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Kizilov V. V.

THE NOTION OF GUILT IN THE CODE ON ADMINISTRATIVE OFFENCES OF THE RUSSIAN FEDERATION

Kizilov Viacheslav Vladimirovich,

c.j.s, Associate Professor, department of administrative and financial law of the non-state educational institution of higher vocational education «Omsk Institute of Law», Omsk;

The concept of guilt as a social and legal assessment category is being contrasted with the current concept of guilt based on mental attitude of a guilty person to the committed offense. Examines the errors of normative concepts of «form of guilt» vested in tort legislation of Russia. Considers the possibility of application of juridical responsibility «without establishment of guilt».

Keywords: guilt, concept of guilt, forms of guilt, intent, negligence, presumption of innocence, principle of guilt, guilt of a natural person, guilt of a legal entity.

In accordance with the Russian delictual legislation the prerequisite for bringing an offender (delinquent) to responsibility is his guilty action or inaction. From the context of article 2.1 of the Code on Administrative Offences of the RF follows that in the absence of guilt in the actions (inaction) of a physical person or legal entity, these actions, despite their illegality, are not administrative offenses.

Enshrined in the Code on Administrative Offences of the RF presumption of innocence requires persons exercising administrative jurisdiction to establish the guilt of a person in respect of whom are being conducted proceedings on an administrative offense. However, in our opinion, the wording of the rules of article 1.5 of the Code on Administrative Offences of the RF, reflecting the presumption of innocence, contains some contradictions with part 1 of article 2.1 of the Code on Administrative Offences of the RF, which in a literal interpretation of the rules preclude administrative responsibility of any subject. It is obvious that

B. V. Rossinsky had in mind the same thing, saying that "the guiltiness of an action implies that it was committed in the presence of guilt. The absence of guilt in any case does not allow considering this deed (even illegal) as an administrative offense" [10, 35].

As we see it, the legislator in the part of guiltiness of the delinquent more successfully formulated the presumption of innocence in the field covered by the Criminal Code and the Criminal Procedure Code of the RF, not applying for torts committed in the absence of delinquent's guilt the concept of a crime (see Table. 1). However, as noticed by M. V. Bavsun, emerging practice of using the Institute of guilt and criminal law principle of fault-based liability "does not comply with their legislative formulations and follows, mainly, the way of expediency. Besides, the expediency that is out the law, far outstripping it and conditioned by reality" [6, 17].

In our opinion, we should not ignore the fact that the law enforcer can act in ways the use of which will contribute to achieving the goals set by the law, herewith relying less on the administrative directions of tort legislation, but more on common stereotypes, perceiving them as a dogma, deviation from which is impossible. This is possible more in situations where the legislator has left enough room for the use of discretionary powers of law enforcer.

A. M. Huzhin believes that the legal construct of "objective imputation" is typical not only to criminal law, but also for other branches of modern law, in situations when it comes to the use of legal liability without establishing of guilt [15, 187]. And it is difficult to disagree with it. Judicial practice confirms the possibility of derogation in cases prescribed by law from the principle of guilt and accepts the possibility of use legal liability without establishing of guilt, i.e. objective imputation.

Table 1

Presumption of innocence in the tort legislation of Russia

Criminal Code and Criminal Procedural Code of the RF	Code on Administrative Offences of the RF
CC RF: article 5. The Principle of Guilt	Article 1.5. Presumption of Innocence
1. **A person shall be brought to criminal** *responsibility* only *for* those **socially dangerous actions (inaction)** and socially dangerous consequences *in respect of which his guilt has been established.*	1. *A person shall be* administratively *liable* only for those **administrative offences**, *in respect of which his guilt has been established.*

CPC RF: article 14. Presumption of Innocence	
1. The accused shall be regarded as non-guilty until his guilt of committing the crime is proved in accordance with the procedure, stipulated by the present Code, and is established by court sentence, which has entered into legal force.	2. A person who is on trial for an administrative offence shall be regarded innocent until his guilt is proved in the procedure established by this Code and established by a lawful decision of the judge, body and official who has considered his case.
2. The suspect or the accused is not obliged to prove his innocence. The burden of proving the charge and of refuting the arguments cited in defence of the suspect or the accused, shall lie on the party of the prosecution.	3. A person held administratively responsible is not obliged to prove his innocence, except as provided by footnote to this article
3. All doubts concerning the guilt of the accused, which cannot be eliminated in accordance with the procedure established by the present Code, shall be interpreted in favor of the accused.	4. Irremovable doubts in respect of the guilt of a person held administratively responsible shall be interpreted in favor of this person.
4. The verdict of guilty cannot be based on suppositions.	*No equivalent to the norm of part 4 article 14 of Criminal Procedural Code of the RF*

The main reason for deviations law enforcer from the lawfulness we believe the absence of the concept of guilt in the tort legislation of Russian. Contents of articles of the Criminal Code and the Code on Administrative Offences of the RF with the heading "form of guilt" reveals, in our opinion, very different concepts – classification of offenses depending on the volitional and intellectual delinquent's state of mind at the time of the wrongful deed (see Table. 2).

