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Denisenko A. V.

ABOUT LEGAL RESPONSIBILITY FOR VIOLATION OF COPYRIGHTS AND RELATED RIGHTS, INVENTOR'S AND PATENT RIGHTS: ISSUES OF ALLOCATION OF RESPONSIBILITY

Denisenko Anton Viktorovich,
Degree-seeking student of Rostov Law Institute of RF MIA.

Argues that allocation of civil and criminal responsibility is carried out in accordance with the object of encroachment and in accordance with the objective aspect of a wrongful act, and in cases of related compositions of relevant administrative offenses and crimes in accordance with the size of inflicted harm.

The differences in the jurisdiction of crimes and administrative offences in the field of legislation on copyright and related rights, inventor's and patent rights are noted in the article.

The author focuses attention on legal uncertainty in the priority of jurisdiction between district court and garrison military court, and also on the uncertainty of priority of jurisdiction between district court and arbitration court in a case of administrative investigation in respect of administrative offense under article 14.33 of the Code on Administrative Offences of the Russian Federation.

Keywords: copyright and related rights, inventor's and patent rights, copyright infringement, responsibility for copyright infringement, intellectual property courts.

In accordance with the Russian legislation, violation of copyright and related rights, inventor's and patent rights entails occurrence of one of three types of legal responsibility:

- administrative one (under the Code on Administrative Offences of the RF (hereinafter – CAO RF) [2]: article 7.12 – for breach of copyright and related rights, inventor's and patent rights; article 14.33 – for unfair competition);
- civil-law one (under the Civil Code of the RF [1]: article 1253 – responsibility of legal persons and individual entrepreneurs for violations of exceptional rights; article 1301 – responsibility for the infringement of an exclusive copyright; article 1311– responsibility for the infringement of an exclusive right on the object of related rights; article 1472 – responsibility for the infringement of an exclusive right to manufacturing secret; article 1515 – responsibility for the unlawful use of a trademark; article 1537– responsibility for the unlawful use of the appellation of origin);
- criminal one (under the Criminal Code of the Russian Federation [3]: article 146 – for breach of copyright and related rights).

Consideration of cases on relevant administrative offences, civil-law torts and crimes in respect of jurisdiction is a prerogative right of courts of general jurisdiction and arbitration courts.

The ratio between these types of legal responsibility has not undergone fundamental changes after establishment in the system of arbitration courts of intellectual property court, which is a specialized arbitration court that considers within its competence as a court of first and cassation instance cases on disputes relating to the protection of intellectual property rights, and removes a significant part of the issues associated with the determination of jurisdiction and arbitrability of cases of the named category.

Part 1 article 43.3 of the Federal Constitutional Law No. 4-FCL from December 06, 2011 "On Amendments to the Federal Constitutional Law "On the Judicial System of the Russian Federation" and the Federal Constitutional Law "On Arbitration Courts in the Russian Federation" in Connection with the Creation of an Intellectual Property Court in the System of Arbitration Courts" [4] determines, that the intellectual property court as a court of first instance deals with:

1) cases on contesting normative legal acts of federal executive bodies affecting the rights and legitimate interests of an applicant in the field of legal protection of intellectual property and means of individualization , including in the field of patent rights and rights to selection achievements, the right to integrated circuit layout, right to manufacturing secrets (know-how), right to the means of

identification of legal persons, goods, works, services and enterprises, the right to use the results of intellectual activity in a single technology;

2) cases on disputes about granting or termination of legal protection of intellectual property and equivalent to it means of individualization of legal entities, goods, work, services and enterprises (with the exception of objects of copyright and related rights, integrated circuit layouts), including:

- on disputing non-normative legal acts, decisions and actions (inaction) of a federal body of executive power for issues of intellectual property, a federal body of executive power for selection achievements and their officials, as well as of the bodies authorized by the Government of the Russian Federation to consider applications for the grant of a patent for secret inventions;

- on disputing the decisions of the Federal Antimonopoly body on recognition as unfair competition of actions associated with the acquisition of an exclusive right to means of individualization of a legal person, goods, services and enterprises;

- on determination of a patent holder;

- on invalidation of a patent for an invention, utility model, production prototype or selection achievement, a decision to provide legal protection to a trademark, appellation of origin and to grant exclusive rights to such name, if federal law does not provide another procedure for their invalidation;

- on early termination of legal protection of a trade mark because of its non-use.

At the same time it is established that these cases are dealt with by the intellectual property court regardless of whether the participants of legal relations, of which the dispute has arose, are organizations, individual entrepreneurs or citizens (part 2 article 43.3 of the Federal Constitutional Law No. 4-FCL from December 06, 2011).

Delimitation of subjective composition of violations of copyright and related rights, inventor's and patent rights well stay within the usual scheme for major types of legal responsibility.

When a crime under article 146 of the Criminal Code of the RF, namely in the case of conversion of authorship (plagiarism), if this deed has caused major damage to the author or other right holder (part 1) or in the case of illegal use of an object of copyright or related rights, as well as the acquisition, storage, transportation of counterfeit copies of works or phonograms for purposes of sale, committed on a large scale, the subject of criminal responsibility is a general subject – a sane natural person who at the time of offense has reached sixteen years of age. Deeds provided for in the said article shall be deemed committed on a large

scale if the cost of copies, works or phonograms or the cost of the rights to the use of objects of copyright and related rights exceeds fifty thousand rubles. General subject is also provided for in the case where the deeds provided for in part 2 article 146 of the Criminal Code of the RF are committed: by a group of persons in a preliminary collusion, by an organized group or on a large scale (clause "b" and "c" part 3 article 146 of the Criminal Code of the RF. Deeds that are provided for in this article shall be deemed committed on an especially large scale, if the amount of damage exceeds two hundred fifty thousand rubles). And only in case of an offense under part 2 article 146 of the Criminal Code of the RF committed by a person using its official position, the subject of a crime is a special subject, while the law does not stipulate that it must necessarily be an official.

At that, it should be borne in mind that the prosecution of a person, who has committed a crime under part 1 article 146 of the Criminal Code of the RF, shall be implemented in private-public order that provides for the institution of criminal proceedings only upon application of a victim or its legal representative and must not be terminated in connection with the reconciliation between the victim and the accused, except for cases provided for in article 25 of the Code of Criminal Procedure of the RF (part 3 article 20 of the Code of Criminal Procedure of the RF). In accordance with article 25 of the Code of Criminal Procedure of the RF, a court, as well as an investigator with the consent of the head of an investigative body or an interrogator with the consent of prosecutor is entitled on the basis of application of the victim or its legal representative to terminate a criminal case against a person suspected or accused of committing a crime of minor or moderate gravity, in cases provided for by article 76 of the Criminal Code of the RF, if this person has reconciled with the victim and made up inflicted losses. Based on the fact that crimes provided for in parts 1 and 2 article 146 of the Criminal Code of the RF, in accordance with part 2 article 15 of the Criminal Code, refer to minor offenses, a person who for the first time has committed a crime of small or moderate gravity, can be exempted from criminal responsibility if it has reconciled with the victim and made up inflicted losses (article 76 of the Criminal Code of the RF).

The subjects of administrative responsibility in the field of legislation on copyright and related rights, inventor's and patent rights, and rightly so, can serve three categories of actors: citizens, officials and legal entities. For the mentioned subjects this type of responsibility occurs if there is a fact of:

- import, sale, hiring out or any other unlawful use of copies of works or phonograms for the purpose of deriving income, where the copies of

works or phonograms are counterfeited under the legislation of the Russian Federation on copyright and related rights, or where the information about the manufacturers of the copies of works or phonograms, or about the places of their production, as well as about the possessors of the copyright and similar rights, indicated on these copies, is false, as well as any other violation of copyright and related rights for the purpose of deriving income, except for cases provided for in part 2 article 14.33 of the Code on Administrative Offences of the RF (part 1 article 7.12 CAO RF);

- unlawful use of an invention, utility model, production prototype, except for cases provided for in part 2 article 14.33 of the Code on Administrative Offences of the RF, or disclosure of the essence of an invention, utility model, production prototype without the author's or applicant's consent prior to the official publication of information about them, conferment of authorship and coercion to co-authorship (part 2 article 7.12 CAO RF);

With regard to article 14.33 of the Code on Administrative Offences of the RF, which provides for administrative responsibility for unfair competition, if these actions do not contain a criminal deed (part 1 article 14.33 CAO RF) or in case of unfair competition that is expressed in the introduction into circulation of goods with the illicit use of the results of intellectual activity and equivalent to them means of individualization of a legal person, means of individualization of products, works, services (part 2 article 14.33 CAO RF), the subjects of responsibility may be solely officials and legal persons.

CAO RF also provides for the possibility of a judge to take a decision to release a person from administrative responsibility when the administrative offense is insignificant and to declare to it an oral reprimand (article 2.9). However, CAO RF contains no explanation of what is meant by the notion of "insignificance of an administrative offence" and conditions of application the provisions of article 2.9. CAO RF.

Analysis of articles 7.12, 14.33 CAO RF and article 146 of the Criminal Code of the RF, cases upon which are referred to the jurisdiction of courts, allows to judge that the legislator has exercised the delimitation between administrative and criminal responsibility, primarily, according to the object of encroachment and according to the objective side of a wrongful deed, and in cases of related compositions of relevant administrative offenses and crimes according to the amount of harm inflicted.

There are also differences in jurisdiction of crimes and administrative offences in the field of legislation on copyright and related rights, inventor's and patent

rights. In accordance with parts 1 and 2 article 31 of the Code of Criminal Procedure of the RF, crimes under article 146 of the Criminal Code of the RF are subject to the jurisdiction of district courts. With regard to the jurisdiction of cases on administrative offences provided for by articles 7.12 and 14.33 CAO RF, in practice may occur uncertain situations in respect of the issue of what judge has to consider this or that case.

By a general rule cases on administrative offenses provided for by article 7.12 CAO RF are under the jurisdiction of justice's courts, and cases on administrative offenses provided for by article 14.33 CAO RF – arbitration courts (part 3 article 23.1 CAO RF). At the same time it is established that in cases of administrative offenses by servicemen and citizens called up for military training, such cases shall be considered by the judges of garrison military courts. Besides, the carrying out of proceedings on administrative offences in the form of an administrative investigation, the possibility of which, in accordance with part 1 article 28.7 CAO RF, is stipulated in case of detection of an administrative offence in the field of patent legislation, legislation on copyright and related rights, also provides for changes in the jurisdiction of a case, namely its assignment to the jurisdiction of district courts.

When it is evident, that in the implementation of the proceedings on a case of administrative offense under article 7.12 CAO RF in the form of an administrative investigation, it shall be considered in accordance with jurisdiction not by a justice of the peace, but by a district court judge, the situation is not as evident when the subject of such administrative offense is a military serviceman or a person called up for military training. In this case, there is uncertainty as to the priority of jurisdiction between a district court and garrison military court. The same uncertainty about the priority of jurisdiction between a district court and arbitration court occurs in the case of an administrative investigation of an administrative offence provided for by article 14.33 CAO RF.

To exclude situations of uncertainty regarding the priority of jurisdiction between district courts, arbitration courts and garrison military courts in respect of cases of administrative offenses in general and in cases of administrative offenses provided for, in particular, by articles 7.12 and 14.33 CAO RF, we need introducing of appropriate amendments to article 23.1 CAO RF, and before their introducing – the explanations of the Plenary Session of the Supreme Court of the Russian Federation.

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Ezhov Yu. A.

ADMINISTRATIVE REFORMS IN THE RUSSIAN FEDERATION

Ezhov Yurii Alekseevich,
c.j.s. (PhD in law), Associate professor of the Chair "Administrative and Informational Law" at Financial University under the Government of the Russian Federation, Associate professor.

In the article noted the change in the ratio of application of legal means (laws and subordinate acts) to ensure administrative reform, as well as the development of processes for allocation of powers, including those between the federal bodies of executive power and the bodies of executive power of the subjects of the Russian Federation regarding the matters of joint jurisdiction of the Russian Federation and its subjects.

Argues that depriving the executive authorities of the subjects of the Russian Federation of the most part of management functions, such as coordination, planning, predicting, accounting, information gathering, organization, supplying, etc., has significantly changed the administrative-legal status of the bodies of executive power at the regional level.

The author makes a conclusion that the bulk of excessive functions contained in the federal laws and decrees of the President of the Russian Federation and in the acts adopted by the Government is still preserved.

Keywords: administrative reform, public authority, management reform, transformations in executive branch.

In recent years our country has being conducted reforms in many spheres of state and public life. Reforms have also touched upon the sphere of administration. The current administrative reform is focused primarily on the creation of an optimal system of public administration. Effective state power is necessary to address urgent social and economic problems, to improve the level and quality of life of the population.

Today's world is notable for the trends of a new understanding of the role of the state, its functions, interrelations between society and the state, its bodies. As a result, in some countries, it has become necessary to carry out administrative reforms. Their experience shows that this is a long, difficult task that requires efforts of the whole society and, importantly, openness of government for the dialogue with it. At the same time, hasty and ill-considered decisions can lead to significant economic and social losses.

Reforming of governance – is not only and not so much change in the structure and staff as a revision of the powers of executive authorities, improvement the mechanisms for the implementation of these powers and functions. On the other hand, reallocation of powers, elimination of duplication, elimination of redundant functions – not an end in itself, but objectively necessary component of administrative reform.

The term of "administrative reform" has been being familiar to everybody for many years. But only at the end of 2003, and especially in 2004-2005 these words were given the nature of a real, radical and large-scale state affair. The meaning of "reform" measures in the Letter of the RF President to the Federal Assembly of the Russian Federation for the year 2005 was characterized as follows: "In the last five years, we have been forced to deal with the difficult task of preventing the degradation of state institutes. But, at the same time we were obliged to create the basis for development in the years and decades ahead…" [8].

What are the prerequisites of administrative reform, when has it began, its content, bills related to the conduct of, and other normative legal acts, results and expectations – this is the range of issues that now require scientific and legal comprehension.

Administrative reform – the most difficult in the history of modern Russia – has been continuing steadily and gradually from 1991, since the end of the Soviet public and state system and the transformation of the socialist planned economy into a market one. The revolutionary course of actions to transform Russia suggested a radical restructuring of the entire state mechanism. Hence is the formation of a new system of legislative power and conducting of judicial reform, which has been

continuing up to this day. It is time to start the reorganization of public administration and, above all, executive authority [8; 9, 29].

