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Adamenko I. E.

TOWARDS THE QUESTION OF CONFLICTNESS OF THE RIGHT TO PUNISH AS A BASIS OF CRIMINAL-PROCEDURAL ACTIVITY

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Considering the criminal and criminal procedural law of Russia in the context of the analogy with the corresponding law of the United States, the author notes the copying of the norms and institutes of the American legal system, which has been conducted, in the opinion of the author, without taking into account the differences in the "spirit" of the Russian and American people. He notes a conflict between the criminal law and criminal procedure law in the legal system of the United States. Argues that the right to punish (in the United States) as a basis does not form an effective criminal procedural activity, which would be capable of achieving its objectives. Consequently, the building of the Russian legal system by copying the United States legal system leads to theoretically and practically flawed foundation of criminal procedural activity.

Keywords: criminal procedural activity, foundations of criminal procedural activity, punishment, conflictness of law.

Exploring the right to punish as a basis of criminal-procedural activity through the prism of the legal mechanism, mention should be given to some of its "programmed nature". At the level of the general theory of law A. V. Mal'ko and K. V. Shundikov describe this feature of legal mechanism as follows: "Normatively set "program", a kind of "algorithm" of action for legal mechanism, provides for what means, at what point and in what conditions they should work. In other words, legal mechanism is always based on a clear procedure" [9, 88]. Delegation the status of a normatively set "program" (a kind of "algorithm" for action) to legal mechanism means that the potential of the legal mechanism should inevitably ensure realization of the right to punish as a basis of criminal-procedural activity. This ensuring shows us the effectiveness both of the whole legal mechanism and its element (the right to punishment), as bases of criminal-procedural activity.

Consideration of the bases of criminal-procedural activity at the level of legal bond enables us to say that in this case we are dealing with the legal framing of logical thinking. However its subject matter is forms and laws, techniques and operations of thinking at the level of marginal grounds [6, 13], otherwise the logical thinking is the most abstract thinking. The genesis (life) of people, as well as the genesis of criminal-procedural activity is not subject to the laws of logical thinking. Specialists on systemic approach write: "People and events are not subject to the laws of logic, they are much less predictable and manageable than mathematical equations. Quick, methodical, logical decisions are not applicable to them" [10, 23].

The right to punish, as a basis of criminal-procedural activity, is a legal bond. Its goal is the realization of the right to punish, in accordance with the law. However, the results of research by Russian scientists show that the goal of the right to punish in many cases is not achieved, and in some situations it is simply depressing. So, S. B. Anufriev, analyzing the quality of pre-trial proceedings in criminal cases of corruption, wrote: "It is necessary to pay attention to a depressing situation connected, on the one hand, with the number of revealed crimes against state power, the interests of public service and service in local self-government bodies (20.5 thousand), and on the other, with the number of persons brought to criminal responsibility (4.3)" [2, 3-4].

The situation with the implementation of the right to punish as a basis of criminal-procedural activity is not only quite depressing, but also paradoxical. So, A. S. Kolyshnitsyn, having investigated the violations of the principle of inevitability of responsibility for crimes against personality, writes, "The paradox of

the situation is that, in some cases, the criminal law does not provide possibility to punish those perpetrators, who maliciously evade the enforcement of a sentence imposed against them, but allows to punish those who do not fulfill a court decision taken in respect of other persons" [7, 166].

The given results show that the right of punish as a basis does not form an effective criminal-procedural activity, which would be capable to achieve its objectives. This circumstance gives us reason to doubt the ability of the right to punish to serve as a backbone basis of criminal-procedural activity. Help to our doubts in this matter is the following fact. Failures in the implementation of the right to punish through criminal-procedural activity, which is structurally represented as a corresponding legal mechanism, illustrate a certain disharmony between the provisions of criminal law and criminal-procedural law. In the emotional frame of American researchers it is called as "the conflict between criminal law and criminal-procedural law" [8, 51].

In this study, we will pay the greatest attention to this conflict. Our step we explain not only by theoretical, but also by practical considerations. Because today there is no doubt that the current reform of domestic criminal court procedure is being conducted under the influence of American legal doctrine [1, 436-451]. Because of this, the main vector of judicial reform was directed to copy the provisions of law norms and legal institutes, which were assumed as a model for others to follow. The euphoria of emulation, associated with borrowing in the legal sphere of American legal formulas, unfortunately, did not walked past domestic researchers. For example, veteran legal scholar S. S. Alekseev, considering the conditions and specific features of functioning of the American legal system, wrote: "All of this has allowed the American jurisprudence on a number of positions "to spurt into the lead" in world development..." [3, 492].

In fairness, it should be noted that subsequent reflections of the domestic thinker are accompanied by critical thoughts about the ignoring by the American legal system of "juridical dogmatics", which, in his view, forms the basis of the legal culture in the global sense [3, 492]. The copying of the norms and institutes of the American legal system by the reformers of the current Russian criminal court procedure was carried out without taking into account one important circumstance: the moving of normative structures of criminal court procedure into Russia does not automatically transfer the spirit of law that is driven by the spirit of the American people [2, 79-99].

The transfer of the spirit of law is virtually impossible without the physical movement of its carriers, in our case, the members of the American community. For

our part, we would like to point out that in retrospect the transfer of the spirit of law in space was carried out by Europeans during the conquest of the indigenous people of the American continent. But with all its success it had limitations. The European spirit of law applied only to the immigrants from Europe, the indigenous people did not perceive it, what led to armed conflicts, in which the European law was generally of a secondary role.

Conflictness lies not only in the base of armed confrontation. It is also peculiar for contemporary American legal doctrine. Well-known American researcher Norbert Wiener says, "Our whole legal system has the nature of conflict. It is a conversation involving at least three parties ..." [5, 126]. In turn, Norbert Wiener sees the resolution of conflicts of the American legal system in legal precedent. Norbert Wiener notes, that "At any rate, no legal norms obtain absolutely accurate meaning until they and their limitations are determined in practice, and this determination is the work of precedent. Ignoring of a decision on an already existing case, means to argue against a uniform interpretation of legal language, and ipso facto it would be the cause of uncertainty and, very likely, of consequent injustice" [5, 122].

Conflict in the American legal system is manifested not only at the level of a whole, but also at the level of separate, namely, at the level of criminal law and criminal-procedural law. Its essence American experts explain as follows: "Substantive law is trying to ensure order (absence of crimes) through the control over population. Procedural law or legality, which in the United States is traditionally higher than the application of substantive law, impedes it to achieve total control. As a result, the total order is unreachable, and the popular phrase "law and order" should be interpreted as a "law and some mess" [8, 51].

A conflict between the criminal law and criminal-procedural law in the American legal system lets us say: bond in the legal mechanism, as a basis of criminal-procedural activity, is of conflict nature. Even say more: it is contradictory. Judging by the conclusion of the American legal scholar, its inconsistency lies in the opposite vector direction, on the one hand, criminal law, which seeks to establish an order, and, on the other hand, criminal-procedural law focused on a mess. In turn, the mess conditioned by criminal-procedural law is justified by the priority of the rights of a personality. As a consequence, we have theoretically and practically defective basis of criminal-procedural activity.

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ORGANIZATIONAL AND LEGAL FOUNDATIONS OF PUBLIC CIVIL SERVICE OF A SUBJECT OF THE RUSSIAN FEDERATION

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Essential features of public civil service in the subjects of the Russian Federation (through the example of the Ministry of Education of Omsk region) are considered in the article on the basis of the features of the system of public authorities of the subject and with taking into account the difference of the subjects in respect to ensuring human resources and established national-cultural traditions.

The author examines relevant issues of organization and passing public civil service in the subjects of the Russian Federation.

Keywords: public civil service, public civil service in the subjects of the Russian Federation, organizational and legal foundations of public civil service, posts of public civil service.

Lately, due to the administrative reform in the formation and activities of the institute of civil service, significant changes resulting from the normal historic development of the Russian State have happened.

Paragraph "r" article 71 of the Constitution of the Russian Federation [1] provides that the federal public service is the exclusive jurisdiction of the Russian Federation. The legal regulation of the public civil service of the subjects of the Russian Federation is a subject of the joint competence of the Russian Federation and its subjects.

Organization and functioning of the public civil service of the Russian State is exercised on the basis of the Federal Law No. 79-FL from July 27, 2004 (as amended on April 2, 2014, No. 53-FL), "On the Public Civil Service of the Russian Federation" [3], as well as by the decrees of the President of the Russian Federation, establishing and detailing how to implement its provisions.

Public civil service of the Russian Federation is a type of public service represented by professional service activity by the citizens of the Russian Federation at the posts of the public civil service of the Russian Federation for enforcement the powers of Federal public authorities, public authorities of the subjects of the Russian Federation, persons employed in public positions of the Russian Federation, and persons employed in public positions of the subjects of the Russian Federation (part 1 article 3 of the Federal Law No. 79-FL).

According to part 4 article 2 of the Federal Law No. 58-FL from May 25, 2003 (as amended on July 2, 2013, No. 185-FL) "On the Public Service System of the Russian Federation", legal regulation and organization of the federal public civil service of a subject of the Russian Federation is jointly administered by the Russian Federation and its subjects, and its organization is referred to the jurisdiction of the subject of the Russian Federation. Article 73 of the RF Constitution establishes that the subjects of the RF shall have full authority, if the subject matters are not assigned to the exclusive competence of the RF or joint jurisdiction.

Some provisions of the legislation of the RF that govern the issues of public civil service of the RF regulate the public-service relations at the level of the subjects of the Russian Federation. At the same time, along with the federal legislation, corresponding social relations are governed by the legislation on the public civil service of a subject of the RF.

It is appropriate to examine the essential features of the public civil service of the subjects of the RF: first, being based on the peculiarities of the system of bodies of state power of a subject; secondly, taking into account the difference of subjects in provision of human resources and established national-cultural traditions [8, 14].

