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REFLECTIONS ON ADMINISTRATIVE PENALTIES  
IN THE FIELD OF ROAD TRAFFIC<sup>1</sup>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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