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GENERAL PROVISIONS OF THE CODE ON ADMINISTRATIVE RESPONSIBILITY: SUBJECTS OF ADMINISTRATIVE RESPONSIBILITY

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Is proposed the author's classification of the subjects of administrative responsibility for the future (the next) codification of administrative and tort legislation. Substantiates the relationship of the basic principles of administrative and tort legislation with different subjects of administrative responsibility.

Keywords: administrative responsibility, subjects of administrative responsibility, public persons, the codification of the administrative and tort legislation.

No one doubts the future complex changes in the administrative and tort legislation. Among scientists who study administrative law exists the view about the need of detaching the Administrative Procedural Code from the Code on Administrative Offences of the RF [9] and conducting the third codification of administrative and tort legislation [10, 42]. Estimating the available doctrinal developments, law making activities of a legislator and law-enforcement practice, it can be noted that the partial changes that have been made to the Code on Administrative Offences of the RF, since its adoption, are unable to resolve a number of issues that have arisen among the jurists in process of its application. For example, Professor A. P. Shergin wonders whether further development of administrative and tort legislation will follow the path of mixed codification of substantive and procedural norms of administrative responsibility, or will be realized a separate codification [10, 45-48]. E. V. Denisenko notes the de facto of presumption of impunity of individual delinquents-physical persons in mind of their special service status [4]. Professor E. B. Luparev asks himself about the ratio for norms of financial and administrative responsibility under the Tax Code and the Code on Administrative Offences of the RF, instrument of administrative coercive measures [8, 29].

Professor V. V. Denisenko puzzled about the combination in the Code on Administrative Offences of the RF of objective fault imputing to a delinquent-legal entity with the laid down principle of the offender guilt, based on the psychological theory, noting that "while establishing administrative responsibility for this or that sphere of social relations, the legislature each time had to decide the same question which of two options to prefer: the presence of guilt as a mandatory feature of an offense or the objective imputation" [3, 39].

Issues of guilt determination were the subject of study by V. V. Kizilov who rightly believed in the possibility of a combination in administrative and tort legislation of Russia depending on the subject of objective and subjective imputation [5, 7].

As we see it, now is the time when in the first place should be conducted a deep revision of general provisions of the Code on Administrative Offences of the RF to eliminate the conflicts of the applied principles and presumptions, and to clarify the subjects of administrative responsibility by "widening" the category of an official under its constituent subjects. On the multiplicity of subjects of the mentioned category pointed V. V. Kizilov [6] and we agree with the author that the integration of these subjects creates problems in law-enforcement in bringing to administrative responsibility of a delinquent-official.

The main reason of administrative and tort legislation's imperfection seems to us the lack of will of the legislature to abolish their own legal immunity and to keep civil society calm remains the disapplication of administrative responsibility for other categories of public servants. In our opinion, the responsibility for administrative offence committed by a physical person should bear all persons, including ones who possess special administrative and legal status. As a matter of fact the question is not about the administrative responsibility for an official offence, then we agree that a number of public officials in their service activity are not subject to administrative responsibility (e.g., the President, the Prime Minister, judges and prosecutors), we are talking about administrative responsibility for offences of a private entity (private subject of law). It seems to us, for a good example to civil society physical persons who have a special legal status of an official, which provides a special procedure for bringing to administrative responsibility, should bear greater responsibility for an administrative offense than an ordinary private person. For this in the Code on Administrative Responsibility should be provided provisions on the procedure of holding these subjects liable and not to use reference rules similar to part 2 of article 1.4 of the Code on Administrative Offences of the RF [1].

The main point determining the forming the general part of the Code on Administrative Responsibility shall became the chapter on the subjects of administrative responsibility. As we see it, should be divided two main groups of subjects – public and private persons. And with respect to these subjects administrative responsibility define the principle of guilt determination (subjective or objective imputation). Taking into account the vast array of regulated public relations administrative law admits in the administrative and tort legislation the combination of the principles of objective and subjective imputation of guilt for different subjects of administrative responsibility. However, as we see it, and we agree with V. V. Kizilov [7], should be reviewed unconditional and monopoly application of psychological theory of guilt (borrowed from criminal law) in administrative and tort legislation. State in pursuing and protecting the public interest implements the controlling impact in a number of private legal relations by establishing obligatory rules and norms for the parties of civil turnover. Therefore, it is quite possible to apply to subjects of business activity, when committing by them administrative and legal torts, behavioral theory of guilt in determining the subjective element of an administrative offense structure.

Previously, we carried out a classification of public persons, where we considered the feasibility and acceptability of bringing to administrative responsibility of collective public persons [2]. In our opinion, it is absurd to bring to administrative responsibility the very public formations – the sovereigns of the territories and representing the whole their population. However, it is quite possible to bring to administrative responsibility collective public subjects:

- public authorities, acting as legal representatives of public-legal formations (this refers to persons who under the power of the law in a certain amount have been given powers of authority , as well as a directly impact on their implementation, i.e., the agents of the public authority);
- institutions of public authority (economic entities that provide services and perform a public social provision of services), which arise usually on the basis of a legal act of a public authority (laws, decrees, resolutions, etc.) and in a regulatory order;
- public-law associations in the form of an organization (political parties, public associations).

Taking into account previously said, all subjects of the administrative responsibility will be placed in the following structure:

1. Public persons.
    1.1. Collective public persons.
        1.1.1. Public legal entities.
        1.1.2. Public persons without the status of a legal entity.
    1.2. Individual public persons.
        1.2.1. Public civil servants.
        1.2.2. Municipal civil servants.
        1.2.3. Military servicemen.
        1.2.4. Public formations officials.
        1.2.5. Law enforcement officers
        1.2.6. Special subjects: deputies, judges, prosecutors.
2. Private persons.
    2.1. Individual private persons.
        2.1.1. Citizens.
        2.1.2. Foreign citizens and persons without citizenship.
        2.1.3. Officials.
        2.1.4. Individual entrepreneurs.
        2.1.5. Special private subjects: notaries, lawyers.
    2.2. Collective private persons.
        2.2.1. Legal entities.
        2.2.2. Collective persons without legal education.

As we see it, only at a specified classification of delinquents is possible the solution of problems faced by the administrative and tort legislation, and ensuring its fundamental principles (including real, but not imaginary equality before the law).

It should be noted that there is possible a separation of administrative and tort legislation in the legislation providing for separately administrative responsibility of public and private persons, for example, by analogy with the legislation regulating labor (service) relations and assignment pensions.

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