Public civil service of the Russian Federation can be differentiated according to the following criteria:

1. by territorial and national principle: civil services of fifty-five territories and regions, three cities of Federal significance, twenty-two national republics, one autonomous region and four autonomous districts;

2. by levels of state power (vertical): civil services regional and district ones;

3. by branches of state power (horizontal): civil services of legislative, executive, judicial power and other bodies.

Through the example of activity of the Ministry of Education of Omsk region (hereinafter the Ministry) we can reveal characteristics, legal and organizational foundations of passing the public civil service of a subject of the RF.

The structure of the public civil service of Omsk region is built in accordance with the provisions of the Law of Omsk region No. 601-RL from December 22, 2004 (as amended in Law of Omsk region No. 1636-RL from June 2, 2014) "Code on Public Positions of Omsk region and the Public Civil Service of Omsk Region" [4]. Public civil service is the most numerous in the system of executive power bodies (about 82 per cent), both at the level of the subjects of the RF and at the federal level [9].

Among the first, introduction of professional code of ethics, which was adopted by the order of the Governor of Omsk region No. 72-r from May 16, 2011 "On the Code of Ethics and Official Conduct of Public Civil Servants of Omsk Region" [6], was held in Omsk region.

In 2012, the Ministry carried out the work on designing individual plans of professional development, due to this there was formed a clear systematic activity for development of professional skills, retraining and internship of public servants [7].

One of the key institutes of civil service is an institute of post of public civil service. Posts of the Federal public civil service are established by a federal law or by Decree of the President of the RF, posts of the public civil service of the subjects of the RF – by laws and normative legal acts of the subjects of the RF.

Posts of public civil service acquire their legal status from the date of their inclusion in the corresponding list of posts.

In Omsk region the Decree of the Governor of Omsk region No. 49 from March 2, 2004 (as amended on June 9, 2014, No. 72) "On the Register of Posts of the Public Civil Service of Omsk Region" determines the titles of posts that are generalized and used when generating the staffing schedule of departments and ministries. The decision on specification of a post title of the public civil service of Omsk region, on the basis of the direction of activity and level of qualification (economist, lawyer, accountant, etc.), is adopted by the heads of state bodies of Omsk region.

The registry of posts of public civil service of Omsk region determines the following posts:

- public civil service of Omsk region in the Office of the Governor of Omsk region;

- public civil service of Omsk region in executive authorities, their territorial bodies and offices;
- public civil service of Omsk region in the Office of the Legislative Assembly of Omsk region;
- public civil service of Omsk region in the Office of the Court of audit of Omsk region;
- public civil service of Omsk region in the Office of the Electoral Commission of Omsk region;
- public civil service of Omsk region in the Office of the Commissioner of human rights of Omsk region;
- public civil service of Omsk region in the Office of the Justices of Peace of Omsk region;
- public civil service of Omsk region provided for at the expense of subventions from the Federal budget to implement powers of the Russian Federation transferred to the bodies of executive power of Omsk region.

For example, in the Ministry of education of Omsk region in 2013, the order No. 5-DSP from December 17, 2013 "On approval of the structure and staffing schedule of the Ministry of Education of Omsk region" (document is not published) determined the posts of public civil service by categories and groups. The Ministry is headed by the Minister of Education of Omsk region (hereinafter the Minister), who is appointed by the Governor of Omsk region. There are the posts of the first Deputy Minister and four Deputy Ministers, who are appointed and dismissed by the Government of Omsk region in accordance with the regional legislation. Departments, offices, divisions and sectors are established in the Ministry.

In accordance with the order "On approval of the structure and staffing schedule of the Ministry of Education of Omsk region", currently 112 of 152 members of the Ministry hold the posts of the public civil service of Omsk region. As in the rest of Russia, most of the posts (79%) are held by women.

It should be noted that the legal examination of normative legal acts of Omsk region in the sphere of public civil service that was carried out in 2010 by leading specialist-expert of the Department of the Ministry of Justice of Russia in Omsk region N. A. Cherkasov testified that social relations in this sphere were settled in accordance with the powers provided by the Federal legislation to the bodies of state power of the subjects of the RF. Gaps, conflict and problems of law enforcement were not identified at the time of the examination. Public authorities of Omsk region promptly react to changes in the Federal legislation and bring the regional legislation in line with it [10].

The conducted analysis of normative legal acts taken by the public authorities of Omsk region in the sphere of public civil service shows that, in general, they have implemented the powers granted by the Constitution and the current legislation in the considered sphere of social relations.

Thus, the public civil service of the subjects of the RF is a professional activity of citizens holding the posts of public civil service for the enforcement and execution the powers of regional public authorities. A unified system of public civil service, based on the principles of federalism, with signs of a two-tier organization, is being gradually established in the Russian State.

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TOPICAL ISSUES OF USING THE TECHNOLOGY OF PROFILING IN ACTIVITY OF TRANSPORT POLICE AS MEANS TO ENSURE ANTI-TERRORIST SECURITY ON TRANSPORT

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The main signs of crimes of a terrorist nature on transport are considered in the article. The authors argue the need for synthesis of tactical, psychological and legal actions to prevent crimes of a terrorist nature on transport.

The authors justify the need for the use of profiling technology in the work of transport police to identify potentially dangerous individuals and to prevent terrorist crimes on transport.

Keywords: transport police, transportation security, anti-terrorism activities, profiling technology.

Issues of ensuring security, preventing crimes on objects of transport currently are very relevant. The greatest threat is represented by acts of terrorism, which usually occur in crowded places, kill dozens of innocent people, and inflict considerable material damage. The number of victims of terrorist attacks is significant. Here are some examples: as a result of the terrorist attack of December 29, 2013 at the train station in Volgograd 15 people were killed and more than 40 wounded; January 24, 2011 at Domodedovo Airport 35 people were killed and 180 wounded; March 29, 2010 at Moscow metro stations "Lubyanka" and "Park Kultury" 39 people were killed and 33 wounded; November 27, 2009 when attacking the "Nevsky express train" 28 people were killed and 95 wounded and etc.

The goals terrorist acts on transport are not only the violation of its proper functioning, damage to life and health of citizens, implementation of total intimidation of the population, but also pressure on the authorities.

For the Russian Federation, which is a link between Europe and Asia, as well as North America through the small space of the Bering Strait, "ensuring the safety of transport infrastructure is much more important than for the majority of countries in the world, due to the size of the territory, presence of all transport types (rail, road, air and water)" [21, 2]. The turnover of the Russian market of transport services in 2014, including the revenues from cargo handling in ports and airports, will exceed 72 billion $ [16, 5].

It is clear that, under the circumstances, prevention crimes of terrorist nature on transport requires the synthesis of tactical, psychological and legal actions, the implementation of which is within the competence of law enforcement officers, there is a need for "decisive measures and new technologies that can be used not only against the threat of terrorist acts, but also against other types of crime on transport objects" [20].

Goals, objectives, directions of activity of public authorities to counter terrorism are defined by the Constitution of the Russian Federation [4], generally accepted principles and norms of international law, international treaties of the RF [1; 2; 3], "The National Security Strategy of the Russian Federation until 2020" [11] approved by the Decree of the RF President No. 537 from May 12, 2009, "The Concept of Counter-terrorism in the Russian Federation" [12] approved by the President of the Russian Federation on October 5, 2009, as well as by Federal Laws: No. 115-FL from August 7, 2001 (as amended on July 21, 2014, No. 213-FL) "On Combating Terrorism" [6], No. 390-FL from December 28, 2010 "On Security" [7], No. 3-FL from February 7, 2011 (as amended in Federal Law No.258-FL from July 21, 2014) "On the Police" [8], No. 40-FL from April 3, 1995 (as amended

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According to paragraph 3 article 3 of the Federal Law "On Combating Terrorism", terrorist act is a commission of an explosion, arson or other acts that frighten people and create the risk of loss of human lives, infliction of significant property damage or other serious consequences, in order to destabilize the activity of public authorities or international organizations, or to impact on their decisions, as well as a posing of threat to commit such acts for the same purposes.

The main signs of crimes of a terrorist nature on transport, according to the shared by us opinion of E. N. Savinkovoy, are [19, 36]:

1) the use of extreme forms of violence or threats of such violence;

2) goals of attacks go outside of really caused, actual consequences (killed, wounded, panic, etc.);

3) goals of attack are achieved through psychological impact on people who, as a rule, are not direct victims of violence;

4) objects, which are significant for terrorists, are traditionally the objects of transport representing high-risk sources; including objects of citizens concentration – railway stations, airports, etc. Victims of attacks are chosen randomly, independently from the status in the system of public authorities (passengers of Metro, train, aircraft, employees of terminals, airports, etc.).

According to paragraph 5 article 12 of the Federal Law "On the Police", the duties of police officers include "ensuring the safety of citizens and public order ... on highways, railway stations, airports, sea and river ports and other public places". Moreover, the police, in accordance with paragraph 6 of the said article, bears the responsibility "to ensure, together with the representatives of executive authorities of the subjects of the RF, bodies of local self-government and the organizers... of public events, the security of citizens and public order ...".

The reality is that in modern conditions to ensure anti-terrorism security on transport objects the use of formal monitoring activities and inspection techniques is not enough, since they often do not allow early identification of criminal intent.

Only transport police staff specially trained the technology of profiling with high probability, using analysis of psycho-physiological reactions of a man, can identify its unlawful intention and take immediate actions to prevent terrorist acts [14: 15].

Profiling (English – profile) is based on forming the profile of a passenger. With respect to the use by the police on the objects of transport, profiling technology is a system of special measures to detect potentially dangerous passengers and situations. It can be seen as a) totality of the ways for assessing and prediction, based on analysis of external signs that characterize human behavior; b) surveillance technologies used to detect potentially dangerous persons in crowded places (including on transport objects).

Profiling technology was used for the first time during pre-flight inspection in the registration area by the Israeli airline company "El Al" at the end of the 1970-ies. Israeli profiling concept is based on the fact that any passenger could be a terrorist, and its baggage items – weapons or explosive devices. The experts are to confirm or refute this statement. The use of profiling technology allows the identification of potentially dangerous persons in significant crowding of passengers, but it should not be a substitute for a thorough inspection of a passenger and it baggage.