Public servants are needed in any state. Efficiency of the entire public administration depends on the efficiency of performance of their duties. Therefore, there has not been actual reduction in the number of public servants, benefits and privileges have not been abolished. While long working hours, increased responsibility, unsafe for life and health nature of official activities, etc. are compelling justifications for the presence of benefits. The task is in their legally regulated and real providing.

Being aware of all this, the political elite carried out administrative reform, adjusting the Soviet executive apparatus to the needs of the country's ongoing political and economic reforms. The general vector of this adjustment was characterized by the words: If you change something, do it minimally.

The Constitution of the Russian Federation defined executive power as an independent branch of state power, introduced the concept of a unified system of executive power, established in the most general terms the order of formation of the Government of the Russian Federation, and left open the issues about the system and structure of the executive power and its functional orientation. Regarding these issues a fierce dispute was started around the Federal Constitutional Law "On Government of the Russian Federation". That is why the elaboration of the draft law was lasting for four years.

Many lawyers, including the drafters of the bill, referring to the lack of proper constitutional basis of executive power, offered in it:

- to consolidate the principles of organization of executive power bodies;
- to determine the essence of a body of executive power;
- to define the criteria for determining each type of executive power bodies;
- to determine the purpose of each type of executive power bodies and their place in the system;
- to formulate the tasks and functions of each type of executive power bodies;
- to reflect the correspondence of body's name to the nature and content of its activity, and so on.

But even in the Law on the Government of the Russian Federation [1] these issues have been left opened. This is no accident. The intention of the legislator was to provide full scope for the formation of executive apparatus adapted to the new type of economy.

Clarity was only in one question: to solve the political task of avoiding the system of global state impact on economy. The legislator refused state-legal and

social concept of "governance" and adopted its interpretation in narrow civil-legal sense – in relation to public property. This has generated a lot of difficulties in the exercising the powers of executive authorities and created a set of problems requiring solutions, both in normative and organizational order: combining the functions of regulation and management, powers of authority and "market power", responsibilities for the development of competition and the rights of control and oversight over the activities of business structures, etc.

Thus, administrative reform was initially considered as a significant and the most difficult element of economic and social reforms in Russia since 1990.

Reforms conducted in Russia are aimed at creating a real foundation for the transition to the formation of a unified and effective system of power able to make quick and high quality solutions, that is, adequate time requirements agreed in the objectives and consistent in content, and to achieve their strict implementation. At that, ongoing in the executive branch transformations in recent years significantly affect the content and methods of public administration, without changing the application of well-known legal means: legislative regulation and sublegislative rule-making.

However, as the analysis shows, the ratio in application of legal means (laws and subordinate acts) to ensure administrative reform in Russia has recently been changing. For example, if at the first phase were mainly used the legal acts of the President of the Russian Federation, which determined the main directions of the reform: reallocation and the reduction of the functions of executive power bodies, the modernization of the system of executive power, etc., and the Government of the Russian Federation was entrusted with the duty to carry out these activities, then the subsequent phases were planned by the Government of the RF. It endorsed the Concept of administrative reform in the Russian Federation for 2006-2010.

Changes in the executive branch at the federal level could not but affected the level of the constituent entities of the Russian Federation. The more so because constitutional and legal reform conducted in the regions is now directly linked to the administrative one.

In other words we can say that the strengthening of the system of power at all levels has led to development of processes for allocation of powers, including those between the federal bodies of executive power and the bodies of executive power of the subjects of the Russian Federation regarding the matters of joint jurisdiction of the Russian Federation and its subjects. This is, so to speak, "links of the same chain", what, apparently, was not taken into account in the planning of administrative reform. That is why depriving the executive authorities of the subjects of the

Russian Federation of the most part of managerial functions, such as coordination, planning, predicting, accounting, information gathering, organization, supplying, etc., has significantly changed the administrative-legal status of the bodies of executive power at the regional level.

First, in regions and territories have begun to establish Ministries with sectorial competence, in republics – services and agencies to provide public services; executive authorities of the subjects of the Russian Federation basically have lost the ability to timely and accurately implement regional management, as interconnections (between the federal and regional authorities) have been destroyed and executive bodies of the subjects of the Russian Federation have remained, as they say, "alone with their problems".

Secondly, in the subjects of the Russian Federation has dramatically increased the number of territorial units of federal bodies of executive power. For example, in the field of ecology and environment protection ministries of natural resources of the Russian Federation were "broken up" regarding the objects of management (regional department for water resources, regional forestry, regional department for subsoil use, etc.)

Thirdly, there has appeared a lack of clarity in the scope of powers of some sectorial bodies of executive power – federal bodies and bodies of the subjects of the Russian Federation to conduct state control and various kinds of examinations. For example, the legislation does not clarify exactly which executive authorities are responsible for conducting environmental monitoring and environmental impact assessment. Moreover, the terminology used in determining the scope of powers of executive power bodies makes a mess of the determination of the subject of management.

While using in the Federal Law No. 166-FL from 20.12.2004 "On Fisheries and Preserving of Aquatic Biological Resources" [2] the concept of "federal executive body responsible for supervising the fisheries and preserving of biological resources and their habitats" we cannot determined either we talk about the Federal Service for Veterinary and Phytosanitary Surveillance or the Border Guard of the Federal Security Service of the Russian Federation.

Fourth, Federal Laws passed as a result of the allocation of powers between the public authorities of the Russian Federation and its subjects and, in fact, already representing the results of the administrative reform change the content (subject) of legal regulation. For example, the change in the scope of powers of the executive power bodies, provided for by the Federal Law of the Russian Federation No. 323-FL from 21.11.2011 "On the Basis of Health Protection in the Russian Federation"

[3], has led to changes in the legal status of the recipients of budget funds. Previously was used the notion of "institution of citizens' health protection", and these institutions had the status of state and municipal ones. This notion was replaced by the notion of "organization of citizens' health protection", which, as we know, may be private. Consequently, now also private organizations operating in the field of citizens' health protection act as the recipients of budget funds. The same amendments have also been made in education [10, 14].

So, changes in the executive branch that take place in recent years significantly affect the content and methods of public administration. If the administrative reform will continue to influence on the legislation in such a way, there will be a need to put it in a more or less coherent system. This can be avoided by providing for the above listed steps of conducting the administrative reform.

Administrative legislation did not include officially established typology of the functions of executive power bodies. As a result of the implementation of the decrees of the President of the Russian Federation No. 724 from May 12, 2008 "Issues of the System and Structure of the Federal Bodies of Executive Power" [5] and No. 636 from May 21, 2012 "On the Structure of the Federal Bodies of Executive Power" [6] and review of the functions of federal executive bodies conducted by the Government Commission for Conducting of Administrative Reform [7], the following typology of the functions of executive power bodies was adopted:

- functions of adoption of normative legal acts;
- control and supervisory functions;
- state property management functions;
- functions of provision state services.

Now let's conduct a comparative analysis of the above-mentioned decrees of the President of the Russian Federation.

Both of the decrees of the President of the Russian Federation in order to form an effective system and structure of federal bodies of executive power optimize the functions of federal bodies of executive power.

Optimization of the functions of federal bodies of executive power means:

- abolition of the functions of excessive public administration;
- avoidance of duplication of functions and powers of the federal bodies of executive power;
- transfer of functions of federal bodies of executive power to self-regulating organizations in the field of Economics;
- institutional separation of functions related to regulation of economic activities, supervision and control, management of state property;

- completion of the process of delineation functions between the federal bodies of executive power and bodies of executive power of the constituent entities of the Russian Federation.

Since August 2003 the Government Commission for Conducting of Administrative Reform has being implemented analysis of the functions of the federal bodies of executive power for determination their future, including in terms of their redundancy and duplication [4].

For all similarities of reasons, objectives and nature of the activities to adapt executive apparatus to market economy, which have been carried out in previous years and now, it is important to note a new emphasis in the approaches to solving the problem. The major emphasis is on thorough analysis and comprehensive evaluation of exactly the functions of the executive apparatus, their adequacy to the requirements of market economy development.

Thus, the tasks, which were being addressed during the analysis, evaluation and streamlining of the functions of federal bodies of executive power, by virtue of more solid reasons required:

- to free the apparatus from old functions of yesteryear;
- to distinctly delineate functions between the federal bodies of executive power by eliminating duplication, overlap and "sagging";
- abolish unnecessary structural subdivisions and/or bodies in general.

Thus, it was assumed that finally it will be possible to "suppress" endless restructuring of the state apparatus, rationally implement centuries-proven principle of "three definitions" of organization the executive apparatus: "functions, structure, staff", – and to start implementation of effective public administration.

The results of work of the Government Commission for Conducting of Administrative Reform were discussed at the meetings of the Government of the Russian Federation, which made the final decisions on optimization the functions of federal bodies of executive power.

In analyzing the activities of federal executive bodies were identified groups of functions proposed to be abolished or transferred to self-regulatory organizations, or re-defined in respect of their content.

The Government Commission for Conducting of Administrative Reform in general reviewed the 5300 functions of the federal bodies of executive power. Of which:

- 800 were declared totally or partially redundant;
- 500 – duplicative;
- for 300 functions was offered to change the scale of exercising.

However, only a small part, which was enshrined only by acts of the Government or by the provisions on departments, was abolished. The bulk of redundant functions, which are contained in the Federal Laws and decrees of the President of the Russian Federation and in the acts adopted by the Government, is still preserved (more than 300 laws, dozens of decrees of the President of the Russian Federation, hundreds of decisions of the Government and acts of departments).

Functions of the federal bodies of executive power were considered by the Government Commission also from other points of view:

- their type designs – political, regulatory, controlling, oversight, monitoring of activity, providing public services, etc.;
- possibility of their transfer to the non-state sector, on the lower level of power – to the subjects of the Russian Federation and municipalities.

The Commission also assessed the extent of implementation of state functions. As a result of this assessment certain state functions have been "rationalized" – some of their components withdrawn from budget funding, transferred to state organizations, privatized, etc.

Commission carried out "depoliticization" of a large number of functions of the federal bodies of executive power through removing them from the jurisdiction of federal ministries and transfer to "lower levels" of exercising of executive power – to the competence of services, agencies, what had to contribute to improve the effectiveness of their implementation

Administrative reform – the most difficult in the history of modern Russia – has been continuing steadily and gradually from 1991, since the end of the Soviet public and state system and the transformation of the socialist planned economy into a market one.

Strengthening the system of power at all levels led to the development of processes for the delimitation of powers, including those between the federal bodies of executive power and bodies of executive power of the subjects of the Russian Federation regarding the matters of joint jurisdiction of the Russian Federation and its subjects.

If the administrative reform will continue to influence on the legislation in such a way, there will be a need to put it in a more or less coherent system. This can be avoided if during conducting the following stages of administrative reform to provide for: its sufficient legal ensuring; planning of events on administrative reform on the basis of statutory norms and regulations; prediction of consequences of carried out measures for the legislation on the competence of public authorities of the Russian Federation and public authorities of the RF subjects.

The success of implementation of the administrative reform mainly depends on the understanding and support by citizens and business of the goals and tasks of the administrative reform, civil society interest in the results of the reform, on the one hand, and the availability of objective information on the progress of its implementation, on the other. Interest in the reform of public servants responsible for ensuring of its implementation is also essential for the successful conducting of the reform.

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Gogolev A. M.

ADMINISTRATIVE-LEGAL REGULATION IN TAX FIELD: CONDITION AND ISSUES OF ENFORCEMENT

Gogolev Aleksei Mikhailovich,
c.j.s. (PhD in law), Head of the Perm branch of Federal State Budgetary Educational Institution of Higher Vocational Education "Financial University under the Government of the Russian Federation",
galexey1961@mail.ru

It is noted that there are no specific features that insulate tax offense from administrative one. Both of these offenses are of the same order and cognate by their legal nature.

It was determined that the purpose of tax administration is to achieve the greatest possible effect for the budget system in respect of tax revenues at the lowest possible cost.

As the cause of many conflicts and contradictions in proceedings on cases of administrative offences in the field of taxes and fees the author considers its implementation with the simultaneous application of the norms of both substantive and procedural law of tax and administrative legislation.

Here is stated that the duplication of a number of substantive and procedural norms of the Code on Administrative Offences of the RF and the Tax Code of the RF makes a mess of enforcement, misinforms citizens and legal persons who are taxpayers, as well as entails a lot of negative effects.

Keywords: administrative responsibility in tax sphere, tax responsibility, administrative offence, tax offence.

Attention to this issue is caused by its undoubted relevance, since it directly affects the rights and legitimate interests of taxpayers, society and the state. In this regard, it is extremely important for emerging legal framework and practice of its implementation to find the path of optimal legal mechanism for the implementation of measures of administrative responsibility in tax area that would provide a balance between private and public interests. In conditions when the constitutional provision on compensation to persons of those losses caused by unlawful actions of state bodies and their officials, in fact does not work, such situation allows the latter to abuse their authority, including in the administrative- procedural activity.

It is well known that the formation of the Russian State Treasury income is mainly implemented through taxation – more than 80% of the revenues of the budget system are tax payments. In all countries with market economies taxes are recognized as the main source of budget revenues. According to the Federal Tax Service of Russia the flow of funds in the consolidated budget of the Russian Federation just in 2011 amounted 9,720.0 billion rubles, this is 26.3% more than in 2010.

According to statistics of tax authorities, as a result of exercising by the tax authorities of their supervisory powers in carrying out cameral and field tax audits, violations of legislation on taxes and fees were identified in 96% of the audited organizations. Just in 2011, on the results of tax audits to the State budget the tax authorities charged additional taxes in the amount of more than 6,818,560 thousand rubles [7].

Violations of the legislation on taxes and fees represent not only a threat to the financial stability of the state, but also undermine the basis of fair competition, provoke social tensions and instability in society. According to analytical data of law enforcement bodies, up to 60% of taxpayers (individuals and organizations) evade payment of taxes, reduce taxable base, and hide sources of income. Funds concealed from taxation often go into the "shadow" turnover, increase the activity of criminal organizations, and influence on the development of corruption.

It is appropriate to note that the main motivation for paying taxes has always been not the consciousness of taxpayers, but coercive measures that can be applied to them in case of detecting evasion of taxes and fees or payment them not in full volume. Over time, these measures were designed in appropriate legal provisions regulating substantive and procedural issues of application of such coercive measures.