Table 2

Forms of guilt and guiltiness in the tort legislation of Russia

Criminal Code of the RF	Code on Administrative Offences of the RF
Article 24. Forms of Guilt	Article 2.1. Administrative Offence
1. **A person** who has committed an act deliberately or carelessly shall be **deemed guilty of a crime**.	2. **A legal entity shall be deemed guilty** of an administrative offence, if it is established that he had the opportunity to observe rules and norms whose violation is administratively punishable under this Code or under the laws of a subject of the Russian Federation, but he has not taken all the measures that were in his power in order to compliance with to them.

Continuation of table 2

Article 25. Intentionally Committed Crime	Article 2.2. Forms of Guilt
1. An act committed with direct intent or indirect intent shall be recognized as a crime committed intentionally. 2. A crime shall be deemed committed with direct intent, if the person was conscious of the social danger of his actions (inaction), foresaw the possibility or the inevitability of the onset of socially dangerous consequences, and willed their offensive. 3. A crime shall be deemed committed with indirect intent, if the person realized the social danger of his actions (inaction), foresaw the possibility of the onset of socially dangerous consequences, did not wish, but consciously allowed these consequences or treated them with indifference.	1. An administrative offence shall be deemed willful, when the person who has committed it realized the wrongful nature of his action (omission), could foresee the harmful consequences thereof and wished these consequences, or deliberately allowed them, or treated them indifferently.
Article 26. Crime Committed by Negligence	Article 2.2. Forms of Guilt
1. An act committed thoughtlessly or by negligence shall be recognized as a crime committed by negligence. 2. A crime shall be deemed to be committed thoughtlessly, if the person has foreseen the possibility of the onset of socially dangerous consequences of his actions (inaction), but expected without valid reasons that these consequences would be prevented. 3. A crime shall be deemed to be committed by negligence if the person has not foreseen the possibility of the onset of socially dangerous consequences of his actions (inaction), although, with the necessary care and forethought he ought and could foresee these consequences.	2. An administrative offence shall be deemed as committed through negligence, when a person who has committed it could foresee the harmful consequences of his action (omission) but self-conceitedly hoped to prevent such consequences, or did not foresee the appearance of such consequences, though he had to and could foresee them.

Encyclopedic sources of the Soviet period determined guilt, as:

- position (state), the opposite of righteousness, in which passes a person who has violated ethical or legal standards, having committed a misconduct or a crime. The state of guilt is an expression of moral relations in which the individuality correlates to others and to society as a whole [12, 41];

- necessary condition for the bringing to responsibility [13, 225].

Currently, the guilt is defined as "mental attitude of a person to his wrongful conduct (action or inaction) and his consequences" [14, 42]. "Guilt means person's awareness (understanding) of inadmissibility (wrongfulness) of his conduct and related to it outcomes. Guilt is a necessary condition of juridical responsibility" [14, 42].

"Guilt – the mental attitude of a person to committed by him wrongful act (action or inaction) and its consequences. Means person's awareness (understanding) of inadmissibility (wrongfulness) of his behavior and related to it outcomes. A necessary condition of juridical responsibility" [8, 46].

The concept of guilt, earlier given by I. A. Galagan, is also based on medical and biological nature of man. According to the scientist understanding guilt is a "mental attitude of a person to his committed wrongful action or inaction in the form of intent or negligence, as well as to its consequences" [7, 170].

The above stated understanding of guilt by legal scholars, except that it is a necessary condition of juridical responsibility, we believe, does not satisfy the requirements of law that presumes subjective imputation.

The mistake in the above definitions of guilt is, to our point of view, in binding to one subject – delinquent, even though the establishment of guilt is imposed on other subjects. How, in this case the person carrying out administrative jurisdiction determines the fault of a delinquent? The legislator has proposed the law enforcer artificial structure of forms of guilt, when in fact the content of Article 2.2. of the Code on Administrative Offences of the RF deciphers types of administrative offenses (gives their classification) depending on the delinquent's volitional and intelligent aspect taking place at the time of committing illegal actions.

We believe that in the administrative law definition of guilt should not be limited only with mental attitude of delinquent to his deed. And reference to guilt as a necessary condition of juridical responsibility is a functional purpose of guilt, as the category of law. Guilt is a category of social society, the rules of the existence of which are governed by various norms, including legal ones. In isolation from a society the concept of guilt does not exist. And, above all, fault is an assessment by society of committed acts. On the basis of the given views let's formulate our own notion of guilt.

Guilt is a socio-legal category, reflecting the condemning (reprehensible) subjective assessment of deeds (actions or inactions) of a physical person, committed in violation of social norms and rules of conduct with some volitional and intelligent aspect, which characterizes the deed as intentional or reckless, as well as wrongful acts of a legal entity, entailing juridical responsibility.

This definition does not contain any contradictions in the case of various assessments of deeds by a delinquent himself and persons exercising administrative jurisdiction, judges and other persons – participants of tort legal relations. Society through laws determines the procedure of establishing guilt, authorized persons who establish guiltiness, as well as deeds and conditions of their commission (intentional or reckless), which are condemned by society. And the final decision on the guilt of a delinquent in case there is a dispute is taken by a judicial authority.