Profiling technology is directly based on the identification of potentially dangerous persons and situations on the basis of a comprehensive analysis of factors such as human behavior, physical appearance and its luggage, etc. This technology involves the use of psychology methods, with emphasis on human abilities to perceive and to read information when observing the conduct of people.

The use of profiling technology, which allows decoding of non-verbal components of human behavior, makes it possible to obtain the most objective information about a person planning a terrorist act on transport objects and to take preventive measures to prevent it. It is based on two main methods that allow control of situation: a) psychological monitoring (implies identification of visual discrepancies); b) poll (it is based on the study of the response of a suspected person to specially designed questions asked by experts).

To successfully counter crimes of a terrorist nature on transport the bodies of transport police must be provided with qualified personnel. It is obvious that the effectiveness of law enforcement officers is largely dependent on the quality of training, one form of which is professional development of existing employees, including those working at the objects of transport [12, 18]. Today, one of the most significant tasks for the system of education and advanced training of employees of the transport police is the organization of learning profiling technology.

According to article 46 of The Concept of Counter-terrorism in the Russian Federation, training and retraining of staff to counter terrorism is based on interdepartmental and departmental training centers and educational institutions, as well as the educational institutions of higher professional education.

Successful experience of professional development of transport police officers specializing in profiling, ensuring security (including against terrorist threats) on transport is realized in the All-Russian Institute of Further Education of the Employees of the Ministry of Internal Affairs of Russia – a leading educational institution of additional vocational education of the Ministry of Internal Affairs of Russia. In accordance with the Order of the Ministry of Internal Affairs of the Russian Federation, Training center for employees in the sphere of transportation security, which carries out professional training and professional development of police officers providing security on transport objects, has been formed in the institute since December, 2006. The Center provides training for students in the following disciplines [17; 18; 21]: activity of internal affairs bodies on transport aimed at countering terrorism; peculiarities of the service duties to maintain public order at objects of transport; peculiarities of the regulations for carriage of passengers, hand baggage and luggage on objects of air transport; tactics of checking the documents of citizens on objects of transport; profiling (method of detecting potentially dangerous people and situations during pre-flight inspection).

The widespread introduction in educational institutions of the Russian MIA the system of staff training and professional development of transport police officers, which is based on the study of profiling technology, will allow most efficiently resolve professional tasks of operational activity, develop practical skills aimed at recognition persons that plan a terrorist act that, ultimately, will help to minimize the manifestations of terrorism and achieve the main goal – protection of individuals, society and the State from terrorist acts.

Application of profiling as one of the most important ways of ensuring transportation security allows prevention of wrongful activity through revealing potentially dangerous people and situations, makes it possible to classify an individual according to the identified signs for its potential danger of committing not only terrorist crimes on transport, but also other crimes, to identify the so-called potentially hazardous situations that lead to the conclusion about preparation for a terrorist act on transport (for example, unattended things, baggage, etc.).

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LEGAL ISSUES OF PROFESSIONAL COMPETENCE OF JUDGES IN CONSIDERATION OF ADMINISTRATIVE DISPUTES IN ARBITRATION COURTS

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Issues related to the professional competence of judges in dealing with administrative disputes in arbitration courts are considered in the article.

Keywords: arbitration court procedure, administrative dispute, consideration of an administrative dispute by a judge, professional competence of an arbitration judge.

For the administration of justice in accordance with the current legislation, the State must have highly qualified judiciary establishment. In this regard, the issues of professional competence of judges are of particular relevance.

Any legal conflict situation, which is considered in court, requires judge's knowledge of legislation, skills to apply it, professionalism in communication with the parties, the study of norms of law and evidence on the case, professionalism in judicial discretion.

When considering even a seemingly ordinary dispute, court must take into account many things...

So, a limited liability company "Stayer" appealed to the arbitration court with an application to the State Construction Supervision of Kemerovo region for annulment of the decision, under which the company was imposed an administrative penalty under paragraph 1 article 9.5 of the Code on Administrative Offences of the RF (hereinafter CAO RF) (for violation of the established procedure for reconstruction of a capital construction object) in the form of a fine of 500 000 rubles.

In the present case it was determined that the company without a permit for the reconstruction carried out reconstruction of a capital construction object.

Refusing to meet the demands of the LLC "Stayer", the arbitration courts presumed that the fact of committing the offence, the guilt of the company was confirmed by case materials, breaches of the order of bringing it to administrative responsibility were absent. Signing a contract of work and labour with a third party, the LLC "Stayer" was not released from the obligation to obtain permission for construction; it did not take all the measures to comply with the requirements established by the legislation; the case materials were not provided evidence of any obstacles for the company to comply with the violated norms.

The court of cassation recognized the legitimacy of the conclusions of the courts on the presence of the imputed administrative offence in the actions of the company [3].

According to D. A. Medvedev, "the judiciary establishment needs to be replenished and updated by highly skilled, well trained employees" [7].

Qualification and competence in relation to the level of professional training is used relatively recently [14, 310].

Competence is defined as a totality of knowledge and skills that allow professional performance of activity.

According to V. I. Dal', competence is a full authority, and is used primarily in the legal field: "A competent judge, who can and has the right to judge anyone or anything ... is a fully legitimate judge" [14, 311].

In the modern understanding of competency and competence are complementary and reciprocal concepts and are considered in the following aspects:

1) the possession of knowledge and information in a particular area that allow to judge anything;

2) the possession of competency, powers.

There is a special place in the Code of Judicial Ethics [5] for the competency of judges – judge's competency, level of its professional training are essential for the proper performance of judicial duties in the administration of justice.

Judge's work, like no other, is related to human relations.

So, an individual entrepreneur Zhusupov T. I. appealed to an arbitration court with a claim to the municipal unitary enterprise of housing and communal services to recover losses of 1 695 244 rub. Meeting of the stated demands was denied by the decision of the arbitration court of Tyumen region from 03.06.2013.

Disagreeing with the above decision, IE Zhusupov T. I. appealed with an appellate complaint to the Eighth arbitration court.

The court of appeal returned the appellate complaint of IE Zhusupov T. I., since the petition for postponement of payment of state fee was rejected.

In the cassation appeal, filed in the Federal Arbitration Court of the West Siberian district, IE Zhusupov T. I. requested to repeal the decision of the curt of appellate instance from 02.08.2013, referring to the violation of the norms of procedural law, and to send the case to the court of appeal.

Cassation instance court in the considering the case in accordance with article 286 of the Arbitration Procedure Code of the RF checked whether the conclusions of the arbitration court of first and appellate instance on the application of law norm correspond to the established by them case circumstances and to evidence in the case materials.

According to paragraph 2 clause 5 part 1 article 264 of the APC RF arbitration court of appellate instance returns a complaint if the petition for postponement of payment, payment in installments of state fee or decrease of its size is rejected.

The materials of the case confirm that when submitting an appeal IE Zhusupov T. I. made a petition for postponement of payment of state fee, explaining this by difficult financial situation.

Since IE Zhusupov T. I., in violation of the provisions of paragraph 4 of the Resolution of the Plenary Session of the Supreme Arbitration Court of the Russian Federation No. 6 from 20.03.1997 "On some issues of application by arbitration courts of the legislation of the Russian Federation on state Duty", did not attach to his appeal the confirmed by tax authority list of settlement and other accounts, the names and addresses of banks and other credit institutions, in which these accounts were opened, the appellate court rightly rejected the petition for postponement of payment of state fee and returned the appeal.

The court of cassation recognized the conclusions of the court of appellate instance lawful [4].

Considering a case in court hearing, a judge is constantly faced with complex plexus of human relations. At that a judge has to deal not only with criminals, but also with a wide variety of persons. Those, who deal with people, who are intended to influence on them, to decide their fate, must have not only the legal knowledge, but also the knowledge of psychological science.

While researching the shadow sides of citizens' life, their relations in economic and other areas, often facing the most repulsive of its manifestation, a judge must be able to maintain personal immunity to negative influences and to avoid their impact on themselves, the distortion of its personality, the so-called professional deformation that may be manifested in the transformation of vigilance into excessive suspicion, fault-finding, distrust of any person who has done any wrong step [14, 312].

The issue of high-quality judiciary establishment is relevant to many countries of the world.

So, the President of the Republic of Kazakhstan N. A. Nazarbayev in his speech at the sixth Congress of judges, held in November 2013, noted the positive efforts of judicial system and highlighted problematic aspects requiring attention. Among one of these problems he called inadequate staffing policy in the judicial system and pointed out that there are insufficient barriers against unscrupulous persons trying to work in courts [9].

All the activities of a judge to a very great extent obey social norms and expectations. From a man of the long robe all surrounding rightly expect strictly certain kind of behavior – justice, complicity, assistance and protection.

A judge always works under close attention of people because it is a representative of authority and the law.

In this regard the requirements for candidates for judges are rightly developed at the legislative level [13].

The Russian Federation Law "On the Status of Judges in the Russian Federation" [2] provides for such requirements as: higher juridical education, no criminal record, the citizenship of the Russian Federation, the achievement of a certain age, legal capacity.

Also the candidate for the post of judge should not be registered in a drug or psycho-neurological dispensary and should not have other diseases affecting the implementation of the powers of a judge.

The age requirement for the applicant for the vacant post of judge in the Russian Federation, for example, and in the neighbouring country – the Republic of Kazakhstan, is 25 years.

Many scholars and practitioners disagree with these age requirement and they justify the necessity of raising the age requirement for candidates for judges [12].

At all times a judge was a respected person, and wisdom, knowledge and life experience were considered as its essential qualities.

Wisdom and life experience are achieved with age and as a result of persistent and painstaking work.

Statistics show that the average age of judges of the courts of general jurisdiction in the Russian Federation is from 40 to 50 years, the proportion of judges at the age of 25-30 years among judges at district level is 4%, 30-40 years – 34% [8, 6].