Their list in the current Russian tax legislation is vast: it is the right of tax authorities to make direct debiting of the amounts of taxes and penalties, accrue interest charges, suspend operations of accounts, etc. Except tax sanctions there are

provided for field and cameral tax audits, as well as procedural securing (reclamation of written explanations from taxpayers, seizure of current and report documentation).

However, judicial practice related to tax violations is ambiguous and sometimes contradictory. On the one hand, this is due to periodic changes in tax legislation, introduction of new tax payments, but on the other this requires a careful analysis of both these changes and the very institute of law, which ensures legitimate conduct of all participants of tax legal relations.

It should be noted that to date there is no unified conceptual apparatus of the studied sphere in the science of administrative and financial law. There are fundamentally different scientific positions on the definition of administrative jurisdiction and its correlation with administrative process. There are no independent monographic studies devoted to the sources of administrative or tax law, to the issues of improvement the mechanism of legal regulation in legal relations arising in tax field.

The fact that in recent years in the financial and legal science has been put the question of existence of such a legal category as "tax process", as an independent type of activity that is different from administrative process, argues for the relevance of this problem. Of course, this point of view seems highly controversial, requiring serious theoretical substantiation, and, accordingly, further scientific debate. It is quite possible that its occurrence is due to the enshrining in the Tax Code of the Russian Federation of procedural legal norms [6, 232-233].

This situation creates a duality not only in the practical enforcement, but "blurs" the legal doctrine, moving artificially seek grounds for separation from the administrative tax liability, even though they are, in fact, no.

This situation creates a duality not only in practical law-enforcement, but also "blurs" legal doctrine, making us to artificially seek for grounds for separation of tax responsibility from administrative one, even though they, in fact, do not exist. These research efforts would be useful to spend in a more positive and rational way, that is, to improve the system of administrative responsibility in the field of taxes and fees.

Application of unified approaches to the formulation of substantive and procedural-legal norms, according to A. A. Fatyanov, will not only streamline these relationship, but also will allow increased implementation in this field of public relations of the most significant general legal principle – the principle of the rule of law, one of the faces of which is the concentration of a totality of sanctions of a single legal nature in a large codified act, application of common

approaches to differentiation of penalties depending on the severity of an offense, formation of a general theory of such relations, general categorical apparatus, etc. [8, 124].

Summing up the above it should be noted that administrative-legal regulation in the tax field, in our view, is a multidimensional problem affecting:

- identification of the legal nature of legal relations in the studied sphere;
- issues of legal regulation of substantive norms, norms of competence, as well as procedural norms, which also consistent the mechanism of legal regulation in the field of taxes and fees
- imperfection of the tax legislation: the lack of necessary norms of law in some cases and simultaneous regulation of equal public relations in different legislative acts leads to significant difficulties in law-enforcement and existence of various official points of view contained in legal acts of supreme courts of the Russian Federation, the Federal Tax Service of the Russian Federation, and others.

The reforms carried out in the Russian society in recent years have led to the need to improve the tax legislation and to ensure its effective implementation, as well as to the need to improve the mechanism of tax administration, forms of implementation of the state tax policy. In this connection the legal content of the tax administration takes on new meaning, is being filled with special content and requires further study.

In modern conditions of the development of the Russian statehood, in our view, the study of the problems of administrative jurisdiction in the tax field is very important both for the theory and for the practice that forms it.

It is worth noting that administrative-tort relations and relations in the field of establishment and application of tax responsibility form in the system of executive branch, so they have a common administrative-legal foundation, on which the activity of all bodies of executive branch is based. Both these groups of legal relations, which we still consider as separate, are aimed at ensuring the enforcement of relevant state functions in the sphere of executive power.

In this regard, it seems appropriate to consider the correlation between the basic categories of "administrative offence" and "tax offence".

In accordance with article 2.1 of the Code on Administrative Offences of the RF (hereinafter CAO RF) [2] "administrative offence is recognized as a wrongful, guilty action (inaction) of a natural person or legal entity, which is administratively punishable under this Code or the laws on administrative offences of the subjects of the Russian Federation".

Analysis of this definition reveals the following signs of administrative offence:

1) wrongfulness (existence of a direct regulatory prohibition on commission of a specific action or refraining from a certain action);

2) guiltiness (system attribute for bringing to punitive responsibility that lies in the presence in the commission of a deed of intent or negligence; and these concepts have to be defined, and responsibility has to be differentiated, depending on the form of guilt (usually, responsibility for negligent deeds is lower than for intentional, and innocent infliction of harm to legally protected interests cannot be punished);

3) obligatory presence of a legal ban on the commission of deed in a relevant act of legislative level, at that, the legal ban should be accompanied by a specific, applicably to each deed, sanction.

In a more general form can be said that the main feature of an administrative offense lies in the existence of a logical pair of "wrongfulness - prohibition by a particular law". Under similar pattern the definition of the concept of crime was framed in article 14 CC RF [4]: "A socially dangerous act, culpably committed and prohibited by this Code under threat of punishment, shall be deemed to be a crime". In this case, the sign of direct legal prohibition is replaced by the sign of public danger, always characteristic for counting deeds as criminally-punishable. It follows from the foregoing that in both cases the legislator focuses on specialized law containing legal prohibitions and sanctions.

The reference in the definition of the concept of "administrative offense" to legislation of the subjects of the Russian Federation is due to the delimitation of competence between the Russian Federation and its subjects: in accordance with paragraph "j" part 1 article 72 of the Constitution of the Russian Federation [1], administrative and administrative-procedural legislation are under joint jurisdiction of the federal center and the subjects of the Russian Federation, this, in application to the regulating system of bringing to administrative responsibility, has resulted in the possibility of establishment by the laws on administrative offences of the subjects of the Russian Federation (let's pay attention to the fact that we are again talking about specific acts) of administrative responsibility for violation laws and other normative legal acts of the subjects of the Russian Federation, as well as normative legal acts of local self-government bodies (article 1.3.1 CAO RF).

It is also pertinent to note that the establishment of common principles of taxation and fees in the Russian Federation, in accordance with paragraph "i" part

1 article 72 of the Constitution of the Russian Federation, is also under joint jurisdiction of the Russian Federation and its constituent entities.

Turning to consideration of the concept of "tax offence", it should be noted that, in accordance with article 106 of the Tax Code of the RF [3], "Tax offence shall be understood to be a wrongfully committed unlawful (in violation of tax and fees legislation) deed (action or inaction) of a taxpayer, a tax agent or other persons, for which responsibility is established by this Code".

The analysis of this definition shows the following:

1) presence in it of a system-wide sign of illegality;

2) presence in it of a system-wide sign of guiltiness;

3) establishment of responsibility only by legislative norms.

This means that regarding all system-wide signs administrative offence and a tax offence coincide completely.

At such an approach we should also pay attention to some details. In determining wrongfulness, an emphasis on violation of the legislation on taxes and fees does not have general legal sense, since the wrongfulness, as has been shown above, occurs in case of breach of a direct legal ban established in law through formulating a punishable offence. The target of emphasis – violation of traffic regulations, sanitary-epidemiological rules or legislation on taxes and fees – does not matter. Despite the visibility of specificity of the offence, any person can also become its subject.

However, if CAO RF contains original rules regarding this matter (establishing the minimum age for the possibility of bringing a person to administrative responsibility, the concept of an official and conditions of bringing it to responsibility, guilt of a legal entity, etc.), then in establishment of responsibility for tax offenses the legislator sets just a minimum age for a person to bring it to this kind of responsibility, and completely identical to the age of occurrence of administrative responsibility (16 years).

Also, instead of the term of "legal person" in determining the subject of a tax offense the Tax Code of the RF uses the term of "organization", which is linguistically more general in relation to the category of "legal person", while as it is obvious, a participant of tax legal relations can be only an organization that has acquired the right to engage in civil and other legal relations on its behalf, that is, having the form of a legal entity and recognized as such by the state.

Thus, the use of undefined categories in law, especially when it comes to bringing to legal responsibility is a drawback of the corresponding system of legal regulation.

Based on the above, it is possible to come to the unequivocal conclusion that there are no specific signs that insulate tax offence from administrative offence. Both of these types of offences belong to one category and are related in their legal nature.

Further, on the basis of the analysis of the current state of legal regulation, the author supports the position that "the analysis of the innovations of CAO RF adopted for the period 2009-2011 has showed that they greatly enrich and complement namely procedural component of proceedings on administrative offences, in particularly in the field of taxes and fees. Unfortunately, as has been shown by the analysis of legislative documents adopted in the development of the Tax Code of the RF, the issues of the considered by us legal relations, which arise in connection with procedural actions in implementation of proceedings on cases of violations of the legislation on taxes and fees, were virtually left out of sight of the legislator" [5, 26-29].

It is also relevant to note that the dominant position of researchers in the field of taxation is the defining of tax administration as the process of management of tax relations. State managing, including tax one, is a part of the overall process of public administration, including of tax relations.

The purpose of tax administration is to achieve the greatest possible effect for the budget system in respect of tax revenue at the lowest possible cost, in the conditions of optimal combination of methods of tax regulation and tax control.

The main task of tax administration is tax control. It should be noted that some specialists in this field even equate these concepts. Tax control and evaluation of its performance (efficiency) has received considerable attention, both in theory and in practice, since the implementation of the tax control provides the source materials for the administrative and jurisdictional activity of tax authorities. Offences are revealed, and evidences are collected and recorded in the course of a tax audit.

As has been demonstrated by the analysis, the practice of activities of tax authorities on consideration of cases of offences related to taxes and fees does not meet present-day realities and is far from perfect, what is shown by the statistics of consideration this category of cases. The peculiarity of this activity is that the legal regulation of proceedings on cases of administrative offences in the field of taxes and fees is implemented by the norms of both substantive and procedural law of tax and administrative legislation, what causes a lot of conflicts and contradictions in their practical application.

In addition, the feature of taking decision on a case of an offense in the field of taxes and fees is that several subjects of legal relations bear responsibility for a same

administrative offence in the tax field: a legal entity (usually in accordance with the norms of the Tax Code of the RF), an official or just a natural person (in accordance with the provisions of the Code on Administrative Offences of the RF). And in the presence of signs of a crime in the offence – also natural person (in accordance with the Criminal Code of the RF).

After introduction of CAO RF in 2002, already on the background of the working Tax Code of the RF that partially regulated the procedure of proceedings on cases arising out of tax legal relations, there appeared serious problems both in application of substantive and procedural norms of law. The problem of duplication of legal norms establishing the grounds and procedures of bringing to responsibility under the Tax Code of the RF and CAO RF, as well as the imperfection of the existing procedural order of proceedings on cases of administrative offences in the tax area are extremely urgent.

Up to this day normative-legal acts that regulate jurisdictional activity in the tax area are developed and adopted without a single conceptual approach and accounting of the codification principle of sectorial legislation. The juridical technique of tax laws is also slowly improved, what determines the growth of legal disputes caused by variant reading, erroneous interpretations of normative acts and so on.

Analysis of law-enforcement practice (2002-2012) of bringing to administrative responsibility for offenses in the field of finance, taxes and fees , as well as a comparative-legal analysis of the provisions of CAO RF and the Tax Code of the RF allows us to conclude that the legislation on administrative offences in part of regulation of relations in the field of finance, taxes and fees after the start of market transformations in the Russian Federation was being reorganized too slowly, as a result in legislative array appeared parallel systems of customs and tax responsibility, whose legal nature was single with legal nature of administrative responsibility; customs responsibility was covered by regulations of CAO RF, 2001; tax responsibility without sufficient doctrinal and action-oriented reasons persists in the Tax Code of the RF.

This situation leads to duplication of norms, legal uncertainties and other negative consequences that hinder the realization of the principles of bringing to legal responsibility that have been elaborated through a long evolution of the development of law.

Duplication of a number of substantive and procedural norms of CAO RF and the Tax Code of the RF makes a mess of law-enforcement, disorient citizens and legal persons that are tax payers and entails a lot of negative consequences.

Thus, there is an urgent need for a synthesis and analysis of the current state of legal regulation, law-enforcement practice of tax authorities that have powers in the studied by us area and in the development of proposals for its improvement in order to streamline the legal relations arising in the field of finance, taxes and fees, as well as to unify bringing to responsibility for these offenses.

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Kononov E. A., Shilakin V. B.

PROBLEMS OF APPLICATION OF PHYSICAL FORCE BY THE EMPLOYEES OF INTERNAL AFFAIRS BODIES (POLICE)

Kononov Eduard Anatol'evich,
c.j.s. (PhD in law), Associate professor of the Chair of administrative law and administrative-official activity of internal affairs bodies at Far East Law Institute of RF MIA,
ed.kononov2012@yandex.ru

Shilakin Viktor Borisovich,
Assistant professor at Far East Law Institute of RF MIA.

The article presents a comparative-legal analysis of the norms of administrative and criminal legislation on the issues of legal regulation of application by police officers of physical force, special means and firearms, notes unrecoverable contradictions.

The author argues that normative-legal regulation of the legality of application of physical force by police officers is of a systematic nature and includes interrelated legal prescriptions of the norms of administrative and criminal law.

It is postulated that special administrative-legal norms, which enshrine grounds and procedures for application of physical force, are assigned to an auxiliary function.

Keywords: police, application of physical force, preventive and prophylactic measures against crime, suppression of crime, justifiable defense.

There is an opportunity to acquit yourself,
But nobody will ask – it's a pity!
Caution, caution!
Be careful Sirs!
N. A. Nekrasov ("Caution")

Article 1 of the Federal Law No. 3-FL from February 07, 2011 "On the Police" [5] (hereinafter the Law No. 3-FL) defines the purpose of the police, which is designed "to protect the life, health, rights and freedoms of citizens of the Russian Federation, foreign citizens, persons without citizenship, to combat crime, protect public order, property, and to ensure public safety. Police immediately comes to help to anyone who is in need of its protection from criminal and other unlawful infringements". To achieve these goals, the law No. 3-FL gives to police officers the right to apply measures of government coercion. The toughest of them is the right to apply physical force.

According to article 18 No. 3-FL: "1. Police officer is entitled to use physical force, special means and firearms in person or as members of a unit (group) in the cases and in the procedure envisaged by federal constitutional laws, the current Federal Law and other federal laws. 2. A list of the special means, firearms and rounds for them and ammunition the police has in service shall be established by the Government of the Russian Federation. The police is hereby prohibited to accept for service special means, firearms and rounds for them and ammunition which inflict too grave injuries or serve as a source of an unjustified risk. 3. In the state of justifiable defense, in extreme need or while apprehending a person who has committed a crime a police officer if he/she lacks the necessary special means or firearms is entitled to use any improvised means and also on the grounds and in the procedure established by the current Federal Law to use weapons other than those deemed the standard ones of the police".