In the context of our concept of guilt it is not correct to speak about the existence of forms of guilt. Intent and negligence is a form of manifestation of an offense rather than a form of guilt! The need for differentiation these forms of manifestation of guilt related, in our opinion, with a view to impose differentiated offender's penalties, depending on the taking place volitional and intellectual aspects of the offender in a particular tort. However, in most cases in the administrative and tort legislation the type of tort does not matter that was noted by B. V. Rossinsky: "In the articles of the Code on Administrative Offences of the RF and the laws of the RF subjects, establishing administrative responsibility, a form of guilt is more often not indicated. According to the articles administrative liability arises, regardless of the form of guilt… In some cases, although the form of guilt is not directly established by the legislator, indirectly, it is clear from the nature of the deed… However, sometimes the wording of an administrative offense expressly says that it can be committed only in the form of intent or only in the form negligence" [5, 618-619].

We believe that wine, as a socio-legal category has been introduced as a requirement of legal liability occurrence to implement in the law enforcement activity the presumption of innocence. The implementation of this presumption requires a certain course of actions of the subjects of administrative jurisdiction, which are obliged to collect sufficient evidence on the subject of proof and compliance with the rule of law in procedural actions. Therefore, in tort relations is important not only to the mental attitude of delinquent to a deed and its consequences (i.e., not his subjective assessment), rather assessment of authorized by law subject of administrative jurisdiction the delinquent's offense in terms of forms of guilt manifestation. This statement has a definite sense in view of the fact that the delinquents, as practice shows, if there are sufficient and absolute evidence of their guilt, continue to assert their innocence.

We believe that in cases of guilt assessment by a delinquent – a physical person it should be kept in mind not a very guilt, but feeling of guilt

i.e. the delinquent awareness of the guiltiness of his actions. In this context (sensory perception of guilt), it is rightly so the assertion of legal scholars on the absence of guilt (feeling of guilt) by collective entities of law (legal entities). Therefore, the legislator has formulated in part 2 of article 2.1. of the Code on Administrative Offences of the RF special definition of a legal entity's guilty deed, which can be regarded as a symbiosis of principles of subjective and objective imputation of guilt, because the mere fact of committing an administrative offense is not sufficient for the bringing to administrative liability of a legal entity. It is necessary to establish, that a legal entity had the opportunity to comply with the rules and norms for the violation of which the Code on Administrative Offences of the RF or the laws of a subject of the Russian Federation provides for administrative responsibility, but this (legal) entity did not take all possible measures to comply with them.

We believe that the norm of Code on Administrative Offences of the RF on the guiltiness of a legal entity has been formulated in view of the structure taking place in civil legislation. Article 401 of the Civil Code of the RF stipulates that "a person is admitted innocent, if he has taken all measures for the proper performance of an obligation with the degree of care and prudence which was required of him by the nature of the obligations and terms of turnover" (laid the principle of objective imputation).

However, in our opinion, the guilt of a legal entity (in our definition of guilt) can be implemented both through intentional deeds and the actions by negligence, in view of the intentional deeds or actions by negligence of its officials (authorized representatives of the collective subject of law). In accordance with part 4 of article 110 of the Tax Code of the RF the organization guilt in the commission of a tax offense is determined by the fault of its officials or its representatives, actions (inactions) of which resulted in the commission of the tax offense.

Proposed by us passing of fault from the field of mental sensations to the area of objectively possible conduct of subjects in the field of legal relations governed by public law is not a novelty in the law. Civil law has in this matter the relevant experience, when the real conduct of participants of property turnover is compared with the requirements of the diligence and prudence which should be exercised by an intelligent and good faith entity.

We agree with A. M. Huzhin that "the existing in the modern judicial practice provision on the possibility application of juridical responsibility "without establishment of guilt" is not equal to objective imputation" [15, 188]. All that the specified author said for civil law is relevant for the public sectors of law.

Code on Administrative Offences of the RF contains a number of articles with administrative offenses in which the liability volume is of unconditional nature (proving of innocence is formal, as even casual actions are imputed to a delinquent). However, in law-enforcement practice may take place a decrease in the amount of liability in connection with the establishment of the circumstances of extreme necessity, as well as mitigating circumstances.

Unfortunately, currently in administrative law there is no theoretical-legal conception of justification the application of liability regardless of fault. Attempt to prove the necessity of bringing to administrative responsibility separate entities of law regardless of guilt has been made by us at the consideration of the subjective aspect of administrative offences of public civil servants [9]. We believe that bringing to administrative responsibility regardless of fault may take place with respect to collective subjects – legal entities. Foundations for the considered are laid down by legislator in the articles of the Code on Administrative Offences of the RF with the formal structure, which in fact presume the guiltiness of an illegal action, and the proceedings on the case on an administrative offense in such cases are limited to checking circumstances which exclude bringing to administrative responsibility.

However, before proposing a scientifically based concept of the possible application in the framework of administrative law responsibility regardless of fault, we should sort out the essence of legal structures and concepts that are prerequisites for the realization of this principle.

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