According to the Chairman of the Supreme Judicial Council of the Republic of Kazakhstan, the average age of those, who was firstly appointed to the post of a judge, was 34 years [10].

The age requirement is inextricably linked to the requirement of a length of service in legal profession.

In the RF – a candidate for the post of judge should have five years experience in legal profession, and in the Republic of Kazakhstan – the experience in legal profession is only two years [1; 13].

However, in many countries of the world before taking the post of judge candidates undergo thorough training in the bar (in the United Kingdom and the United States – for 15-20 years) or in posts of interns and assistants to judges (France).

In the majority of CIS countries, this qualification requirement is 5 years, and 10 years in Georgia.

The issue of seniority and work experience as a judge is inextricably linked to the issue of judicial career.

Under the judicial career we understand movement through the ranks of judicial posts (judge – court presidium member – chairman of judicial assembly – deputy chairman of court – chairman of court).

With that, the legislation of Russia does not contain a definition of judicial career. However, there are qualification degrees and qualification attestation of judges in the Russian Federation.

In the Republic of Kazakhstan, for example, qualifying degrees were abolished [1].

But both States provide for requirements concerning the pass of qualification exam and completion of internship.

So, for example, in the Republic of Kazakhstan graduates of specialized magistracy are exempted from passing of qualification examination [1].

In the Russian Federation the persons having the title of candidate of legal sciences or academic degree of Doctor of law, or those who are awarded the honorary title "Honored Lawyer of the Russian Federation" are exempt from passing of qualifying examination.

The position of M. I. Kleandrov is noteworthy concerning the issue under consideration; he believes that knowledge check should not be undertaken at the level of ordinary exam at a higher school, but at the level, at least, candidate examination in specialty, taking into account the knowledge of judicial practice, knowledge of theory, etc., [11, 86].

There is a justified proposal for the 4-month internship of a candidate to the post of judge in the period after the decision of qualification board of judges on recommendation of a citizen for the post of judge and before the consent (disagreement) of the Chairman of corresponding court on the appointment of the candidate [6, 30].

It seems that a citizen, who has a scientific degree of candidate of legal sciences and Doctor of law, could be released from the passing of a qualification examination for the post of judge.

The issue of conformity of dissertation research theme to the called specialization could be resolved by the qualification board of judges, which could also provide an assessment of the scientific activity of a candidate in the period after the award of scientific degree until the moment of meeting of the qualification board, that is, account of teaching activity, the presence of author's monographic works and scientific publications.

The Constitution of the Russian Federation reflects the understanding of social purpose of justice as a system aimed at protection of rights and maintaining of law and order, ensuring stability and strength of civil circulation relations and public-law relations [15, 67].

The State is interested in the effective operation of the third power in the State – judicial power. This is possible provided that the "holders" of the judicial power will have a high level of professional competence.

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DISCIPLINARY RESPONSIBILITY OF JUDGES FOR JUDICIAL ERRORS IN PROCEEDINGS ON CASES OF ADMINISTRATIVE OFFENCES

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The authors note the presence in judicial practice of judges' deeds which are unacceptable for their high status, as well as the need to determine whether a judge falls under disciplinary or criminal responsibility, including what disciplinary measure must be applied in a this or that case.

The relevance of the issue of judges' responsibility for the results of their activities, in particular disciplinary responsibility of judges, is argued in the article.

Keywords: court procedure, proceedings on cases of administrative offences, judicial errors, responsibility of judges, disciplinary responsibility of judges.

Democratic changes in Russian society in the last decade of the last century could not happen without a radical renewal of judicial system. The Court turns from the tool of repression to the tool of protection of human rights – the most important institute of a constitutional state. New equal relations of the judiciary develop with the legislative and executive power. The courts help to promote economic and political democracy in the country, the integration of Russian law to European legal institutes. Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms reads as follows: "Everyone in the determination of its civil rights and obligations or of any criminal charge against it is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law" [1]. A similar right is enshrined in article 10 of the Universal Declaration of Human Rights, article 14 of the International Covenant on Civil and Political Rights.

But to implement these provisions, we need an effective and high-quality work of the judicial branch of the Russian Federation, which belongs only to the courts in the face of judges and representatives of the people assigned to administration of justice in way prescribed by the law, and which acts independently. The latter is the base for understanding the essence of the judiciary and status of judge as its carrier. The Constitution of the Russian Federation proclaims the fundamental principle of the functioning of the judiciary – the principle of independence of judges, which lies in their subordination only to the Constitution of the Russian Federation and federal legislation [2].

The judge is a person who takes legally relevant decisions on behalf of the State exactly because of its special status, by virtue of a special legal force of judicial act, which is substantially able to alter or revoke the decision of any public authority or official. Currently, there are many laws defining the status and powers of judges: "On the Judicial System of the Russian Federation" [5], "On the Constitutional Court of the Russian Federation" [4], "On Military Courts of the Russian Federation" [6], "On the Status of Judges in the Russian Federation" [7], "On Justices of the Peace in the Russian Federation" [8].

Recent years trends show that the State has embarked on the path of expanding the powers of judges, as well as of their special legal status, according to which the Constitution and Legislation of the Russian Federation provide them such elements of independence as irremovability, immunity, high level of material security and social welfare. All the above factors are designed to increase the level of justice and assume high responsibility of a judge for the qualitative performing of its functions, compliance with the laws of the Russian Federation and the requirements of the Code of Judicial Ethics [14].

But at the same time, official state MEDIA, academic and publicistic literature often consider imperfection of the mechanisms for bringing judges to criminal, administrative, disciplinary and civil-law responsibility for offenses committed by them in the course of administration of justice. Very often MEDIA reports about corrupt judges, serving not the interests of Justice, but the interests of individuals and corporations, and often only their own interests. Corruption has always been, and it seems to us, will forever remain the "cancer" of the public authorities' system of the Russian Federation. But, in our view, the most important problem of today courts is not the corruption in the courts, and it consists in "minds", in the professional training and competence, the compliance of the current judges and candidates with the requirements for this service. We verified this when directly met the proceedings on a case of administrative offense on the signs of an administrative

offense under part 1 article 12.8 of the Code on Administrative Offences of the Russian Federation (hereinafter – CAO RF) [3], namely "Driving a transport vehicle by the driver in a state of alcoholic intoxication". It will not be a discovery for anyone that this category of cases can be considered basic, remaining in proceedings on administrative cases, since accidents with participation of drivers in a state of alcoholic intoxication are regularly consecrated in the mass media. Particularly, the driver (hereinafter – citizen B.) while intoxicated drove a four-wheel ATV (in everyday life named "quad bike") and moved along the road of an inhabited locality, where he was stopped by traffic police officers. On the fact of administrative offence the traffic police officers drew up protocols provided for such offence under CAO RF and transmitted them for consideration by the justice of the peace of the N-th area of the Oktyabrsky district of Novosibirsk city. The justice of the peace, having considered the matter, decided to recognize the citizen B. guilty of an offence under part 1 article 12.8 CAO RF and assign administrative punishment in the form of deprivation of the right to drive vehicles for a period of one year six months. Under all indicators – justice is done and the roads have become safer. But from a legal point of view, in our opinion, there were several significant judicial errors, namely:

First, in the course of the proceedings on this case, the vehicle driven by the citizen B. (as well as its characteristics) was not defined, that is, actually there was not defined the direct instrument of offence, which is a structural element of the objective aspect of offence under part 1 article 12.8 CAO RF (under the tool/instrument of administrative offence shall be understood a movable and immovable property used for the implementation of the objective aspect of offence provided for under specific article of CAO RF). The notion of the instrument of offences provided for in Chapter 12 of CAO RF, namely a vehicle, is given in subparagraph 3 paragraph 1 of the Decision of the Plenary Session of the Supreme Court of the Russian Federation No. 18 from October 24, 2006 "On Some Issues Arising in the Courts in Applying the Special Part of the Code on Administrative Offences of the Russian Federation" [11]. So, from the content of the procedural documents drawn up by the traffic police officers, it follows that the citizen B., being in a state of alcoholic intoxication, was driving a vehicle "quad bike" of a green color, and in none of the documents listed above the mentioned vehicle was identified from a legal point of view giving grounds to subsequent qualification with regard to the norms of CAO RF. If we turn to the interpretation of the notion of "QUAD BIKE" [18] that is available at electronic free encyclopedia "WikipediA", placed in the publicly available information network "Internet", then this is recognized (from Lat. quadrn – "four" and ancient Greek κύκλος – "circle") as a vehicle with four wheels. In the former

Soviet Union the quad bikes are more often understood as four-wheel all-terrain vehicles, and in the United States four-wheel bikes. Quad bikes at the same time include the most cars and any other vehicles with four wheels. Within the meaning of part 2 article 1 CAO RF this Code is based on the Constitution of the Russian Federation, the universally recognized principles and norms of international law and international treaties of the Russian Federation. If an international treaty of the Russian Federation stipulates other rules than those stipulated by the legislation on administrative offences, then the rules of the international treaty shall be applied.

According to the content of the "Vehicle classification" of the Inland Transport Committee of the European Economic Commission of the United Nations (a similar principle is enshrined in the Russian GOST R 52051-2003 "Power-driven vehicles and trailers. Classification and definitions" [13]), and Russia is its member, as a "quad bike" can be recognized a four wheel vehicle, the unloaded mass of which is less than 350 kg, not including the mass of batteries, with a maximum speed not exceeding 50 km/h, in the case of an internal combustion engine with a positive-ignition engine with a cubic capacity of the engine not exceeding 50 cubic centimeters, or in the case of the internal combustion engine of another type – with maximum effective engine power not exceeding 4 kW.

Following this classification, we can positively state that the official international, as well as Russian, interpretation of the notion of "QUAD BIKE", which was used by the traffic police officers, clearly does not correspond to the content of the note to article 12.8 CAO RF, so that this vehicle could not be an instrument of administrative offence under article 12.8 CAO RF.