The legal basis for application of physical force, special means and firearms by the police officers is the norms of the following laws: No. 3-FL, Federal Constitutional Law No. 3-FCL from May 30, 2001 "On State of Emergency" [4], Federal Law No. 27 -FL from February 06, 1997 "On Internal Troops of the Ministry of Internal Affairs of the Russian Federation" [3], RF Law "On Weapons" [2].

Despite the official figures on reducing the overall number of crimes in Russia, violent and lucrative-violent crimes have the negative trend to growth. Therefore, one of the duties of the police is to carry out preventive and prophylactic measures on the issues of combating crime. It can be assumed about the inevitable

growth in the number of cases of direct suppression of offences related to the active resistance of criminals to the police. There are quite many examples of armed and group criminal counter the activities of police officers at the moment of suppression of crimes. And they cannot be ignored. Such crimes have become the fact of everyday reality, virtually neutralizing the effectiveness of law enforcement activities of internal affairs bodies. All of this requires the improvement of the activities of the internal affairs bodies regarding the use of the arsenal of legislative measures of countering crime.

Among legislative acts that form the legal basis of application of physical force by police officers, a special role is played by the norms of criminal law. Preventing crimes and other socially dangerous acts, police officers act in situations under circumstances precluding the criminality of deed. While protecting the interests of citizens against criminal encroachments, on the one hand, they run the risk of their own lives and health, on the other hand, they cause significant harm to other protected public relations.

It should be pointed out that this professional activity may not always be predetermined in detail and highly elaborated. As a consequence, there is an inevitable possibility of occurrence undesirable, including socially dangerous consequences of the actions of police officers. Reasoning from this fact, the actual task of the Russian criminal law is to establish such legal norms regulating professional activities of police officers in respect of crimes suppression, which could reduce the risk of wrongful actions up to a minimum. This can be as real as criminal-law institute of circumstances excluding criminality of a deed will be consistent with and not contrary to the norms of Russian legislation, which define the legal basis of the police activity at the moment of application of physical force.

In this regard, considerable interest for regulation of professional-service relations that arise in the process of law enforcement activity is represented by such circumstances precluding criminality of a deed as necessary defense, infliction of harm on a detained person who has committed a crime and extreme necessity. These types of circumstances precluding criminality of a deed are associated with the most active police actions to prevent and suppress crimes and administrative offenses.

However, as evidenced by the results of our poll in the form of questioning of 70 officers of the internal affairs bodies of the Khabarovsk region, the problem of application circumstances precluding criminality of a deed in practice raises serious difficulties. The majority of surveyed employees of internal affairs bodies (93%) face difficulties in their practical activities due to the application of necessary

defense, infliction of harm on a detained person who has committed a crime and extreme necessity. Where in 45% of cases the problems are associated with the correct legal assessment of the activities of the internal affairs bodies' employees in these legal situations, 21% – with the specific circumstances of a case. At that, you should note that only 7% of the employees have indicated that they do not have difficulties in the process of application of the said circumstances.

Regarding the considered circumstances precluding criminality of a deed, we can emphasize the following general signs that characterize legal nature of police activity to protect individuals, society and the State against socially dangerous encroachments:

First, there is always active conduct of police officers, who cause substantial harm to legally protected interests, that is, to another person, society or the State in the commission of such actions. Often the size of the harm is so substantial, that objectively, it corresponds to the gravity of the harm inflicted by the suppressed crime. Therefore there is question of the possible responsibility for infliction such harm.

Secondly, active conduct of police officers regarding the application of necessary defense, infliction of harm on a detained person who has committed a crime and extreme necessity is exercised from socially useful motives. For the necessary defense and infliction of harm on a detained person who has committed a crime, these motives are initiated by external circumstances – the need to protect against socially dangerous attack on itself, another person or on other legally protected interests, the need to apprehend a criminal. In case of extreme necessity such socially useful motives arise from internal motifs to achieve a socially useful result, preventing a greater harm.

Thirdly, since the legal regulation of the circumstances precluding criminality of a deed lies in the plane of the criminal law, in their official activity police officers must abide norms enshrined in articles 37-38 chapter 8 of the Criminal Code of the Russian Federation [1].

Fourthly, if all of the conditions of lawfulness of necessary defense, infliction of harm on a detained person who has committed a crime and extreme necessity are observed , the conduct of police officers will exclude both criminal and any other responsibility (administrative, disciplinary, civil-law one).

Fifthly, infliction of harm resulting from non-compliance with the conditions of lawfulness of necessary defense, infliction of harm on a detained person who has committed a crime and extreme necessity gives rise to the criminal responsibility of a police officer. However, due to the socially beneficial motives of

necessary defense and infliction of harm on a detained person who has committed a crime, the legislator recognizes these crimes privileged (article 108 of the Criminal Code of the RF "Homicide Committed in Excess of the Requirements of Justifiable Defense or in Excess of the Measures Needed for the Detention of a Person Who Has Committed a Crime" and article 114 of the Criminal Code of the RF "Infliction of Grave Injury or Injury of Average Gravity in Excess of the Requirements of Justifiable Defense or in Excess of the Measures Needed for the Detention of a Person Who Has Committed a Crime"). In excess of the limits of extreme necessity such actions of a police officer are taken into account as mitigating circumstances in sentencing.

Thus, normative-legal regulation of the lawfulness of application of physical force by police officers is of systemic nature and includes related legal provisions of administrative and criminal law. In this regard, it is very important to define the hierarchy of these norms in the legal regulation of the use by police officers of physical force, special means and firearms. In other words, to answer the question, which law norms are predominant? The answer to this question is of purely practical importance, since as evidenced by the comparative-legal analysis between administrative and criminal legislation, there are irremovable contradictions on the issues of legal regulation of the use by police officers of physical force, special means and firearms. In particular, according to part 3 article 19 of the Law No. 3-FL, a police officer in the application of physical force, special means and firearms acts taking into account the emerged situation, the nature and danger level of actions of persons, who are subject to application of physical force, special means and firearms, and the nature and force of their resistance. At that, police officer is obliged to seek minimization of any damage. However, norms of criminal law do not contain an indication that a person in a state of necessary defense should strive to cause minimum damage to the attacker. Moreover, in case of a surprise attack, the limits of inflicted damage are not indicated at all, i.e., it is permissible to kill an assailant.

According to articles 37, 38, 39 of the Criminal Code of the RF, today the citizens have more rights, when they protect the legitimate interests of other persons from socially dangerous encroachments or impending danger, as well as in course of criminal-law detention of a criminal with use of firearms, rather than police officers, who are required to carry out their activities within the framework of Section V of the Law No. 3-FL.

In analyzing this issue an interest is aroused by the opinion on this matter of the staff of internal affairs bodies. So, on the question "What in your opinion is the legal basis of application of necessary defense, infliction of harm on a detained

person who has committed a crime and extreme necessity in activities of internal affairs bodies?" three-quarters of surveyed employees (72%) indicate that this is solely the Federal Law "On the Police". Only one in four (28%) considers that the legal basis for the use of physical force should be the norms of criminal law. Every 14th (7%) indicates the Constitution of the Russian Federation among the legal sources. In this regard, it can be assumed that, in application of the circumstances excluding criminality of a deed in their professional activities, police officers will seek to rely solely on the norms of the Federal Law "On the Police". Moreover, the majority of employees of internal affairs bodies (86%) called for further specification of the grounds and procedure for the use of physical force and weapons in the departmental instructions of the Ministry of Internal Affairs of Russia.

However, the norms governing the grounds and procedure for the use of physical force by law enforcement officers only specify the limits of necessary defense or other circumstances, which exclude criminality of a deed, regarding certain legal situations. At that, special norms in respect to the general rules laid down in the criminal law, must not contradict them and the more restrict the rights of citizens to protection against socially dangerous encroachment. This point of view is prevailing in the theory of Russian law and backed by judicial-investigative practice. Therefore, the priority in determining the lawfulness of infliction of harm resulting from the use of physical force, special means and firearms in the activities of police officers is given to criminal legislation on necessary defense, infliction of harm on a detained person who has committed a crime and extreme necessity.

Special norms of the Federal Law "On the Police" are considered as additional conditions of the lawfulness in the activities of police officers within a particular circumstance precluding criminality of a deed. It is obvious that under this approach, special administrative-law norms, which enshrine the grounds and procedure for the use of physical force, have an auxiliary function.

Has the police the right to use physical force against a pregnant woman? The most traditional is unambiguously negative answer to this question. However, in reality, the Federal law "On the Police" does not establish any restrictions on the use of physical force against any category of citizens. The reason lies in the content of this term.

Legal regulation of the use of physical force by police officers is provided for in article 20 of the Law No. 3-FL, which stipulates that "A police officer has the right personally or in a unit (group) to apply physical force, including combat fighting technique, if non-coercive methods do not provide performing of duties charged on police in the following cases:

1) for suppression of crimes and administrative offenses;

2) for delivering to the official premises of a territorial body or police unit, to the premises of a municipal body, in another official premises of persons, who have committed crimes and administrative offenses, and for the detention of these persons;

3) for overcoming of resistance to the legitimate demands of a police officer".

Application of physical force can take the following forms:

1. Combat fighting techniques that may refer to any system of unarmed combat – boxing, judo, combat sambo, karate, etc., or do not refer to any one of them. At that, the use of painful hold and choke hold is allowed. In some cases, there may be applied techniques and strokes, which are obviously aimed at causing death or serious injury, for example, when a police officer is in a state of justifiable defense. The law provides for only one absolute exception – techniques that degrade human dignity cannot be applied.

2. Any other muscular impact on individuals, their property, not accompanied by the use of any items, materials, liquids, carried out with the purposes specified in article 20 of the Law No. 3-FL. Examples of such impact may be: transferring of a drunk in a special vehicle; removing a key from the ignition switch of a car, which the offender tries to use for escape; smashing of doors with a leg (shoulder) in order to apprehend a criminal; etc.

It becomes apparent that physical force in this form may be used, including in respect of law obedient citizens, for example, for moving onlookers from a crime scene, place of conducting specials operations, etc.

A very important point in the application of physical force by a police officer will be delimitation of committed by a person administrative offence and criminal offence. In this regard, if the person has committed an administrative offence, the police officer must, in accordance with part 4 article 5 of the Law No. 3-FL:

1) report its post, rank, surname, submit its warrant card at the request of the citizen, and then say about the reason and purpose of the compellation;

2) in the case of application in respect of the citizen of measures limiting its rights and freedoms, to explain the reason and grounds for such measures, as well as the arising from this rights and obligations of the citizen.

System interpretation of the Federal Law "On the Police" assumes that verbal contact with the citizen, in this case, involves the commission of exactly these actions in the mentioned sequence.

If the person has committed a crime, the police officer must first of all be guided by article 38 of the Criminal Code of the RF. Namely:

The current normative act regarding the issue of application of physical force by police officers (the order of the RF Interior Ministry No. 412 from July 29, 1996 "On Approval of the Manual on the Physical Training of Employees of Internal Affairs Bodies" [6] – (hereinafter – the Manual) is a "catalyst" of bringing police officers to disciplinary or criminal responsibility. Russian scientists have proved that the effectiveness of a technique of self-defense without weapons is possible only when "trainee" has repeated it about 600 times. Of course, an average police officer cannot effectively perform any action described in sections from 11.3 to 12, due to objective or subjective reasons. And this Manual allows punches in nose, neck, groin, collarbone, "solar plexus", temporal fossa, and throat. A police officer, who is not a master of sports in combat fighting, in application of a combat technique through antidynamic punch can harm the health of a citizen.

Therefore, in order to avoid the responsibility of a police officer:

1) if a natural person has committed an administrative offense a police officer can apply fighting techniques: bending of one's arm behind its back from behind; bending of one's arm behind its back twisting inward; "dive" bending of one's arm behind its back; "jerk" bending of one's arm behind its back along with an antidynamic punch or distracting punch on the thigh if the police officer can professionally perform these technique. In any case, infliction of any harm to health must not take place. Police officer, who has been trained within the framework of service and fighting training (according to the Manual), is physically stronger than an average citizen, and if the health of a citizen is harmed, the actions of the employee are not lawful, because, according to official documents of the Department on combat training of a regional internal affairs body, a police officer every week is engaged in physical training and does not have right to use physical force by causing harm, which results in violation of the rights and legitimate interests of the citizen. These are the realities of judicial practice.

2) if a natural person has committed a crime, in this case, police officer can apply combat fighting techniques in accordance with criminal-law legislation.

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Kuyanova A. V., Yuritsin A. E.

TOPICAL ISSUES OF LEGALITY CONSOLIDATION IN ACTIVITIES OF THE RUSSIAN POLICE

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

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

Here is outlined a range of reasons that lead to violations of legality in the activity of police, and determined measures aimed at its strengthening and creation of conditions for overcoming the existing violations.

The author highlights the following tasks: improving of legislation that forms the legal basis for the organization and activities of the police; increasing the level of general and professional culture through the implementation of organizational and educational measures; increasing the level of professional competence of staff, as well as strengthening of their ties with the community.

Keywords: legality, legal order, rule of law, legal relation, system, control, police, police officer, safeguard, protection.

Legality – it is a principle, method and regime of strict, steady compliance with, execution of law norms by all parties to public relations (the state, its bodies, public and other associations, officials and citizens, that is, all subjects without exception) [8, 602 - 603].

As one of the main components of the democratization of Russian society, legality is presented, first of all, in the form of directing origin in the functioning of the state, in the face of its state bodies and officials. The universality of the legality encompassing the entire political system of the society, the activities of all participants of social relations, implementation of all legal provisions allows us to consider it as a specific, peculiar legal "super principle" [5, 34].

The status of the legality in modern Russia should be viewed as very negative. It is characterized by rather a high level of crime, increase of legal nihilism, weak level of legal protection of personality. In this regard, the focus on forming of a constitutional state, which has been reflected in the Constitution of the Russian Federation, necessarily implies a qualitative change in the understanding of the legality as one of the main components of the democratization of society and the protection of a man from the arbitrariness of state power bodies.

The Police in the Russian Federation by virtue of its functional specificity should build its activity in strict accordance with the principle of legality (principle of legality is enshrined in article 6 of the Federal Law No. 3-FL from February 07, 2011 "On the Police" (as revised in the Federal Law № 185-FL from July 02, 2013) [1]), which reflects the views of the legislator about the place and role of the police in society and the state, about the permissible limits, methods and means of its intervention in social life.

