security;
- legal risks in the field of system on security in the transport sector;
- legal risks in the customs system of the Russian Federation;
- legal risks in environmental management and protection of environment;
- public-law risks in housing and communal sector;
- legal risks in the field of management of science and technologies;
- legal risks in education system;
- legal risks in other areas of public management.

4. Public-law risks in the field of administrative jurisdiction in the pre-trial order:

- legal risks in resolution of managerial disputes;
- legal risks when delimitation of the powers of authorities in public management system;
- legal risks when bringing to administrative responsibility;
- problems of interpretation the competence of authorities by court instances.

Participation in the work of the section is open to researchers, lecturers, post-graduate students and degree-seeking students. Remote participation with the submission of the text of reports is possible.

Section materials are expected to be published in a collection of research papers. Articles have to be submitted in both electronic and paper versions, or sent by e-mail as attached files until March 01, 2014.

Requirements to articles: word processor MS WORD, A4 size, volume of articles is not limited, font - Times New Roman, margins: left – 2.0 cm, right – 2.0 cm, above – 2.0 cm, below – 2.0 cm; main text - size 14, line spacing to 1.5, paragraph indent 1.0 cm, word-spacing 1, align of headings and subheadings in the middle in lowercase letters, tables without paragraph indent. "Enter" key should be used only at the end of paragraph once. Title of article is centered in capital letters, a line below put the author's name and higher educational institution. Text alignment in width with automatic hyphenation. Paginal footnotes, size 10, alignment in width. References have to be at the end of article. Do not use any other layout elements, except for highlighting words in bold and italics. Formulas have to be performed only in the mathematical program MathTypeEguations. Illustrative material should be represented by clear contrastive black-and-white images, without the raster grid, suitable for printing performance (in MS Word or Excel).

Non-compliance with these requirements complicates the process of layout of manuscripts and increases the timing of issuance of the collection of research papers.

Address of holding: zip code: 109456, Moscow, 4th Veshnyakovskii passage, bld. 4, study room 511, tel.: 8(495) 1714597,

Coordinators:

Head of the Department "Administrative and informational law", Doctor of Law, Professor Lapina Marina Afanas'evna,

Dean of the Faculty “Risks analysis and economic security”, Doctor of Law, Professor Avdiiskii Vladimir Ivanovich

Head of the Department “Information security”, Doctor of Engineering Science, Professor Tsaregorodtsev Anatolii Valer’evich,

Deputy Head of the Department “Risks analysis and economic security” for Research, Doctor of Law, Professor Truntsevskii Yurii Vladimirovich,

Deputy Head of the Department “Administrative and informational law” for Research, Candidate of historical sciences, Associate professor Karpukhin Dmitrii Vyacheslavovich,

Deputy Head of the Department “Administrative and informational law” for for Teaching and Studies, PhD in law, Associate professor Merkushova Olesya Valer’evna,

Head of training laboratory of the Department “Administrative and informational law” Lokhmanov Dmitrii Vadimovich.

E-mail for sending materials: adminpravo@fa.ru