In accordance with article 24.1 CAO RF, the tasks in proceedings on cases concerning administrative offenses shall be comprehensive, complete, unbiased and with timely clarification of the circumstances of each case, settlement thereof in compliance with law, ensuring execution of a decision rendered, as well as elucidation of the reasons and conditions which led to the committing of administrative offenses.

Secondly, the justice of the peace in adoption for consideration the case of administrative offence committed substantial violations of procedural requirements of articles, such as part 3 article 29.1, part 4 article 29.4 CAO RF [3], according to which, a judge, when preparing for consideration of a case concerning an administrative offence, was obliged to identify the non-compliance of protocols provided by the traffic police officers with the requirements set both by the "Administrative regulations of the Ministry of Internal Affairs of the RF concerning the execution of government function to control and supervise over compliance by road users with

the requirements of the road traffic safety" (paragraph 110: Rules for Drawing up a Protocol on Administrative Offense) [12] and by part 4 article 27.13 CAO RF [3], and, in accordance with part 3 article 29.4, to make a ruling "about return of the protocol of the administrative offence and other materials of the case to the body or officials that drew up the protocol, when the protocol was drawn up and other materials of the case were formalized by incompetent persons, or when the record of the administrative offence was drawn up incorrectly and other materials of the case were formalized in the wrong way, or in the event of incompleteness of submitted materials which cannot be completed during consideration of the case", and the court was not legally entitled to carry out an administrative inquiry, and namely, independently gather evidence of the guilt of the person held liable [3].

And thirdly, there is obvious presence of provided for by part 2 article 24.5 CAO RF [3] circumstance precluding proceedings on a case of administrative offence – the lack of the composition of administrative offence, or more precisely of the objective aspect of the offence under article 12.8 CAO RF. Objective aspect of administrative offence is a specific action (inaction) of a person, which is illegal and entails administrative responsibility established by CAO RF or law of the subject of the Russian Federation. In this case the objective aspect is failed, because there is no instrument of administrative offence under article 12.8 CAO RF.

These grounds have already provided the abolition of taken judicial acts and the termination of proceedings on a case, since they were not based on law, and the judges, in accordance with article 120 of the Constitution of the Russian Federation, shall be subordinated "... only to the Constitution of the Russian Federation and federal law". Imagine my surprise when either the justice of the peace or the higher instances (including the Board on Administrative Cases of the Supreme Court of the RF) **did not see** the grounds for cancellation of taken judicial acts, although the defense was clearly attracting attention of judicial bodies to them. We are disconcerted by the fact that the judicial bodies, whose activities are based on the law and the principles of justice and fairness, could not see a clear violation of law, which is the basis of their activities. And this case is not a single – according to the data presented on the website of the Supreme Court, there are more than **1 million**! sub judice complaints against the decisions of the lower courts. Scary to think that virtually every hundredth inhabitant of our country faced the problem of taking a fair and legal court decision.

In this connection the problem of judges' accountability for the results of their activity, in particular for their decisions, becomes relevant. At that, public morality implies that the judge bears moral responsibility for the correctness of

its decisions to the community, persons participating in proceedings, and, finally, to its conscience. A separate issue, which has become the subject matter of discussions of the many leading lawyers in Russia, is legal responsibility: criminal (for committing crimes against justice) and disciplinary (for violation of legality, committing a vicious deed). The most recognized is the circumstance that a judge has to be subjected to any form of responsibility in case of its guiltiness. Only the question of the limits of it responsibility remains ambiguous. It appears that in this case the legislator should distinguish between the concepts of miscarriage of justice and procedural violation.

In criminal procedure literature an offence is defined as an investigative and judicial error or a violation of legality. However, it should be noted that offense absorbs the content of miscarriage of justice, but goes beyond. The essence of miscarriage of justice is that it, being such a violation of the law, which leads to the illegality, unreasonableness, unfairness and therefore unjust court verdict (or decision), entails certain adverse consequences. The most serious of these deeds – crimes, that is (willful or negligent) violations by a judge of law in the field of court procedure, responsibility for which is provided for by the Criminal Code of the Russian Federation, shall entail, along with the criminal, procedural responsibility. So Shirvanov A. A. offers to define error as committed deed, which should be formally lawful and take place in the absence of guilt, and offence as guilty deed, which is always contrary to the rules established by the law [17, 8-12]. I. M. Zaitsev defines the miscarriage of justice as action of judicial officers that is inconsistent with the purposes of justice or the consequences of such action [15, 5]. And L. V. Trofimov sees miscarriage of justice as the wrong action of judicial officers, which prevents their achievement of certain goals and entails negative consequences, including the cancellation of erroneous decision [16, 130]. However, it should be borne in mind that judicial errors are in most cases unintentional, as a result of good-faith misconception of judge associated with deficiencies in professional training, the level of legal awareness and similar factors. As is known, in such cases a judge cannot be brought to responsibility because there is no its guilt in a committed violation (or it has not been reliably established). However, a committed violation – miscarriage of justice remains such and, like any illegal decision, requires cancellation through applying a restorative sanction, which simultaneously carries a reproach addressed to the person responsible for the error.

The issue of disciplinary responsibility of judges is very important from the point of view of effectiveness and viability of the judicial system of Russia. It lies at the intersection of such complex and diverse aspects of judicial reform as

the independence of judges, protection of the legitimate rights and freedoms of citizens, creation of a unified legal space of the country, creation of a stable legal order and strengthening the controllability in the State.

The State, given the importance of the disciplinary responsibility of judges, pays special attention to its legal regulation.

Disciplinary responsibility of judges, like many other complex public-law relations, is simultaneously an element of several autonomous subsystems. Most practical and theoretical significance is expressed by the fact that disciplinary responsibility of judges acts as a structural element of two systems: firstly, it is one of the components of the system of normative-legal provisions on the status of judges in the Russian Federation; secondly, it is a private form of the unified system of legal responsibility. Through the prism of these two subsystems we should identify the specificity of the disciplinary responsibility of judges.

Disciplinary responsibility of judges in the Russian Federation is governed by such normative acts as article 6.1 (paragraphs 11 and 13), paragraph 1 article 12.1 of the Law of the Russian Federation "On the Status of Judges in the Russian Federation" [6], paragraph 6 article 21, paragraphs 1 and 2 article 22, sub-paragraph 2 paragraph 2 article 26 of the Federal law "On the Bodies of Judicial Community in the Russian Federation" [9] in their interrelation with article 4 of the Provision on the qualification boards of judges [10].

The current Russian legislation does not contain an accurate, clear notion of disciplinary offence committed by a judge and the composition of this deed by analogy with administrative misconduct and crime. However, paragraph 1 article 12.1 of the Law of the Russian Federation "On the Status of Judges in the Russian Federation" and article 11 the Code of Judicial Ethics (approved at VI all-Russia Congress of Judges 02.12.2004) enshrine an indication that the notion of disciplinary offence must always be associated only with the violation of the norms of the Law of the Russian Federation "On the Status of Judges in the Russian Federation" and the provisions of the Code of Judicial Ethics.

Analysis of the Law of the Russian Federation "On the Status of Judges in the Russian Federation", chapters 2 and 3 of the Code of Judicial Ethics, the practice of the Constitutional Court of the Russian Federation suggests that the ground for bringing a judge to disciplinary responsibility may be the activity of the judge on administration of justice, either reflected in judicial acts, in accordance with the requirements of procedural form, or without such registration. At that, the activity of a judge in administration of justice must testify about its incompetence or bad faith (both of these components allow speaking about the competency of a particular

judge) – chapter 2 of the Code of Judicial Ethics. The professionalism, in our view, should be assessed in terms of the legality of application by a judge of the current substantive and procedural legislation within the framework of considered case, since administration of justice is an exclusive activity of anyone with the status of judge; good faith – when a judge exercises other actions related to administration of justice, including organizational and administrative ones.

One of the conditions for bringing judges, in particular, to disciplinary responsibility is laid down in paragraph 2 article 16 of the Law of the Russian Federation "On the Status of Judges in the Russian Federation", which establishes that "a judge, including after the termination of its term of office, cannot be held responsible for an opinion expressed or decision taken in the course of administration of justice, until an entered into legal force court verdict determines the judge's guiltiness of a criminal abuse or taking a knowingly unjust verdict, decision or another judicial act" [7]. This provision clearly shows the legislator's position that links the possibility of application responsibility to a judge in relation to its activity on administration of justice in civil proceedings from the point of view of the results of such activity under the following conditions:

1) if unlawful actions of judge are reflected in the judicial act taken in connection with consideration of a particular civil case, and are presumptive ground for bringing the judge to disciplinary responsibility.

In this case, the unjust nature of court decision or other judicial act shall be proved in civil or criminal proceedings (see part 2 article 118 of the Constitution of the Russian Federation [2]):

- within the framework of criminal proceedings, when there is a court verdict that has entered into legal force, which identifies the judge's guilt of making unjust judicial act;
- within the framework of civil proceedings, when illegal actions of judge to determine the substantive and procedural legal status of parties are confirmed by the judicial acts of higher court instances handed down within the limits of their power provided by procedural law, which cancel or change previous judicial acts of lower court instances.

The systemic nature of taking these unjust decisions, confirmed by higher court instances in their judicial acts, should be the main criterion in here. On the basis of the systemic nature, under which, in this case, we understand the sequence, permanence of negative consequences in the form of making unjust decisions, we can talk about the forms of guilt of this deed. It is suggested to consider two possible forms of guilt – negligence, i.e., an unintentional wrongful action (inaction) of

judges, leading to failure to achieve the goals of administrative court procedure or posing threat of not achieving the goals of administrative court procedure, because of the lack of necessary sufficient professional training and corresponding skills for the due performance of judge's duties, and intent – an objectively wrongful result of judicial activity, expressed in conscious conduct of judges aimed at violation of statutory procedural norms, because of a personal interest and bad faith of judges. For the classifier of judicial errors, we suggest to use the following criteria: 1) systemic nature of miscarriages of justice; 2) content of errors, i.e. administrative-legal and procedural aspects; 3) consequences of errors expressed in occurrence of adverse consequences for the citizen brought to administrative responsibility; 4) eliminability of errors' consequences in the form of a possibility to restore the legal status prior to the commission of errors. From the point of view of the differences among the forms of disciplinary responsibility, it appears appropriate, in the present case, to prematurely terminate the powers of a judge (as one of the most serious forms of disciplinary responsibility) only after the measure of disciplinary responsibility in the form of warning has been applied to the judge.