The legality of the police is derived from the general legal, common to all branches of the law of the principle of legality, got its consolidation in Art. 15 of the Constitution of the Russian Federation: "The bodies of state power, bodies of local self-government, officials, citizens and their associations are obliged to observe the Constitution and laws of the Russian Federation."

The legality in the police activity is derived from the general and legal, inherent in all branches of law principle of legality, which has been enshrined in article 15 of the Constitution of the Russian Federation: "The bodies of state authority, the bodies of local self-government, officials, private citizens and their associations shall be obliged to observe the Constitution of the Russian Federation and laws".

Under the legality as a principle of the police activity should understand the unconditional and precise observance of laws and normative acts by all without exception police officers. On the one hand, the functioning of the police is a measure of ensuring legality in the activities of state bodies, local self-government bodies and their officials, legal entities and individuals, on the other hand, every single act of service activity of the police and their totality as a whole, in turn, must be lawful itself. Otherwise, the police would be unable to fulfill its social role, as deviations from the law, no matter by what they are motivated, are especially intolerant in practice of exactly those government agencies that are engaged in the line of duty in law enforcement activity.

The level of development of the legality depends on the state of the current legislation: "The laws are the base of legality, so the improvement of laws, i.e., strengthening of the foundation of the legality, is an important means of

strengthening of the very legality, its protection and ensuring" [10, 23]. This leads to an understanding of the importance of the task of strengthening the legality in the police activity.

The issues of strengthening the legality in the police activity are relevant for modern Russia. Today, about 40% of servants are young people. More than 47% of employees have higher education. Over 56% of employees have been serving in bodies up to 10 years [6, 5]. The process of achievement of personhood of these people took place in the 90's: wealth, strength, power, unrestrained satisfaction of needs. In this system of values such qualities as honesty, decency, selflessness, and sacrifice have not found a place. Adherence to principles and uncompromising nature of police officers faithful to service duty did not always find understanding and support even among close friends and relatives. The image of an honest police officer somehow unnoticeably disappeared from TV screens. "Honest Police Officer" has become something of surreal and uninteresting for the mass media.

Generation of 90's – this is a special category of employees both for psychologists and for mentors, and managers engaged in educational work. Significant juvenation of staff has an impact on the effectiveness of operational activities, and on the state of service discipline and legality. Comparative figures of crimes and violations of legality committed by employees of internal affairs bodies grow from year to year, despite the staff reduction.

So, according to the Chief Directorate of the own security of the RF MIA, in 2012 over 2.5 thousand police officers were brought to criminal responsibility, over 54 thousand – to disciplinary responsibility. At that, 90% of revealing of infringements of the legislation is the result of work of internal security units [4].

In this regard, study of the causes of violation of legality by police officers is an important prerequisite not only to overcome existing offenses, but also to prevent them. In this connection "the knowledge of the causes of violation of legality, as well as the relevant directions of activities of police officers, where the risk of legality violation and the level of various kinds of abuse of authority is high, provides a real opportunity to eliminate causes of violations of legality through impact on them and thus improve and strengthen the requirements and regime of legality" [7, 145].

What are the main causes of violations of legality in the activities of the Russian police? In our view, they consist in bad organization and low technical equipment of service activity of employees. Violation of the legality is also facilitated by factors of regulatory nature, which include low-quality regulatory prescriptions, unduly broad and uncontrolled borders of official and legal discretion [9, 381-387].

Police as an integral part of the state is experiencing a positive and negative impact of the processes taking place in society, to which should be referred a low standard of living of large segments of the population, instability of economic system, high unemployment, etc. These and many other factors determine the need for a timely response to a qualitative changes in public relations, improvement of organizational structure and the legal basis of the police activity in order to ensure a high level of the legality while protection of life, health, personal rights and freedoms, combating crime, protection of public order, property, and ensuring public safety.

Order of the Ministry of Internal Affairs of Russia No. 211 from March 23, 2012 "On the Declaring the Decision of the Collegium of the Ministry of Internal Affairs of Russia" approved the decision of the collegium of the Ministry of Internal Affairs of the Russian Federation on No. 2km from March 15, 2012 "On urgent measures to strengthen the service discipline and legality in the internal affairs bodies of the Russian Federation". Collegium of the Ministry of Internal Affairs of the Russian Federation notes that, despite the measures taken by the leadership of the Ministry to strengthen official discipline and the legality, employees of internal affairs bodies of the Russian Federation continue to commit crimes that lead to grave consequences.

The Collegium considers that the main causes of crime and emergency incidents in the bodies of internal affairs of the Russian Federation are:

- reduction of the level of personal responsibility of the heads of the bodies of internal affairs and units for work with personnel for maintaining in subordinate collectives of service discipline and the legality, maintaining the proper moral and psychological condition of the staff;
- self-recusal of heads from organization of moral and psychological support and training of employees in the territorial bodies of the Russian Interior Ministry at district level, inaction in education of personnel;
- gross breaches of the orders and instructions of the Russian Interior Ministry, aimed at enhancing the effectiveness of educational work with personnel, during reforming of internal affairs bodies;
- serious omissions in the evaluation of personal and professional qualities of candidates to the service in internal affairs bodies;
- lack of a system for the timely identification of moral and psychological strain of personality of employees and behavioral abnormalities in the process of service;

- underestimation by heads of the role of HR managers work and moral and psychological support of the territorial bodies of the Ministry of Internal Affairs of the Russian Federation, educational institutions, research organizations, and other organizations and subdivisions created to fulfill the tasks and exercise the powers conferred on the Ministry of Internal Affairs of the Russian Federation.

The current system of interaction between departments for work with personnel and internal security units to prevent crime and accidents among employees does not meet the requirements of the time and does not allow quality work towards strengthening of service discipline and legality.

Insufficiently implemented the practical mechanisms laid down in the Federal Law No. 342-FL from November 30, 2011 "On the Service in Internal Affairs Bodies of the Russian Federation and Amendments to Certain Legislative Acts of the Russian Federation" [2], regarding the selection of citizens for service in law-enforcement bodies. Still, there are cases of ignoring negative conclusions of psychologists about the occupational psychological suitability for service while hiring in police departments.

In our opinion, the causes of violations of law by police officers should be divided into two groups.

The first should include objective reasons: economic instability; social tensions; poor-quality selection of candidates for service; omissions in the educational work on the part of the leadership and HR managers; shortcomings in arrangement of service activity on the part of the leadership, weak control over the activities of subordinates; bringing to the execution of inappropriate tasks.

The second group should include subjective reasons directly related to the individual characteristics of police officers: low level of legal awareness and legal culture; misconceptions about discharge of duty, expressed in the desire to "sugar-coat" achievements in service activity to achieve personal goals (promotion, getting rewards and awards, and desire to get loyalty of leadership); bad habits, rudeness, etc.; adverse psychological climate in team.

It should be noted that the state of legality in the activities of the police is largely influenced by the failure to resolve many social problems and a high rate of staff turnover.

Designation of a variety of reasons that lead to violations of legality in the activities of the police, allows determining measures to strengthen it, create conditions for overcoming existing violations. In our view, the most effective ones are the following:

1. Improving of the current legislation.
2. State, public and internal control over the police activity.
3. Maximum openness and publicity of the police activity.
4. Optimization of organizational structure of the police.
5. Quality improvement in the system of police management.
6. Sufficient funding, in order to ensure a high level of material and technical equipment of the police.
7. Systematic targeted increasing of the level of police professional training.
8. High quality of the work of HR apparatus.
9. Enhance of social protection of police officers.
10. Improvement of the system of reporting on executed work, overcoming of the so-called "furtigation" system.
11. Compliance with the legislation governing the police service, the official time of police officers.
12. Establishment in law enforcement bodies of independent trade unions.

Indicating the reasons contributing to the violation of the legality in the police activity and measures aimed at its strengthening we should bear in mind that the abilities of law enforcement bodies to protect the lives, health, rights and freedoms of the citizens of the Russian Federation, foreign citizens, stateless persons, combat crime, protect public order, property, and to ensure public safety are not unlimited.

The most important practical task of the police is a strengthening of the legality in its own activities, since exactly a sturdy legality would enable it to take its place in the system of bodies of a constitutional state [3]. The main directions of solving this task are: improvement of the legislation that forms the legal basis for the organization and activity of the police; increasing the level of general and professional culture through the implementation of organizational and educational measures; increasing the level of professional skills of employees, as well as strengthening their public relations.

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Lipatov E. G.

ADMINISTRATIVE OFFENCES LEGISLATION OF THE RUSSIAN FEDERATION AS A WAY OF A REPRESSIVE IMPACT ON SOCIETY[1]

Lipatov Eduard Georgievich,
Doctor of law, Head of the Chair of administrative and criminal law at P. A. Stolypin Volga Region Institute of Management (Russian Academy of National Economy and Civil Service), Saratov.

The author argues that the activities of officials of public authorities for bringing to responsibility are due not only to a committed offense, but also to the desire to demonstrate to the political leadership their loyalty and the proper understanding of the strategic objectives facing the state.

Based on the fact that the statutory basis for bringing to administrative responsibility is extensive, complex and controversial legislation, here is proved the possibility of the use of administrative-legal norms for implementation of a political order.

The author proposes the classification of acts of management, adopted in violation of the law.

Keywords: administrative offences, crimes, legislation on administrative offences, administrative responsibility, criminal responsibility.

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Common place of public and professional consciousness has been occupied by the fact that prohibiting norms contain certain repressive potential, since they are of protective nature, the basis for their implementation is an offense and application of these norms is associated with bringing to responsibility. The most pronounced forms of enshrining prohibiting norms are criminal legislation and legislation on administrative offences. However, not always implementation of prohibiting norms turns into the policy of state repression. As a rule, this characterizes an extreme form of deformation of law-enforcement activity, in most cases the implementation of protective norms takes place in lawful law-enforcement form.

The point, the moment, in which the deformation of the whole procedure of ensuring legality and the rule of law takes place, is of interest. It appears that the repressive capacity of the legislation is implemented exactly when the law-enforcement mechanism is driven by political will, and becomes a way to solve state tasks. In this case, the activities of the officials of public authorities for bringing to responsibility are due not only to a committed offence, but also to the desire to demonstrate to the political leadership their loyalty and the proper understanding of the strategic challenges facing the state. In such a situation, consideration of cases turns into a political "campaign", in which the culprits are known in advance. Legal criteria for an enforcement procedure in this case lose their independent significance and become only the formal terms that must be met in order to prosecute the subjects that have been indicated in advance "by the top". We often have to be witnesses of the scene, when the political leadership of the country or region expresses dissatisfaction with the work of oversight bodies or their inaction, the reason of which is the unsatisfactory situation in this or that area. As a rule, the response of the competent authorities does not make us wait. They quickly initiate criminal or administrative cases, begin a frantic search for perpetrators, consideration of cases occur without taking into account their essence. Of course, the discontent of senior management is based on real social problems, and it puts good goals, but the turned into "flurry" complicated procedure of case consideration, multiplied by the traditional for the bureaucracy desire to do a good turn and "to respond to the challenges of the time", makes the procedure of bringing to responsibility a repression.

In this aspect the most vulnerable to the repressive use the legislation on administrative offences. If criminal-law mechanisms are enough regulated and do not allow to take liberties with them, then normative basis for bringing to administrative responsibility is extensive, complex and controversial legislation that facilitates

the procedure of use of administrative-legal norms in order to fulfill a political order. In addition, the lack of a unified practice of bringing to administrative responsibility and its regional differentiation become a fertile field for such a consideration, which more satisfies the interests of political leadership, rather than meets the objectives of justice.

The lack of clear criteria for the distinction between administrative and criminal offences has become one of the major threats of the development of state repression in the sphere of administrative law-enforcement. Thus, the objective aspect of many administrative offenses is failure to comply with managerial rules by officials, the execution of which is their duty. With that, article 293 of the Criminal Code of the RF "Neglect of Duty" defines corpus delicti as non-performance or improper performance by an official of its duties due to a dishonest and careless attitude to civil service, if this has involved the infliction of a considerable damage or substantial breach of the rights and lawful interests of individuals or organizations, or of the legally-protected interests of society and the state. Practically this corpus delicti differs from many administrative offences only by general characteristic of harmful consequences – "*considerable damage or substantial breach of the rights and lawful interests of individuals or organizations, or of the legally-protected interests of society and the state*". At that, this characteristic has not received full and complete interpretation except for the cash equivalent of the considerable damage. It should be noted that the concept of "*substantial breach of the rights and lawful interests of individuals or organizations, or of the legally-protected interests of society and the state*" is the only consequence of one more corpus delicti – "Abuse of Official Powers" (part 1 article 286 of the Criminal Code of the RF). The official interpretation of this concept has turned in a discretionary power of law enforcement agencies, what has given rise to two types of consequences

First, it has become possible to bring to criminal responsibility for negligence or for abuse of official powers virtually any official who has taken with violation any managerial act, even if there are no pronounced harmful consequences. This is made easier by the fact that in these offences there is no such sign as personal interest, personal motive. All this allows estimating of an average official misconduct (violation of administrative legislation) without personal motive and clearly defined consequences as a crime against the state, the interests of public service and service in bodies of local self-government. Considering the complexity of administrative legislation, controversy of managerial norms, lack of unity of their proper understanding, the subject of criminal prosecution can become almost any official who has taken a defective managerial act. There is a lot of evidence of how

uncertainty of these compositions enables to use them to settle scores and put administrative pressure.

Secondly, there is an opportunity during the proceedings on cases of administrative offences to change the status of these cases, transferring them into the category of criminal ones. Quite often this or that case is initiated as administrative, and ends as criminal. At that, such dynamics is not always justified by the interests of justice. In recent years, we can see that the heads of the state focused their attention on the lack of effectiveness of placement public and municipal orders. This criticism was based on the information about the development of corruption in the field placement public and municipal orders. Response to the criticism of law enforcement agencies was expressed in the fact that without the ability or needed professional level to prove the corruption component in cases relating to the placement of orders, they in an emergency procedure began to try to prosecute officials of customers for any violation of the rules for placement orders under articles "Neglect of Duty" or "Abuse of Official Powers". In fact, there was a process of transformation of cases on administrative offenses into criminal ones, what can be characterized as repressive policy aimed at addressing the tasks set by the political leadership. All this even more discredited the process of criminal prosecution, and the set goals were not achieved.