One of the substantiations of the need to take into account the considered criteria (systemic nature, eliminability of a miscarriage of justice) is the current civil procedural legislation of the Russian Federation, of the countries that are members of the Romano-Germanic law, common law. We are talking about the acceptable by the legislator possibility of a judge to commit judicial errors, their probability in actions of any judge, what under the current Russian civil procedural law is reflected in the existence of appeal, cassation, supervisory proceedings, which are designed to eliminate these judicial errors in way prescribed by procedural law.

The procedure for bringing judges to disciplinary responsibility by qualification boards should not perform the same purposes which the supervisory instance performed under the Code of Civil Procedure of the RSFSR, 1964 (the possibility of interference of administrative bodies, other bodies and officials in the administration of justice), otherwise the guarantees of the independence, immunity and the irremovability of judges and, consequently, the credibility of judicial power will be substantially reduced. In addition, it is necessary to take into account the principle of the free exercise of material and procedural rights by the parties to legal proceedings and adversarial principle, which form the basis of modern civil court procedure and the main difference from criminal court procedure, as well as the guarantees of these principles enshrined in all the levels of the current Russian legislation.

Therefore, it seems reasonable to introduce the ability of qualification board to consider of the issue of bringing judges to disciplinary responsibility, the actions

of which are expressed a judicial act that is subject to appeal, in view of the positions of the civil procedural legislation. In order not to create for the consumers of services of judicial power bodies, public officials and other persons the mechanism for exerting pressure on a judge in taking judicial act and, consequently, in order to respect for the principles of independence, irremovability and immunity of judges, it seems possible to appeal to qualifications board by persons concerned, as well as to consider by qualifications board of the issue on bringing judges to disciplinary responsibility, only if the unjust nature of a judicial act is confirmed by a higher court instance in order established by the procedural legislation (in civil, administrative or criminal proceedings).

The need to substantiate the unjust nature of a judicial act, which is taken by a judge, by a higher court instance as a basis for bringing judges to disciplinary responsibility is also confirmed by the fact that there is no correlational interrelation established in the current legislation (articles 330, 362, 387 of the Code of Civil Procedure of the RF, articles 19, 22 of the Federal Law "On the Bodies of Judicial Community in the Russian Federation", paragraph 1 article 12.1 of the Law of the RF "On the Status of Judges in the Russian Federation"; article 11 of the Code of Judicial Ethics) between the grounds for cancellation of judicial act, enshrined in the Code of Civil Procedure of the RF, and the decisions of qualifications boards of judges. Accordingly, the decision of a higher court instance about unjust nature of a judicial act, which is handed down by a judge and gives rise to bringing it to disciplinary responsibility, will allow us to talk about the absence of parallel procedures for verification the legality and validity of judicial act, which are carried out outside the framework of the procedure for consideration of cases established by the procedural legislation;

2) if unlawful actions of judge are not reflected in judicial acts taken by this judge.

In accordance with paragraph 5 of the Decision of the Constitutional Court of the Russian Federation N 1-P from 25.01.2001, as a ground for compensation by the State for damage to a person, whose right to a fair trial is violated (articles 6, 41 of the European Convention for the Protection of Human Rights and Fundamental Freedoms), as well as, in our view, bringing a judge to disciplinary responsibility may be a unlawful deed of the judge in resolving issues of procedural and legal status of the parties, not expressed in judicial act taken by the judge (violation of reasonable length of proceedings, unlawful seizure of property, undue delay of execution, late delivery of procedural documents resulting in missed deadlines for appeal, another gross violation of the procedure for consideration of a case).

In this case, in our opinion, disciplinary responsibility of a judge again is bound by the Constitutional Court of the Russian Federation with the ascertainment of its guilt in the commission of unlawful act, which should be substantiated either by a court verdict or another court decision. It appears that the term of "court decision" is used by the Constitutional Court of the Russian Federation in its broad sense, which includes any judicial act taken by a judicial body within the limits of its competence as prescribed by law.

In the considered situation, qualifications board of judges should take into account all the components of disciplinary deed: the type of misconduct (chapter 2 of the Code of Judicial Ethics), the degree and the form of guilt of a judge; the size of damage inflicted to the person(s); other specific circumstances.

However, also in this case, it seems appropriate to prematurely terminate the powers of a judge only after imposing a disciplinary sanction in the form of a warning;

3) another activity not related to the administration of justice – responsibility under chapter 3 the Code of Judicial Ethics. Here all the components of disciplinary deed should be taken into account, as like in the case when unlawful actions of a judge are not reflected in taken judicial acts. However, the premature termination of the powers of a judge, in our view, can be carried out without bringing the judge to disciplinary responsibility against judges in the form of a warning;

4) if the actions of a judge contain several violations, as reflected in the subparagraphs 1-3 paragraph 3 of this study, advantage should be given to the order of bringing judges to disciplinary responsibility defined by us in case of taking by it of a unjust act.

The analysis of the above-mentioned legal acts and results of court practice suggests that the consumer of legal services (a citizen, legal person, organization that has applied for the protection of rights and freedoms to the body of judicial power) may ask for the compensation of damage suffered from the actions of court in administration of justice in civil proceedings.

Conclusion

Formation of a strong judiciary, increasing of court's role in society is inextricably linked with the increasing of requirements for its representatives and the quality of court decisions. Achievement of the objectives of justice, protection of the rights and lawful interests of a personality are directly dependent on the professionalism of judges as an essential condition of quality of judicial activity. Responsibility in various forms and varieties is an effective, stimulating method. Court practice highlights the priority of the issue of creation legal institutes for the protection of the rights of a personality in court proceedings, one of which is the responsibility of judges for the quality of their work on administration of justice in criminal and civil cases.

Summarizing the above, it can be argued that in court practice there are various deeds of judges that are incompatible with their high status and which are different in nature: non-performance or improper performance of their duties, gross errors in decision-making, unethical behavior with the participants of proceedings, violation of work discipline, committing an act that defames the honor and dignity of judge, impairs the authority of judiciary, including activity out of office, and in each particular case it is difficult to determine whether a judge falls under disciplinary or criminal responsibility, and what measure – termination of powers or warning should be applied in the case of disciplinary responsibility.

Therefore, there is a need for legislative and clearer establishment of the grounds and mechanism of bringing judges to disciplinary responsibility. The establishment of disciplinary court procedure is necessary not only in view of the special status of judges, but also because there is no clear mechanism for bringing it to responsibility. Also, there are no norms for initiating disciplinary proceedings, the timing for bringing to responsibility and other aspects.

The problems of responsibility of judges for their professional activities are not fully resolved – there is still a need for clearer determination of the boundaries of judicial immunity, delimitation between types of misconduct and errors, determination of their content, improvement of the mechanism of bringing judges to disciplinary, administrative and criminal responsibility. All this, as highlighted by V. A. Terekhin, on the one hand, will allow establishment of the legal and moral order in judicial environment, and on the other, will become a reliable legal guarantees of effective and fair implementation by judges of their functions, ensuring the rights, freedoms and legitimate interests of citizens.

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Sosnina S. V.

THE EFFICIENCY OF A JUDGE ASSISTANT IN ECONOMIC LEGAL PROCEEDINGS

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The article deals with the role of a judge assistant in the administration of justice in arbitration courts of the Russian Federation. The author makes proposals to increase powers of judge assistants and to give them the right to perform certain procedural actions on behalf of judges (by analogy with the institute of judge assistants in foreign legal systems).

Keywords: arbitration proceedings, judge assistant, functions and powers of a judge assistant, rights and duties of a judge assistant, institute of judge assistants.

Nowadays the issue of optimization the activity of judge assistants, members of the arbitration court system of the Russian Federation, is relevant. Large number of cases in arbitration courts causes the need for a new approach to the organization of their activity.

According to paragraph 3 article 45 of the Federal Constitutional Law No. 1-FCL from 28.04.1995 (as amended on April 30, 2010) "On Arbitration Courts in the Russian Federation", employees of an arbitration court are at the federal public service. The rights, duties, responsibility of employees of an arbitration court and the conditions of their passing public service are set by laws and other normative legal acts on the federal public service:

- Federal Law No. 79-FL from 27.07.2004 "On Public Civil Service of the Russian Federation";
- Decrees of the President of the Russian Federation: No.763 from 25.07.2006 "On the Cash Allowance of Federal Public Civil Servants"; No. 765 from 25.07.2006 "On a Nonrecurrent Promotion of Persons Passing the Federal Public Service";

- Decisions of the Government of the Russian Federation.

The provisions of legislation are specified in:

- Regulations of arbitration courts of the Russian Federation;
- Instruction for paperwork in arbitration courts of the Russian Federation, adopted by the order of the Chairman of the Higher Arbitration Court of the Russian Federation No. 27 from March 25, 2004 [1];
- Model provision on the apparatus of arbitration court, approved by the order of the Chairman of the Higher Arbitration Court of the Russian Federation No. 75 from 18.05.2009.

The model provision provides a definition of the apparatus of arbitration court and functions of structural subdivisions, including judge assistants, determines the directions of their work, which are organized (coordinated) by the chief of the apparatus.

Paragraph 21 of the model provision points out that judge assistants are subordinated to the chief of court apparatus in terms of their compliance with the legislation on public civil service and official regulations of arbitration court, implementation of functions on ensuring the passage of cases in arbitration court and enforcement of judicial acts.

Part 1 article 58 of the Code of Arbitration Procedure of the Russian Federation points out that a judge assistant shall help a judge in the preparation and organization of a trial, but it has no right to perform the functions for the administration of justice.

The Assistant cannot perform actions that give rise to the emergence, change or termination of the rights and obligations of persons involved in a case, and other participants to arbitration process (part 3 article 58 of the Code of Arbitration Procedure of the Russian Federation).

Of course, all legal decisions are taken by a judge independently on the basis of personal exploration of case materials. At the same time, in the conditions of high workload of judges, a qualified assistant is able to significantly facilitate the work of a judge, allowing him to focus on the implementation of the main function – administration of justice [5, 164].

Judge assistants prepare a lot of projects of judicial acts taken by judges (96.5% of the number of district court cases) [3].

The Code of Arbitration Procedure of the Russian Federation of 2002, like the Code of Arbitration Procedure of the Russian Federation of 1995, in detail governs the status of persons assisting in the administration of justice in arbitration process. It seems, however, that exactly the status of such person as judge

assistant is insufficiently regulated in the Code of Arbitration Procedure of the Russian Federation of 2002.

Many scholars and practitioners point to the need for professional development of court staff, extending the powers of a judge assistant and giving the latter the right to conduct individual procedural actions on behalf of judge. "Great help for judges would be extending the powers of a judge assistant at the stage of initiation of proceedings and at the stage of preparation of a case for trial... At the stage of preparation of a case and court proceedings judge assistants may perform procedural actions under the leadership of a judge... A similar practice exists in foreign courts (the United States, the United Kingdom and others)..." [4].

It appears that the role of a judge assistant in the administration of justice should be procedurally extended. For example, the work of each judge will be generally more effective when the powers of judge assistants are extended and they are given the right to perform certain actions on behalf of judge.

In 2002, when the Code of Arbitration Procedure of the Russian Federation was introduced, judge assistants had got quite large powers, but all these powers had not been legislatively enshrined at the stage of passage of the draft law. Deputies considered that such great functions on the administration of justice should not be trusted to assistants.

Legislative consolidation of the rights and duties of judge assistants is proposed in order to improve the legislative regulation of the administration of justice in the system of arbitration courts of the Russian Federation

According to the draft law "On Bankruptcy of Individuals" (second reading of the law in the State Duma) such categories of cases of assume serious role of assistants, because, according to the lawmaker, judges will not be able to cope with such volume of legal, but at the same time bearing largely technical nature, work associated with tracking payments under bankruptcy, various health procedures.

In the United States in bankruptcy courts the institute of judge assistants is used exactly for these purposes. Considered that a judge itself cannot monitor in real time how this or that individual, who has received a deferral in repaying debts or possibility to repay debts in installments, makes such payments. In the United States one bankruptcy judge deals with approximately 200-300 bankruptcy cases simultaneously. Of course, since a judge is obliged to carry out continuous certain control over such cases, these functions are assigned to assistants (in the United States four assistants per judge). Only in this way judges can consider such a number of cases. At that, the number of bankruptcy judges in the United States is considerably lower than in Russia.

It can be concluded that the institute of judge assistants in the United States plays a very significant role and contributes to the rapid, expeditious and legally correct resolution of cases by judges.

Foreign experience in improving the productivity of judge assistants may be used by the Russian legislator in carrying out judicial reforms.

In order to lighten the workload of a judge, to release it from technical work, to reduce the violations of procedural time terms of consideration cases, the Russian judicial system should increase the number of judge assistants.

First of all, the number of judge assistants shall be increased for the judges dealing with particularly complex cases. This can contribute to reducing the workload of all the judges, rapid and correct consideration of particularly complex disputes, using internal capacity, optimize organization of judicial activity.

The salary of assistants in European countries is different from judges' salaries only 20-30%. In Europe, many people work as judge assistants throughout their lives, since not every judge assistant wants to take on a heavy burden of deciding the fate of people (an incredible moral burden).

An analogical to the world experience situation occurs with salaries of judge assistants of the Higher Arbitration Court of the Russian Federation. It is tarifficated by the wages of the Government of the Russian Federation, and not by the general grade for payment of labor in arbitration courts. This makes it possible to remain at the post of judge assistant of the Higher Arbitration Court of the Russian Federation until retirement.

Among the main measures for the selection of qualified staff wishing to work in the court system as a judge assistant, it is necessary, in accordance with the high status and responsibility of judge assistants, to significantly increase their salaries and guaranteed decent financial security.

This will create the sprouts of elitism in the legal field, which will allow recruiting on a competitive basis of the most capable and professional staff.

Thus, in order to improve the institute of judge assistants, the legislator should make a proposal to increase the salaries of judge assistants in the arbitration judicial system throughout the Russian Federation.

The results of any labor collective are ensured primarily through the correct organization of work. The use of scientific and technical means, which could improve paperwork in court, brings significant effectiveness in the work of court.

Separation of a judge, its assistant and a specialist has a negative impact on the preparation of a case for trial, slows its. This affects the quality of procedural

actions carried out on a case, making judgments on the case in full, bringing them to the attention of the persons participating in the case.

The author shares the position of the Chairman of the Higher Arbitration Court of the Russian Federation, A. A. Ivanov that "It is a good idea to create in arbitration courts "the offices of a judge", which would include compactly located offices of a judge, its assistant, specialist that support the activity of the judge" [2, 54].

In addition, it should be noted that for the purpose of self-improvement and the improvement and development of the organization of work of arbitration courts system, its effective functioning, as well as in order to enhance the authority of judicial power, transparency and accessibility of justice, judge assistants should perform not only the main work on the preparation and organization of judicial process, but also particularly important and complex task of judges and the head of court apparatus.

Monitoring over performing by judge assistants of particularly important or complex tasks and evaluation of the results of their work is a responsibility of judges and the head of court apparatus.

This takes into account:

- volume, complexity and importance of a done task;
- rapidness and quality of task performing;
- proactiveness and creative attitude to a case;
- timely and qualitative performance of official duties under the official rules of a civil servant;
- participation in carrying out the activities under the work plans of a court and the work plans of a judicial assembly or a judge.

Judge assistants, who have low performance results (a lot of complaints, missing deadlines, etc.), are not included by a judge or the head of court apparatus in the list of judge assistants that perform particularly important and complex tasks.

Consequently, you can come to conclusions that it is important to:

- increase staff of judge assistants in arbitration courts;
- procedurally extend the role of a judge assistant in the administration of justice;
- legislatively enshrine the rights and duties of a judge assistant;
- increase the salaries of judge assistants in arbitration court system throughout the territory of the Russian Federation;
- create "the offices of judges", which would include compactly located offices of a judge and its assistant;

- assign judge assistants to perform particularly important and complex tasks;
- develop further ways of improving the productivity of each judge assistant in general.

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Surgutskov V. I.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Proceedings on a case of administrative offence are carried out by the bodies and officials in strict accordance with the law.

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

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

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Ul'yanov A. A.

LEGAL REGULATION OF PROTECTION OF OBJECTS OF PARTICULAR IMPORTANCE

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Such problems in the legal regulation of protection of objects of particular importance, as the lack of a legal regulation of issues associated with the categorization of objects and uncertainty of control procedures over protected objects of certain categories, are noted in the article.

Given that particularly important objects are the subject of intense interest by criminal groups that are usually specially prepared, the main objectives of protection are an exception of penetration on an object and into vital centers of the object, full restriction of access by unauthorized persons and personnel in the special "zones" of the object, detecting leaks of hazardous substances (e.g. domestic gas), which can lead to technological accidents.

Keywords: objects of particular importance, protection of objects of particular importance, Federal Guard Service, principle of objects' protection, extradepartmental security service.

The main potential to improve the protection of objects of particular importance lies in the sphere of organization of closer interaction of administration of objects' security services with state law enforcement agencies and special services.

Being objectively interested in cooperation with law enforcement agencies for quality conducting of prevention activities, detection the attempts of crimes and ensuring of prompt, timely arrival of units of the Federal Security Service, the Ministry of Internal Affairs and the Emercom of Russia at the scene of accident, the heads of objects of particular importance, and the heads of security structures should take an appropriate initiative, regardless of the level of understanding among the local representatives of law enforcement agencies [10, 205].

Article one of the Federal Law No. 57-FL from May 27, 1996 "On State Guard" provides that state guard is a function of Federal authorities for the protection of objects of the state guard, which is carried out based on a totality of legal, institutional, protective, modal, investigative, technical and other measures" [3].

Objects of the State Guard are: the President of the Russian Federation, holders of public office of the Russian Federation, federal public servants, heads of foreign states and governments and other persons of foreign states during staying in the territory of the Russian Federation. Protected objects are buildings in which the federal bodies of state power are located, the surrounding territory and water area.

Federal Guard Service of the Russian Federation carries out protection of the Prime Minister of the Russian Federation, Chairman of the Federation Council, Chairman of the State Duma, Chairman of the Supreme Court of the Russian Federation, Chairman of the Higher Arbitration Court of the Russian Federation, President of the Constitutional Court of the Russian Federation, Procurator General of the Russian Federation during their term of office. If necessary, by decision of the President of the Russian Federation, the state guard may be provided to other persons – deputies, public servants. In accordance with the international treaties, heads of foreign states and governments, members of their families during their stay on the territory of the Russian Federation are provided protection. By the order of the President of the RF the Federal Guard Service protects foreign political and public figures during their stay on the territory of the RF. That is, this information allows us to describe the State's Departmental Guard as a totality of created by the federal executive authorities management bodies, forces and resources for the protection of protected objects against unlawful encroachments.

At that, you must determine what body of state power is given the functions of ensuring security of objects of the state guard, that this state body is the Federal Guard Service (FSO – in Russian).

Meanwhile, police units of extradepartmental security service, in accordance with the Order of the Russian Ministry of Internal Affairs No. 609 from August 4, 2006 "Organization Issues of Activity of the Military Police Units of Extradepartmental Security Service of the Internal Affairs Bodies of the Russian Federation", bear responsibility to ensure the protection of objects subject to mandatory protection, protection of property of individuals and legal entities on a contractual basis, to implement tasks on participation in ensuring the protection of public order and fight against offenses in areas of their posts and patrol routes.