It would be possible to optimize the procedure of bringing to responsibility for violation of administrative norms through classification of defective managerial acts (as a form of improper performance of duties by officials) on the basis of the legal means of influence on them. By this criterion it seems appropriate to distinguish the following types of defective managerial acts, i.e., taken in violation of the law:

- acts, the subject of complaint of which can be only a natural or legal person, whose rights have been violated. In themselves the violations of the procedure for the adoption of these acts are not the reason for their termination, they only give rise to rights and obligations of persons to their appeal. Without an appeal procedure of these acts on the part of subjects, whose rights have been violated, there is no possibility of criminal or administrative prosecution of officials, who has taken these acts;
- acts adopted by officials in the implementation of organizational- administrative powers. These acts may be contested as by natural and legal persons, and by competent public authorities. This type of acts is subject to monitoring and oversight of executive power bodies. Adoption of these acts generates administrative responsibility of officials. This type of managerial acts cannot lead to "*substantial breach of the rights and lawful interests*

of individuals or organizations, or of the legally-protected interests of society and the state", since they are adopted regarding the issues of corporate nature. Consequently, officials, who have adopted these acts, cannot be criminally prosecuted under articles "Neglect of Duty" or "Abuse of Official Powers".

- acts adopted in exercising of powers of authority. These acts can lead to "*substantial breach of the rights and lawful interests of individuals or organizations, or of the legally-protected interests of society and the state"* and taking into account the circumstances of a case, there is possible the criminal prosecution of officials under articles 286 and 293 of the Criminal Code of the RF.

Such classification of unlawful administrative acts would differentiate the responsibility of officials for their adoption and would limit abuses in consideration of these cases.

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Shchukina T. V.

ALTERNATIVE METHODS OF CONFLICTS RESOLUTION IN THE PUBLIC CIVIL SERVICE: PROBLEMS AND NEW APPROACHES[1]

Shchukina Tat'yana Vladimirovna,
Doctor of law, Head of the Chair of civil law and process at Lipetsk branch of Federal State Budgetary Educational Institution of Higher Vocational Education "Russian Academy of National Economy and Public Administration under the RF President, Associate professor,
shykina@lipetsk.ru

The author considers a non-judicial method of settling disputes arising in the field of official legal relations, and preventing, suppressing of corruption offenses in the public civil service, which, in author's opinion, is close to the alternative methods of disputes resolution. Studies the possibility of applying meditative technologies in resolving conflicts of interest, including through the participation in a commission for compliance with the requirements of official conduct of public servants and settlement the conflict of interests of members of the public, who have the experience and qualification of mediator.

In the article is argued that the settlement of the conflict of interest is both a conflict resolution procedure and, at the same time, a measure of preventing the commission of corruption offenses in the system of public civil service.

Keywords: public civil service, public civil servant, conflict of interests, settlement of a conflict of interests.

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Alternative resolution of disputes and conflicts implies widening of decentralization of public administration in its certain areas and branches. Moreover, such a decentralization will be expressed both in the transfer of powers to deal with certain categories of disputes from bodies of state power to entities with a private-legal element and in strengthening the influence of society on the procedures and actually processes for dispute resolution. Thus, the application of private-legal methods to regulate legal relations that are in the field of traditional influence of public administration demands its understanding and effective legal regulation.

In the future the potential for inclusion methods of alternative dispute resolution in a legal matter of modern legislation will change approaches to the determination of the limits of public administration and forms of activity of public authorities, state apparatus, refresh the issues of implementation the principle of publicity of public civil service. Because modern public administration is penetrated by social interactions that are expressed by the system of interrelations, which occur at different levels of the hierarchical structure of exercising the functions entrusted to public authorities and public servants [8, 4].

Advanced communication services enable citizens to monitor government and its decisions through their indirect contact with it. In this regard, the possibility of indirect participation of citizens and formed by them structures makes it easy to apply to the leadership of the state and require power structures to respect or implement their interests, regardless of the location of the citizens and their status in social or political hierarchy [9, 30]. Openness and transparency of the executive branch activity are the most important indicators of the effectiveness of their operation in the implementation of established powers, as well as a necessary element of a constant and quality communication between citizens and the bodies of executive power [4, 16].

In addition, the interaction of the system of public administration and civil society regarding alternative methods of conflict resolution generates the following issues in law-enforcement: what limits should be set by the legislator for using of private-legal methods at state (municipal) service; and whether possible the application of such legal principles and methods? Let's note that the social interest of society (population) is expressed not only in creating, maintaining and ensuring the well-being of citizens, meeting social needs [7, 29], but also in the need for protection of their rights, ensuring and preservation of the cultural and moral ideals and traditions, interaction with bodies of state and municipal power in directions of government intervention in private life.

State cannot exist without the support of its population, wise use of its intellectual, physical and spiritual resources, as well as the population is not able to provide its own self-organization without effective state influence. It seems that the State and population (people) represent a single socio-cultural and politico-economic phenomenon filled with common processes. For example, provisions of the legislation on public service give impetus to the development of social partnership in its system. Social partnership in public civil service involves the activization of activities of collective entities [1] in a body of state power and the adoption of appropriate local normative legal acts. It is, above all, a collective agreement. Conglomeration of interests of people and the state leads to diverse processes, consisting, for example, in the provision of certain social benefits and advantages in the implementation of judicial and other protection of violated rights.

Directly at public civil service the ways of resolution of disputes and conflicts, which are similar to alternative methods, can be applied in the process of resolution of a service dispute between an employer and employee, as well as for settlement of a conflict of interest.

So, scientists say about several ways for resolution of individual labor disputes:

- negotiations;
- dismissal of an employee (a parties' agreement, staff redundancy, layoff in the event of repeated failure of the employee without good cause to exercise its job duties, layoff in the event of a single gross violation of job duties by the employee);
- mediation;
- wage increase;
- collecting negative information about an employee;
- consideration of the conflict by labor disputes commission;
- consideration of the conflict by the Federal Labour Inspectorate [2, 80-93].

In terms of the actions of employer, the dismissal of an employee as a result of conflict associated with its official activity is quite effective way of resolving the individual labor conflict. However, without the proper conduct and arrangement the dismissal can lead to further conflict, emergence of a judicial dispute and engagement in the dispute other staff, who are on the side of the unwanted employee [2, 87]. On the other hand, an employer can abuse this ground for resolution of conflicts. For example, staff redundancy can be used for "getting rid" of unwanted workers due to the lack of requirement for the employer to motivate the decision on staff redundancy, and eliminate the possibility of appealing the decision as unjustified [10, 94].

Let's consider the concept of mediation. From the point of view of M. A. Avdyev, mediation is a form of non-judicial resolution of disputes through a third impartial neutral party. Currently, mediation is actively used in the countries of Europe, the United States, and Australia. The world experience has shown that mediation is one of the most effective ways to resolve labor disputes [3, 44]. However, in respect of workers in Russia, there is a slightly modified form of mediation: when employers at their own expense invite lawyers, which specialize in labor law, to get some expert's "opinions" on a current dispute [2, 87].

In view of the restrictions on the application of mediation, it seems extremely difficult and uncertain to apply it in practice, especially with regard to conflicts affecting public interest. Federal Law No. 193-FL from July 27, 2010 "On Alternative Dispute Settlement Procedure with a Mediator (Mediation Procedure)" in part 5 article 1 envisages that the mediation procedure shall not apply:

- to collective labor disputes;
- to disputes arising from labor legal relations, if such disputes affect or may affect the rights and legitimate interests of a third party not involved in the procedure of mediation or *public interests*. Thus, there is excluded the possibility of involvement of mediators in consideration of conflicts arising in passage of public service [6, 50]. This is a clear limitation in choosing the means of protection the rights and interests of a public civil servant in the settlement of service disputes and conflicts. Such limitation is especially not backed by appropriate additional guarantees in the current legislation on public civil service. For example, the procedure for consideration of a service dispute by a commission on service disputes, as well as the procedure for taking decision by a commission on service disputes and its implementation is still not regulated by federal legislation (article 69-70 of the Federal Law "On the Public Civil Service of the Russian Federation"). There is a procedure for the formation of a commission on consideration of individual service disputes, but there is no procedure for resolving them. While in foreign countries similar structures in public service are fairly efficient.

Resolution of a conflict of interest in public civil service implies the existence of a commission for compliance with requirements to official conduct and settlement of conflicts of interest, as well as independent procedure of consideration of the current situation. This non-judicial way of settling contradictions arising in the field of service legal relations and preventing, combating corruption offenses in public civil service, in fact, is close to alternative methods of dispute resolution.

This method has its own features:

- consideration of conflict occurs in the presence of a body of state power, but with the participation of private individuals;
- public interest is exercised with help of civil society representatives in the course of settlement of a conflict of interest;
- procedure for conflict resolution is of mixed nature (private-public), from the point of view of subjective membership.

This conclusion relates to the essence of all disputes and conflicts arising in public civil service, if the rights and legitimate interests of civil servants are affected

According to the decree of the President of the Russian Federation No. 821 from July 01, 2010 "On Commissions for Compliance with Requirements to Official Conduct of Federal Public Servants and Settlement of Conflicts of Interests", for a more objective and transparent review of conflicts of interests in the commissions include members of the public, namely, "representative (representatives) of scientific organizations and educational institutions of secondary, higher and further professional education, the activities of which are related to public service".

The importance of activity of such commissions is great. Representatives of scientific organizations and educational institutions, representatives of public council, representatives of social organization of veterans, representatives of trade union organization has to express an independent opinion on the issues addressed by commission. They become "independent evaluators" of situations that have arisen and the decisions taken by the commission. Exactly they, first of all, should not have direct or indirect interest in consideration of an issue.

Independent representatives of scientific and educational institutions act as a kind of independent experts that evaluate the objectivity of a taken decision, objectivity and impartiality of consideration the issues of agenda, may disagree with its decision. Like any member of the commission, they shall have the right to express their views in writing, which shall be compulsorily annexed to a protocol. Bigger number of members of the public should evidence about the significance of the commission status, about the possibility of excluding an adoption of decisions that include subjective or conjunctural nature. But, in any case, members of the public should not bring pressure on the taking of decision. Moreover, according to paragraph 12 of the Decree, members of the commission are formed in such a way as to avoid the possibility of appearance of conflict of interest that could affect the decisions taken by the commission. Both members of the commission and individuals, who participate in its meeting, are forbidden to divulge information that has become known to them in the course of the work of the commission (paragraph 21).

This is a specific feature of the procedure for consideration of conflicts of interests in public civil service.

Consequently, the possibility of application of mediation techniques in resolving a conflict of interest can be expressed in inviting of members of the public that have the experience and qualification of a mediator for participation in the commission for compliance with requirements to official conduct of public servants and settlement of conflicts of interests. Of course, this is possible if appropriate amendments are made to existing normative legal acts. In addition, it would be useful to get some skills and abilities of professional reviewing of conflicts for public servants themselves that enter the commission for compliance with requirements to official conduct of public servants and settlement of conflicts of interests.

Paragraphs 3.1-3.2 part 3 article 19 of the Federal law "On the Public Civil Service of the Russian Federation" provide for the consequences of the prevention or settlement of a conflict of interest. They include:

1) change of official position or employment status of a civil servant, who is a party of a conflict of interest, up to its removal from the performance of official (service) duties in a prescribed manner;

2) refusal of a public civil servant from the benefits that have caused the appearance of a conflict of interest;

3) dismissal of a public civil servant, provided that it has not taken steps to prevent or settle a conflict of interests, if this is an offence.

The above can be considered as options for ending of a conflict of interest provided for by law. Prevention of conflicts of interests is related to the mandatory application of penalties to public civil servants whose personal interests have begun to prevail over the interests of the state and society, where has been a situation that reveals commission of corruption offenses and serious corruption manifestations by public servants.

But there may be other consequences of consideration of a conflict of interest, which are not necessarily reduced to the penalties of public servants and to forcing them to actions that have an irreversible character for them. An important role in this process should be played by measures of prevention the appearance of a conflict of interest at public civil service. In this case, mediation technologies and techniques will allow implementation of a more effective procedure for the settlement of a conflict of interests. Exactly, *settlement* rather than prevention of a conflict of interest. Settlement of a conflict of interests seems to us both the procedure of conflict resolution and, at the same time, the measure of prevention of corruption offences at public civil service.

The Federal Law "On the Public Civil Service of the Russian Federation" does not delimitate in detail the term of "prevention of a conflict of interests" and the term of "settlement of a conflict of interests", including also the options to resolution of a conflict. Specified state of the legislation contributes to reducing the resolution of a conflict of interests to its "prevention". At that, meditative techniques of conflict resolution suggest to implement this procedure most rationally and effectively through diagnosis of the conflict (analysis of the essence of the conflict), impact on the conflict (estimation of the positions of conflicting parties, consecution of the conflict) and technique of its resolution (creating an objective and supportive environment, search for the best options for conflict resolution) [5]. Algorithm of resolution a conflict in public service must lie in strict compliance with the requirements of normative legal acts and, at the same time, in maximum, *objective* protection of the rights and interests of civil servants. Application of such methods of conflict resolution will prove to be effective also in consideration of individual service disputes. However, as in consideration of any conflict situation in the system of public civil service.

Thus, there are quasi-alternative methods of resolution of disputes and conflicts in the system of public civil service. All of them are pre-trial forms of dispute resolution, with a specific procedure for consideration in appropriate commissions. We think that certain elements of mediation (meditative techniques) with adaptation to the mixed nature of the above mentioned disputes will help to strengthen the effectiveness of collegial decisions.

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Shevchenko S. V., Yuritsin A. E.

POLICE ACTIVITIES TO PREVENT, REVEAL AND SUPPRESS EXTREMIST ACTIVITIES IN THE RUSSIAN FEDERATION

Shevchenko Sergei Vital'evich,
Candidate of historical sciences, Associate professor of the Chair of constitutional and international law at Omsk Academy of RF MIA, Associate professor;

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

On the basis of analysis of the current legislation in this area is noted that the mechanism for bringing to juridical responsibility persons, who preach extremist ideas or commit any actions of an extremist nature, needs to be improved. In order to increase the efficiency of counteraction against extremist activities the article offers a list of institutional arrangements.

Keywords: duties of the police, extremist activity, state security, public safety, extremist materials, offences of extremist orientation (hate crimes).