It should be noted that currently the optimization of the list of objects subject to mandatory police protection of the previously existing RF Government Order No. 1629-r from November 2, 2009 [7] has been completed; the list of these objects is approved by the RF Government Decree No. 2324-r from December 10, 2013 [9], from the previous list were excluded such items as:

- buildings, storages of state museums, libraries, archives, reserve museums of regional significance;
- administrative buildings of the Accounting Chamber of the RF;
- administrative buildings, occupied by other prosecutors in the constituent entities of the RF, the investigative bodies Investigative Committee of the RF;
- storages of narcotic drugs and psychotropic substances;
- buildings of state television and radio companies, their radio-television transmitting and technical centers;
- administrative buildings of the Federal Drug Control Service (FDCS), the Federal Bailiff Service (FBS) of Russia and their territorial bodies;

and the following items were included:

- administrative buildings of the central office, territorial institutions of OJSC "Bank VTB";
- objects of fuel and energy complex;
- weapon storage rooms of departmental guard units of the federal executive authorities and their organizations;
- administrative buildings occupied by city, district courts in the constituent entities of the Russian Federation.

However, not all provisions of the list are indisputable.

Namely, according to the particular arbitration case No. A45-11313/2013, considered in the Federal Arbitration Court of the West Siberian district, April 8, 2014, it can be concluded that exclusion from the list of objects of protection the storage depots of narcotic drugs is inappropriate in terms of public security.

So, the State Budgetary Health Institution of Novosibirsk region "Advisory-diagnostic polyclinic No. 2" appealed to the Arbitration Court of Novosibirsk region with a statement to invalidate the decision of the Department of the Federal Drug Control Service of Russia in Novosibirsk region No. 3/417 from 14.03.2013 "On refusal to issue a conclusion on the conformity of objects and premises related to activities associated to turnover of narcotic drugs and psychotropic substances included in List I of priced catalogue, and (or) the cultivation of narcotic plants, to the established requirements for equipping these facilities and premises with engineering technical means".

The stated demand was met by the decision of the Arbitration Court of Novosibirsk region from September 16, 2013, which had been left without changes by the decision of the seventh Arbitration Court of Appeals from 25.11.2013.

In the cassation appeal the Department, referring to the incorrect application of material and procedural norms of law, not matching of the findings of courts with the detected circumstances of the case, asks to cancel the decisions and to take a new legal act on refusal to meet the stated demands. According to the applicant of the cassation appeal, in accordance with the current legislation, the controversial object is subject to state guard, i.e. by the police.

Materials of the case found that on the basis of application from the institution № 3/490 from 19.02.2013 the Department made an examination of premise of the third category for storage of narcotic drugs and psychotropic substances No. 33, located in a clinic at the address Novosibirsk, Morskoy Avenue 25.

Based on the results of the examination the Department compiled act No. 3/29/54 from 12.03.2013 and took decision No. 3/417 from 14.03.2013, by which the institution was denied the conclusion on the conformity of the premise to the established requirements due to the fact that it was not protected by the police.

Believing that the Department's denial to issue the conclusion is not based on norms of the current legislation, the institution appealed to arbitration court with the present application.

When meeting the demands stated, arbitration courts had come to the conclusion that the premises for the storage of narcotic drugs, psychotropic substances and their precursors, that constitute a part of health institutions, including state ones, related to the premises of the third category, might be protected by non-governmental organizations having the license for realization of non-state (private) security activity.

Federal service department points to the contradiction of the current legislation norms.

The courts investigated these issues and were based on the following.

On the basis of paragraph 1 article 8 of the Law on narcotic drugs, trafficking in narcotic drugs, psychotropic substances and precursors included in List I on the territory of the Russian Federation is carried out only for the purposes and under the procedure prescribed by this Federal Law and adopted in accordance with it normative legal acts of the Russian Federation.

By virtue of paragraph 10 of the Rules of storage narcotic drugs, protection of premises belonging to the third and fourth categories is carried out through involving (in addition to the units of extradepartmental guard of internal affairs bodies) of legal entities licensed to conduct non-state (private) security activity.

However, subparagraph 25 paragraph 1 article 12 of the Federal Law No. 3-FL from February 7, 2011 "On the Police" [4], the police is responsible for protection on a contractual basis of property of citizens and organizations, as well as objects subject to mandatory protection of police, in accordance with the list approved by the Government of the Russian Federation.

According to paragraph 8 of the List of objects subject to mandatory police protection, approved by order of the Government of the Russian Federation No. 1629-r, in the version valid at the time of the inspection by the Department, warehouses (storage rooms) for narcotic drugs and psychotropic substances, highly potent, poisonous, toxic substances and chemical drugs composed of highly potent, poisonous and toxic substances, of state bodies and organizations are subject to mandatory police protection.

It was found out, that paragraph 8 of the List is in conflict with paragraph 10 of the Rules of storage narcotic drugs.

Having set during the consideration of the present case, the collision of provisions of the mentioned legal acts, arbitration courts of both instances, in accordance with part 2 article 13 of the Arbitration Procedural Code of the Russian Federation [1], article 23 of the Federal Constitutional Law No. 2-FCL from December 17, 1997 "On the Government of the Russian Federation" [2], rightly pointed out that in the present case priority should be given to the Order of the Government No. 1148, since this normative legal act has greater legal force and the later date of adoption.

In such circumstances, courts have come to a reasonable conclusion that the provision of services to protect the disputed premises may not only be on the basis of a contract with the police, but also with the specialized organizations licensed to non-state (private) security activity.

Arguments of the Department on non-use by courts the provisions of the Law of the Russian Federation No. 2487-1 from March 11, 1992 "On Private Detective

and Security Activities in the Russian Federation" [5] and the RF Government Order No. 587 from 14.02.1992 "Issues of Private Detective (investigative) and Private Security Activity" [6] were rejected by the court of cassation.

The reorganization of the Ministry of Internal Affairs of Russia shows that extradepartmental security service has not stopped in its development, and it has been given new functions, new approaches of service activity have been elaborated and fundamentally new tasks have been set.

So, the Federal Law "On the Police" provides extradepartmental security service such functions like the inspection of guard units of legal entities engaged in special assignments and units of departmental guard (paragraph 25 article 12), the issuance of instructions on elimination of detected violations in their security activity, in the area of arms trafficking and ensuring the safety of State and municipal property (article 26 article 13). Appropriate regulatory framework is already created and since 2012 the service has begun to implement these functions.

The cardinal change in the structure of the service and its legal status has become the signed on December 30, 2011 RF Government Decree No. 2437-r [8] on the establishment of federal state-owned institutions on the basis of Internal Protection Directorate (Department of Extradepartmental Security Service) with the accession to them as branches the units of extradepartmental security service of local internal affairs bodies at the district level.

Since the units of extradepartmental security service are entrusted with a number of specific tasks that are the distinctive feature from the other services of internal affairs bodies, the creation of a Federal State-owned Institution was necessary to save them the status of a legal entity with preserving accounts in the Federal Treasury bodies, the contractual framework of activities of these units for the protection of property of citizens and organizations, the powers to conduct the work with claims and suits, the performance of functions of revenue administrators and performing of prognostic indicators for the transfer of funds to the Federal Budget, as well as the formation of tariffs for services.

In this regard, in 2014, it is proposed to conduct significant organizational-legal and practical arrangements for the amending of normative-legal acts of Internal Protection Directorate (Department of Extradepartmental Security Service), preparation of provisions on the branches of Federal State-owned Institution, powers of attorney for the heads of branches defining their powers, staff schedules of branches and other documents, as well as arrangements for the renewal of contracts (additional agreements) with counterparties, reregistering of

the property of the units of extradepartmental security service of the subjects, paying special attention to the preservation of the volume of security services, prevention of negative factors in connection with the reorganization.

Over the past 10 years, the Ministry of Internal Affairs of Russia, Department of State Protection of Property, Center for Operational Management of Extradepartmental Security Service and Main Directorate of Extradepartmental Security Service of the RF MIA had prepared for units of extradepartmental security service more than 230 directives aimed at improving the protection of objects of particular importance, including the requirements for activity on carrying out examination of their technical strengthening and elimination of revealed deficiencies.

This shows not only the emphasis that is laid by the Ministry of Internal Affairs of Russia on the strengthening security of such objects, but also the presence of various problems.

Such problems include the following:

- there is no legislative regimentation of issues associated with the categorization of objects;
- uncertainty in control procedures for certain categories of protected objects;

Since these issues relate to the definition of the status and the state guard of objects of particular importance, there is no doubt that their resolving should be enforced at the federal level.

In addition, it should be noted that optimization of administrative apparatus of extradepartmental security service, first of all, should focus on strengthening the units of organizational and analytical work while ensuring qualitative selection and training of staff for management activities, including the training of staff in the staff offices of internal affairs bodies.

Particularly important objects are the subject of intense interest by criminal groups that are usually specially prepared. Their methods include not only the direct implementation of a sabotage, but also compulsion to prepare them by means of threats or bribery of site personnel. For this reason, the main objectives of protection are an exception of penetration on an object and into vital centers of the object, full restriction of access by unauthorized persons and personnel in the special "zones" of the object, detecting leaks of hazardous substances (e.g. domestic gas), which can lead to technological accidents. In addition, with the introduction in the market of security services of private structures, own security services of objects, expanding their spheres of activity, there is an urgent issue of the need for strengthening state regulation in the field of property protection.

In view of the threat of wrongful acts at these objects, territorial internal affairs bodies and extradepartmental security service, in cooperation with the heads of executive authorities, carried out a set of organizational, practical, precautionary and preventive measures.

However, security of objects of particular importance is a condition when the negative effects of potential dangers from threats of man-made, natural nature and criminal encroachments of terrorist nature are overcome or extremely reduced.

The principle of security of objects of particular importance includes the following main elements:

- coordination and collaboration of the subjects of protection;
- assessment of the security of objects of particular importance;
- assessment of the reliability of technical means of protection.

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