Federal Law "On the Police" [2] defined a new police duty, which is expressed in the prevention, revealing and suppression of extremist activities of public associations, religious and other organizations, and citizens.

In accordance with the National Security Strategy of the Russian Federation until 2020, approved by the Decree of the President of the RF No. 537 from May 12, 2009 [3], extremism is recognized as one of the main sources of threats to state and public security. The document notes, that the main direction of state policy in this area for the long term should be the improvement of the normative legal regulation of the prevention and combating against terrorism and extremism.

For carrying out extremist activity the citizens of the Russian Federation, foreign citizens and stateless persons bear criminal, administrative and civil-law responsibility in accordance with the legislation of the Russian Federation. According to part 1 article 1 of the Federal Law No. 114-FL from July 25, 2002 (as amended on April 29, 2008, No. 54-FL) "On the Counteraction of Extremist Activity", [1] extremist activity (extremism) is determined as: forcible change of the foundations of the constitutional system and the violation of the integrity of the Russian Federation; public justification of terrorism and another terrorist activity; excitation of racial, national or religious strife; propaganda of the exclusiveness, superiority or deficiency of individuals on the basis of their attitude to religion, social, racial, national, religious or linguistic identity; violation of rights, freedoms and lawful interests of individuals and citizens, depending on their attitude to religion, social, racial, national, religious or linguistic identity; obstructing the free exercise by a citizen of its election rights or the right to participate in a referendum or breaking the secrecy of ballot associated with violence or threat of violence; impeding lawful activities of state bodies, local self-government bodies, election commissions, public and religious associations or other organizations associated with violence or threat of violence; commission of crimes under motives specified in clause "f" part 1 article 63 of the Criminal Code of the RF (clause "f" part 1 article 63 of the Criminal Code of the RF provides for circumstances aggravating criminal responsibility for crimes of extremism. They include: commission of an offence for reasons of political, ideological, racial, national or religious hatred or enmity or for reasons of hatred or hostility toward any social group); propaganda and public show of nazi attributes or symbolics, or the attributes or symbolics similar to nazi attributes or symbolics to the extent of blending; public calls for the said activity or mass distribution of obviously extremist materials, as well as their manufacture or storage for mass distribution; public and knowingly false accusation of a person holding public office of the Russian Federation or a public office of a subject of the Russian Federation, of committing deeds mentioned in the current article, which constitute a crime, during the performance of their official duties; organization and preparation of the above actions, as well as incitement to their implementation; financing of the above actions or any other promotion of their organization, preparation and implementation, including by providing training, printing and material-technical base, telephone and other means of communication or providing information services.

Extremism should be distinguished from radicalism, which is "the ideology of the radical changes in society". Extreme form of radicalism is the advocacy of

war against other states or genocide of any cultural minority within the state. Radicalism lays in demand of a certain positive result, which is a goal. Extremism, in contrast to the radicalism, is a means to achieve the goal, does not imply the use of extreme measures, is a concept relating to the methods of achieving the set goal. Most extremists carry out their activities without purpose, the means are important to them, that is, the most aggressive and deadly actions. Radicals strain after a specific goal.

In addition, extremism differs from radicalism in the fact that it is illegal, contrary to not only the law, but also norms of morality. Extremism is formed on the basis of the principle of violent confrontation and represents a kind of "ideology of a crowd".

An extremist organization is understood as a public or religious association or another organization, in respect of which, on the grounds stipulated by the Federal Law "On the Counteraction of Extremist Activity" [1], the court has taken an entered into legal force decision on liquidation or ban of activities in connection with the implementation of extremist activity.

Extremist organizations in Russia tend to have the following main features:

- often their representatives emphasize the theme of protection the rights of a people or an ethnic group;
- hostility to the Western and Eastern states, as well as to their policies;
- absence of liberal views (often extremists are supporters of a dictatorship, restriction on freedom of speech and democracy in general, political repressions, etc.);
- anti-Semitism.

Under extremist materials shall be understood the documents intended for publication or information on other carriers, which call for extremist activity or substantiate or justify the need for such activity, including the works by the leaders of the National-Socialist Worker's Party of Germany and the Fascist Party of Italy, publications substantiating or justifying national and/or racial superiority, or justifying the practice of committing military or other crimes aimed at the full or partial destruction of any ethnical, social, national or religious group (see part 3 article 1 of the Federal Law "On the Counteraction of Extremist Activity" [1]).

Criminal legislation distinguishes the following types of crimes of extremist nature:

1) public appeals for a forcible change of the constitutional system of the Russian Federation (article 280 of the Criminal Code of the RF);

2) organization of an extremist community (article 282.1 of the Criminal Code of the RF);

3) arrangement of the activities of extremist organizations (article 282.2 of the Criminal Code of the RF);

For these crimes provides for penalties such as fines, arrest, deprivation of right to hold certain posts or engage in certain activities, deprivation of freedom.

Code on Administrative Offences of the Russian Federation in article 20.3 provides for administrative responsibility for propaganda and public demonstration of Nazi attributes or symbolics.

Countering extremist activities is based on the following principles: recognition, observance and protection of the rights and freedoms of man and citizen, as well as the legitimate interests of organizations; legality; publicity; priority of ensuring security of the Russian Federation; priority of measures aimed at prevention of extremist activity; partnership of the state with public and religious associations, other organizations and citizens in countering extremist activity; inevitability of punishment for extremist activities .

Presidential Decree No. 1316 from September 06, 2008 (as reworded by the Presidential Decree No. 254 from March 01, 2011) "On Some Issues of the Ministry of Internal Affairs of the Russian Federation" [4] in the system of internal affairs of the Russian Federation has formed special units to combat extremism with assignment to them functions to counter extremist activity.

Their competence includes: organization and direct carrying out of special investigative activities and preventive events to detect, prevent, suppress and reveal crimes and offences of extremist nature; revealing and identification of persons who are preparing, committing or have committed crimes of an extremist nature; collection, compilation and analysis of operational information of those involved in the activities of extremist organizations (communities); providing practical assistance to departments of internal affairs bodies in the realization of operational information on cases of high-profile crimes of an extremist nature, as well as providing methodological assistance to the territorial bodies of internal affairs in organizing of prevention crimes of extremist nature; study of social, economic and other factors , causes and conditions conducive to the commission of crimes and offenses of extremist nature, predicting of criminal situation in the Russian Federation; informing the leadership of the internal affairs bodies about the state of counteraction extremism and making suggestions for its improvement.

Joint order of the Ministry of Justice of the RF, Ministry of Internal Affairs of the RF, the Federal Security Service of the RF No 362/810/584 from November 25, 2010 "On the Interaction of the Ministry of Justice of the RF, Ministry of Internal Affairs of the RF, the Federal Security Service of the RF to Improve the

Effectiveness of Institutions (departments) that Carry out Research and Expertise on Matters Related to the Manifestation of Extremism" [5] approved a List of measures to improve the effectiveness of institutions (departments) that carry out research and expertise on cases related to the manifestation of extremism.

This document prescribes the leaders of forensic units of the Ministry of Internal Affairs of the Russian Federation to ensure the priority of conducting researches for the departments of internal affairs bodies of the Russian Federation on combating extremism. In addition, the Ministry of Justice of the RF, Ministry of Internal Affairs of the RF and the Federal Security Service of the RF are prescribed: to elaborate software and information support for institutions (departments) that perform research and expertise on cases related to the manifestation of extremism; to organize scientific-methodological and technical support of conducting research and expertise on cases related to the manifestation of extremism; to take measures to increase the level of experts' training.

Police officers are involved in the fight against extremism through conducting of pre-investigation check of applications and reports of citizens, through prevention of administrative offences in the field of ensuring public order in mass events. Their activity, ultimately, determines proper registration of applications, conducting of a qualified check, timely transfer of materials under investigative jurisdiction. At the same time, despite the efforts made, it should be noted that the mechanisms of bringing to legal responsibility of persons, who advocate ideas of extremism or commit any deeds of extremist nature, need to be improved. In this regard the following events of institutional nature should be carried out:

- implementation of interdepartmental interaction (the Ministry of Justice of the RF, Ministry of Internal Affairs of the RF and the Federal Security Service of the RF) in order to coordinate joint actions aimed at preventing and combating crimes of extremist nature;
- ensuring among structural units of the police within the framework of service training the study of normative legal acts regulating the activities of public authorities in the issues of fighting against extremism;
- timely revealing of the locations of possible illegal extremism manifestations (unauthorized meetings, demonstrations, processions, pickets, etc.);
- collection and systematization of information about activity of public associations of extremist nature;
- taking into account the information received to undertake measures of individual preventive effect against the leaders and active members of extremist groups;

- revealing of criminal gangs and their leaders engaged in inciting interethnic, ethnic conflicts and conflicts in order to cover up their illegal activity;
- systematical monitoring of the MEDIA in order to identify the spread of extremist materials;
- suppression of manifestations of extremist activity in cases of conducting mass events through bringing offenders to legal responsibility.

Implementation of these events in the activity of the Russian police will lead the fight against extremism to a higher qualitative level, and will allow effective prevention, revealing and suppression of offences of extremist nature.

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Zyryanov S. M.

THE PLACE OF ADMINISTRATIVE RESPONSIBILITY IN RUSSIAN LAW[1]

Zyryanov Sergei Mikhailovich,
Doctor of law, Professor, Moscow University of RF MIA,
zyryanov.s@gmail.ru

It is noted that in the administrative-legal science have not been elaborated the essential criteria of delimitation of administrative and criminal responsibility, namely the grounds of application a particular type of legal responsibility.

The author raises the issue on assessment of the degree of social danger of a wrongful act. Here is noted a general legal nature of crimes and administrative offenses as illegal deeds that infringe on legally protected public relations.

Taking into account that the interests of the executive power apply to almost all public relations, and the executive branch actually interferes with (regulate or is trying to regulate) relations in manufacturing, construction, environmental management, education, science, culture, health care, finance, foreign and domestic trade and services, as well as labor, family and other relations, the limits of application of administrative responsibility have wide borders.

Keywords: administrative responsibility, administrative offence, delimitation of administrative responsibility from criminal one, legal nature of administrative offence.

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Recently in administrative science has appeared an interest in the problem of correlation and interrelation of administrative and criminal responsibility. And we must admit that this interest is not accidental. It is due to legislative novelties that significantly change the formed for quite a long, on the scale of existence of the Russian Federation, historical period balance between these two types of legal responsibility.

The first notable proof of this phenomenon was the case when Federal law No. 162-FZ from December 08, 2003 "On Amendments and Additions to the Criminal Code of the Russian Federation" [1] cancelled criminal responsibility for infliction of medium body injuries as a result of road accident, and after almost one year and a half Federal Law No. 38-FL from April 22, 2005 "On Amendments to Article 12.24 of the Code on Administrative Offences of the Russian Federation" [2] established administrative responsibility for this illegal deed.

This was followed by "transfer" by the Federal Law No. 420-FL from December 07, 2011 "On Amendments to the Criminal Code of the Russian Federation and Certain Legislative Acts of the Russian Federation" [3] from the Criminal Code of the RF (hereinafter CC RF) to the Code on Administrative Offences of the RF (hereinafter CAO RF) of the norms providing for responsibility for smuggling (article 188 CC RF – article 16.2 CAO RF), libel (article 129, CC RF – articles 5.60, 17.16 CAO RF) and insult (article 130 CC RF – article 5.61 CAO RF).

By the way, the same Federal Law introduced to CC RF a new article 151.5 that provided criminal responsibility for retail sale of alcohol to minors, which previously formed the composition of an administrative offence under part 2.1 article 14.16 CAO RF.

All these changes took place in the near retrospective. However, one cannot ignore a number of circumstances that are "stumbling block" in resolving the issue about correlation between criminal and administrative responsibility. These are so-called "related" compositions of offences, for example, larceny (article 158 - 160 CC RF) and hooliganism (article 213 CC RF), under certain circumstances they are qualified as minor and in this case are referred to the scope of administrative jurisdiction (article 7.27 and 20.1 CAO RF), and in other cases fall within the scope of criminal jurisdiction. As well as offences for which the legislator has established criminal responsibility for individuals and administrative responsibility for legal entities, employees of which are the guilty individuals: unlawful use of a trademark (article 180 CC RF and article 14.10 CAO RF), falsification of documents (article 327 CC RF and 19.23 CAO RF) and others. We can also recall the institutes of administrative collateral estoppel and replacement of criminal responsibility by

administrative responsibility existed in the Soviet law. Researchers either bypass issues related to these circumstances, or offer conformist solutions that come naturally in conflict with theoretically asserted features allowing delimitation between criminal and administrative responsibility.

Taking into account the above circumstances, it is necessary to answer the question: is administrative responsibility in Russian legislation an independent kind of legal responsibility and, if so, in what extent is it independent, and under what features it can be distinguished from criminal responsibility?

Administrative responsibility is a product of Soviet law, although it is assumed that its appearance in our country is due to the judicial reform of 1862, when in criminal legislation were separated criminal misconducts – deeds of a small public danger, which required implementation of court procedure in a simplified manner. Analysis of the legislation on administrative offenses, some elements of which are shown below, does not allow us to make a different conclusion, except that even now consideration of administrative responsibility as a legal responsibility for minor criminal offenses is correct.

Despite the fact that administrative responsibility in the USSR was applied very widely, in the literature it was taken for granted, without justification of its separation as such. So, S. S. Studenikin in his textbook of administrative law of 1945 gave a description of acts of management – compulsory regulations (decisions) issued by authorized state bodies and establishing for the entire population or for specific groups or institutions, enterprises and organizations those or other obligations, breach of which is punishable under administrative law [15, 69]. Hence, it can be concluded that administrative responsibility ensures compliance with the acts of administration.

Then S. S. Studenikin listed the principles of application of administrative penalties, including: "administrative penalty may be imposed for the offense which does not contain signs of a criminally-punishable deed. Criminal penalty cannot be replaced by administrative penalty, as well as it is unacceptable to bring to criminal responsibility in cases where for an administrative offense provide for administrative responsibility" [15, 72]. Sign of administrative offense – punishability (as in the Code on Administrative Offences or a law on administrative offences of the subject of the Russian Federation) corresponds to this principle in the modern administrative law.

The textbook "Soviet Administrative Law" of 1958 says about the Administrative Code of the Ukrainian SSR, adopted in 1927 (in other Soviet republics similar acts were not accepted). At that, the authors of the textbook indicated that,

despite of its considerable volume, the Code covered mainly the legislation relating to the activities of the police, as well as to the activities of local Soviets in the field of protection of public order and security [14, 16]. In the section of the textbook devoted to public service, we find that particular form and procedure for application of administrative penalties are characteristic for administrative responsibility. At that, this impact is applied by authorized bodies to persons that are not under official subordination of those bodies [14, 70]. Administrative responsibility in this textbook was viewed as a form of administrative coercion – administrative penalties – warning, fine, correctional labor in administrative order (not in all the Union republics), administrative detention and confiscation of property that were imposed for administrative offences [14, 94].

Interesting that these measures sometimes really could not be considered as measures of responsibility. Thus, a warning could be applied to violators of administrative-legal norms at the lack of awareness of offender about the acts which were violated by it, i.e., in the absence of fault of the person who committed an illegal deed. And the purpose of its application – administrative impact against accidental offenders, education of workers to respect the rules set out in normative legal acts [14, 94]. Application of fines, as was pointed out by the authors of the textbook, was provided for by the laws, regulations and compulsory decisions of the USSR departments and even by the decisions of the local Councils of Deputies of Workers and their executive committees. At the same time, administrative detention was provided for by the decrees of the Presidiums of the Supreme Soviets of the Union Republics for disorderly conduct, profiteering. Judges imposed this punishment. Administrative punishments for violations of traffic rules were imposed by police officers in the place of violation or in police department. And here we are again faced with administrative responsibility beyond the scope of public administration.

So, already at that time administrative responsibility: a) was established by acts of administration and legislative acts; b) was ensuring sanctions for regulations acting in the sphere of public administration and in other spheres of public life; c) was applied by officials and judges.

In preparation for the first codification of the legislation on administrative offenses in the Soviet administrative science the issues of administrative responsibility have been given much attention [17, 39-41; 10, 9-10; 11, 245-249; 12, 45-55; 13, 32-38]. On the merits the debate ended that the main criterion for the delimitation of administrative offences and crimes was a sign of social danger. Due to the fact that the legislator had not included this sign in the legal definition of administrative offense, it was suggested to consider administrative offenses socially harmful, but

not socially dangerous. In our opinion, this is a demagoguery, because crime is also socially harmful, moreover, the presence of inflicted harm as a consequence of the tort and the determination of a causal link between the deed and the inflicted harm is required for qualification of a crime (almost all corpus delicti are substantive, in contrast to administrative offences). Every crime has a public importance, if public-law responsibility is established for it. Since, there is established civil-law responsibility for purely private cases. The objectives of the legislation on administrative offenses include, inter alia, protection of public safety – it is directly specified in article 1.2 CAO RF. Finally, why we should establish public-law responsibility for deeds that do not pose social danger? And hardly anyone dares to say that a citizen in a state of intoxication and driving at the same time a vehicle does not represent a danger to society. Of course, it does. By the way, a committed offence, by and large, does not represent public danger; the danger has already been implemented in it.

The lack of prospects of further discussions on this matter is clear, it seems, for everybody.

At the same period the work of A. P. Shergin about administrative jurisdiction was published. The scientist observes in it that depending on the subject matter the interpretation of the concept of jurisdiction gets each time the sectorial tone (criminal-law, civil-law, administrative and other types of jurisdictions). Respected professor points to the unifying them essence of jurisdictional way to protect social relations, which consists in reviewing by a competent authority of a legal case on the merits and taking in respect of it a public-authoritative decision [16, 8].

Describing administrative jurisdiction, the scientist draws attention to the social environment, in which this method of law enforcement operates, and notes that for the understanding of legal nature of the administrative jurisdiction the fundamental role is played by the relation with the aims and tasks of public administration, the dependence on them. The tasks of public administration, in turn, are exercised primarily through the law-enforcement activity of public administration bodies [16, 30].

Public administration is a self-managed system for which offenses are perturbations that disrupt public relations. Jurisdiction allows elimination of "entropy" and the process of disorganization, bringing the system to a new state. However, it appears that also in the sphere public administration administrative jurisdiction coexists with criminal-legal and disciplinary one, since officials of state bodies sometimes commit crimes or disciplinary misconducts, although administrative misconducts are, according to A. P. Shergin, the bulk of offenses in the considered area. Administrative misconducts are different due to the fact, that by their nature

and actual circumstances they are relatively simple, consideration of cases on them and taking decisions does not require complicated procedure for the collection, verification and evaluation of the evidence on the case, what is typical for criminal jurisdiction [16, 31].

A. P. Shergin's assessment of the institute of replacing criminal responsibility by administrative responsibility in respect of those persons who commit crimes that do not pose great danger to society is of interest. In his view, this example illustrates the close interrelation between criminal and administrative responsibility, the unity of their purposes. Analyzed institute expands the possibilities of using administrative and jurisdictional method of law enforcement in combating crimes [16, 37]. Let's recall that article 31.1 of the Criminal Code of the RSFSR provided for the possibility of replacing criminal responsibility by administrative one regarding cases of crimes, for which imposed punishments in the form of deprivation of liberty for a term not exceeding one year or another, lighter punishment.

Respected professor wonders whether the application of administrative penalties to persons, against whom criminal case has dismissed on the grounds of article 50.1 of the Criminal Code of the RSFSR, means changes in the legal classification of the committed by them deeds, and what is the nature of the activity to review cases on such offenses and the application of administrative penalties [16, 38]?

The scientist believes that the legal classification of wrongful deed does not change, because the law allowed replacement of the type of responsibility only regarding a terminated criminal case, and not regarding materials of check. Indictment in a criminal case and proving the existence of corpus delicti was mandatory. Ground for termination of a criminal case in the framework of this institute is different from termination of a criminal case for lack of corpus delicti. At the same time, law-enforcement (jurisdictional) activity of a judge regarding a terminated criminal case, which culminates in the appointment of an administrative penalty, is exactly administrative and jurisdictional one, since criminal jurisdiction regarding a terminated criminal case is no longer possible [16, 39].

The problem is that those criminal cases, in respect of which it was impossible to apply the institute of replacement of criminal responsibility by administrative one under article 50.1 of the Criminal Code of the RSFSR, did not refer to the scope of public administration.

A. P. Shergin also writes that in determining a method to protect certain public relations we should be based on a realistic assessment of deeds' danger. Not all offences, which are beyond of criminal jurisdiction, cease to be socially dangerous. The fight against them must be implemented through administrative or disciplinary

jurisdiction, and not only through measures of social influence. The ratio of criminal and administrative jurisdiction the scientist describes through the process of narrowing of the first and enlargement of the scope of the second, at that, reverse process is not excluded. Anatoly Pavlovich draws attention to the phenomenon, which was noted in those years in the foreign legislation of bourgeois states, where the aggravation of criminal repression, its expansion "was hidden under the guise of administrative penalties imposed for certain offenses, which in case of introduction of so-called state of emergency were automatically replaced by criminal penalties" [16, 50-51]. Currently, there is also a similar but more primitive phenomenon in the Russian legislation, when criminal legislation is subject to decriminalization and criminal responsibility for certain deeds is replaced by administrative one.

Of course, A. P. Shergin could not ignore the institute of administrative collateral estoppel, in which as the basis of criminal responsibility for certain offenses the legislation provided for preliminary application of administrative penalties. In this case, according to the respected professor, there is a manifestation of the principle of economy of legal means, since the main burden in combating against such offenses lies on administrative jurisdiction [16, 51].

However, in our opinion, in this case we are dealing with a deep, essential contradiction that lies in the fact that administrative jurisdiction is focused on law enforcement in the field of public order, the rules of social life, personal property rights (administrative collateral estoppel was applied, for example, to family rowdies, petty theft). And criminal jurisdiction already defended managerial relations, since the measures of administrative coercion proved insufficient. Thus, by means of criminal responsibility was carried out state-authoritative impact to the person who did not respond to managerial influence. It turns out, that the spheres (social areas), which Anatoly Pavlovich considers as fundamental (generic) for this or that type of jurisdiction, may switch to the diametrically opposed!

Significant contribution to the theory of administrative responsibility was made by I. A. Galagan. However, we must admit, that he focused his attention on the procedural issues of administrative responsibility, passing by the issues of delimitation of crimes and administrative offences.

I. A. Galagan indicated the presence of a system commonality in procedural forms of various types of legal responsibility, which is predetermined by a number of circumstances of public-law nature. Among them: the unity of the sphere of state-legal activity, which is the law enforcement activity of the state; the unity of the nature of substantive legal relations, within the scope of which legal responsibility occurs and is exercised (the scientist highlights protective legal relations

– criminal-law, civil and administrative-tort and etc.); the commonality of normative base for all types of legal responsibility, formed by law enforcement norms, secured by punitive sanctions; the commonality of signs for substantive content of the various types of legal responsibility, which consist in the fact that legal responsibility always acts as a measure of state coercion that is well-defined and formulated in the punitive sanction of the norm of law, lies in the public condemnation of a deed and offender, consists in causing to it adverse legal consequences, occurs for the violation by a guilty person of its legal responsibilities; the commonality of foundations of different types of legal responsibility; the commonality of functions, goals, tasks , substantive-legal principles of imposition different types of legal responsibility in the mechanism of public administration [6 , 13].

N. V. Vitruk writes that administrative responsibility is an independent type of responsibility in public law [5]. At that, on the one hand, he agrees with O. A. Kozhevnikov, who alleges that protection of regulatory norms is carried out with help of not only administrative, but also other types of legal responsibility, what does not give grounds to link administrative responsibility with the existence of only one branch of administrative law [8, 13-14], on the other hand, notes that administrative responsibility provides functioning and implementation of the norms of all sectors of private and public law. Next, the scientist claims that the features of administrative responsibility are defined by the nature of administrative offenses as a ground for the emergence of administrative responsibility and legal consequences that occurred in the process of their application.

Regarding the differences between danger and harmfulness, N. V. Vitruk notes that, of course, such terminological distinction is possible and recalls that earlier administrative torts used to be called misdemeanors as opposed to crimes – criminal torts.

Important, that N. V. Vitruk notes the homogeneity of the social nature of administrative offences and crimes, what allows mobility of the distinction between them and possibility of criminalization and decriminalization of deeds.

Thus, it must be noted that the administrative-legal science has not worked out the essential criteria of delimitation of administrative and criminal responsibility, or rather, the foundations of application specific type of legal responsibility.

Formal criteria derive from legal definitions of CC RF and CAO RF, under which a crime is distinguished by the signs of public danger and bringing to criminal responsibility solely by the criminal law. Administrative offense is distinguished in that it also can be committed by a legal entity, and the fact that administrative responsibility may be also established by the laws of the subjects of the Russian

Federation. But these formal signs do not disclose the essential distinctions between crimes and administrative offenses.

It seems possible to offer another formal criterion associated with the term of "administrative". Application of the term by the legislator must have some value. At least the external difference between criminal and administrative responsibility is determined exactly by these words: "criminal" and "administrative". However, there can be variants.

First, let's suppose that the definitions of "criminal" and "administrative" are needed to reflect the juridical nature of responsibility. Criminal responsibility is established by criminal law – CC RF, while administrative responsibility – by administrative legislation – CAO RF and laws on administrative offences of the subjects of the Russian Federation.

Second, the term of "administrative" may mean an area in which torts are committed. This area must be the same as the subject of administrative law – area of managerial relations. However, the area of managerial relations, which is subject to the interests of executive authority, includes virtually all public relations. Executive power actually interferes with (regulate or is trying to regulate) relations in manufacturing, construction, environmental management, education, science, culture, health care, finance, foreign and domestic trade and services, as well as labor, family and other relations. Executive power exercises management in the field of public order – let's recall famous works and I. I. Veremeenko and M. I. Eropkin [4, 7]. Consequently, domestic crime also enters the field of view of administration. Narrow understanding of administration as a managerial apparatus does not meet the range of relations protected by administrative responsibility; on the contrary, intra-managerial relations are protected for the most part by disciplinary responsibility rather than by administrative one.

Third, the definitions of "administrative" and "criminal" can refer to entities that exercise responsibility. Criminal responsibility is exercised by court. Administrative jurisdiction has always been considered as part of the executive and administrative activity, one of the types of law enforcement activity [9, 65]. But administrative responsibility is only "mostly" a prerogative of administrative bodies. We have already given the data, that in individual cases decisions were given by judges. And the current CAO RF assign a rather extensive range of administrative offenses to the jurisdiction of justices of peace, judges of the courts of general jurisdiction, including military courts and judges of arbitration courts.

Fourthly, finally, these terms may be relevant to the order of proceedings. Crimes correspond to criminal court procedure, and administrative offences – proceedings

on cases of administrative offences. That's for sure! These two juridical processes have significant differences. Moreover, proceedings on cases of administrative offences are closer to civil court procedure, rather than to criminal one, although common sense requires otherwise. Even in courts of general jurisdiction cases of administrative offences were considered by judicial divisions for civil cases. The same is evidenced by assigning cases relating to administrative offences in entrepreneurial activity to the jurisdiction of judges of arbitration courts. No one thought to assign to the arbitration court consideration of criminal cases concerning business crimes

Perhaps it is possible to suggest some other formal reason for delimitation administrative and criminal responsibility. But from the analysis of given above it follows that the administrative responsibility is established by the acts of administrative, rather than criminal legislation and implemented by a wide range of subjects in independent administrative-jurisdictional (administrative-tort) proceedings (in the administrative process). There are no essential reasons except for degree of public danger.

As for the degree of public danger, then it is not a constant value. In different historical periods one and the same acts may be of greater or lesser public danger. You may remember the time when one was criminally responsible for any theft of Socialist property (law on three spikelets), for non-payment of utility bills – these examples are now perceived as working of a sick imagination.

By the way, the degree of public danger lies in the basis of the classification by type of crime. In accordance with part 1 article 15 CC RF, there are different minor offences, crimes of average gravity, grave crime and especially grave crimes. If you continue with this classification, should administrative offences be defined as minor crimes?

And the last question: who and how estimates the danger of this or that wrongful deed? The answer is simple – the subject of the estimation is the legislator, which, by virtue of collegiate management, has the properties of objectivity of its decisions. Although, of course, these decisions are influenced by many subjective factors.

And judging by the changes that are taking place in interrelations of the criminal law and the legislation on administrative offenses, it can be argued that administrative offenses are distinguished from crimes by established by the legislator degree of public danger and its own administrative and procedural order of proceedings. And this means that crimes and administrative offences as wrongful deeds against protected by law public relations have a common legal nature.

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Programme of
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