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DEVELOPMENT TRENDS OF THE RUSSIAN LEGISLATION ON ADMINISTRATIVE OFFENCES

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In the article are presented the results of the critical analysis of changes in the CAO RF over the past decade with the assessment of positive and negative aspects of these changes. Are projected the directions of further development of administrative and tort legislation of Russia.

Key words: legislation on administrative offences, administrative offences, administrative responsibility, administrative penalties, the principles of administrative and tort legislation

The importance of the legislation on administrative offenses is determined by its role in the fight against the most common illegal phenomena – administrative offenses. This legislation exercises administrative deliktolization of deeds, defines the system and types of administrative penalties, formulates structures of particular administrative offenses, the procedure for implementation administrative responsibility, system and powers of the subjects of administrative jurisdiction. Norms of the legislation on administrative offences have two functions: a) they enshrine the administrative policy of the state, and b) they are a form of implementation of this policy. The content of these norms and thrust of administrative repression does not remain unchanged; their change is inseparable from the dynamics of socio-economic development of the state, from the needs of the administrative and judicial protection of public relations, from the level of scientific research of the problems of administrative responsibility.

The development of legislation on administrative offenses is divided into three main stages: 1) before codification (1917-1984 years), characterized by the presence of numerous normative acts on administrative responsibility of different levels, the lack of an unified legislative determination of order and the mechanism for its implementation; 2) the first codification (1984) as a result of which was adopted the Code on Administrative Offences of the RSFSR – a comprehensive normative act, which combined substantive, competent and procedural norms on administrative responsibility; 3) the second codification (2001) – the adoption of the Code on Administrative Offences of the RF [1] on the basis of the Constitution the Russian Federation and its improvement. Features of each of these stages have been the subject of numerous studies, and their analysis is beyond the scope of our task [13; 11; 14].

Since the entry into force of the CAO RF have passed ten years, has been accumulated some experience of application its norms, that allows to estimate the completeness and quality of the norms and practice of their application. The current stage of development of the legislation under consideration can be described as the evolution of the norms of administrative responsibility on the basis of the Russian Federation Constitution [15, 4]. If the codification was used to solve the problem of a radical reform of the legislation on administrative offenses, its integration in the legal system of Russia, then the evolutionary development period of this legislation is associated with its improvement based on the needs of administrative and judicial protection of public relations and law-enforcement experience.

Identification the major trends in the modern development of the legislation on administrative offenses is not only a doctrinal interest, allowing to understand the mechanism of establishing and implementing of administrative responsibility. The solution of this scientific task makes it possible to determine the vector for implementation of administrative policy, identify problem situations in law-enforcement practice, and predict further development of the legislation on administrative offenses.

In our opinion, the following trends characterize the current legislation on administrative offenses.

First, there is virtually completed the formation of two units that constitute the legislation on administrative offences: federal and regional ones. Although in the law (article 1.1 of the CAO RF) this division was enshrined initially, after the adoption of the CAO RF it took several years for the creation of a regional legislation on administrative offenses. There is no a unified form of it: in some regions of Russia it is represented by separate laws on administrative offenses, in others – by

a Code on Administrative Offences. However, there is an apparent tendency of legislators of the RF subjects to the codification form of consolidating the legislation on administrative offenses. Analysis of the Russian Federation subjects' Codes on Administrative Offences indicates the duplication of norms of the Federal Code, that has led to the problem of delimitation the subject of regulation of the CAO RF and the norms of a regional legislation on administrative offenses, including in respect of related sets of elements of an offense, procedural rules, etc., what has already been pointed out in the literature [8, 9].

Second, the dynamism of the CAO RF improvement which is associated with the rapid development of contemporary public relations. Whereas in 2002 was adopted five federal law on amendments to the Code in 2003 – 8, 2004 – 11, in 2005 – 18, in 2006 the number was 28 federal laws. Prior to 2010, the number of laws, that amended the CAO RF, ranged from 17 to 25. However, years 2010 and 2011 presented to jurists surprises in the form of 46 and 48 of the taken legislative amendments to the CAO RF. There have already been taken 17 laws amending the main administrative and tort law of the country during seven months of 2012. Occurs an important for lawmakers and law-enforcers issue of stability of the legislation on administrative responsibility. In 2006, for the first time since the adoption of the CAO RF were introduced more than two dozen new articles, even more articles were set out in new edition, and all in all amendments and additions to some extent affected more than hundreds of articles of the Code. This dynamism remained in subsequent years. Only five federal laws from July 24, 2007 have significantly changed the content of the Code on Administrative Offences of the RF [2; 3; 4; 5; 6]. Unequivocally this trend can hardly be estimated. Of course, stability creates a more comfortable environment for law-enforcers. But it should not be introduced to the detriment of an adequate response of law to the needs of jurisdictional protection of public relations. Package variant of additions to the CAO RF (1-2 times per year) proposed by scientists [14] is enticing, but life goes on. There should not be a gap between a new administrative and legal ban and appropriate sanction, otherwise legal norm does not work. Simultaneous adoption of both the very rules, which need jurisdictional protection, and the relevant norms of administrative responsibility, seems to be optimal. It should be noted that lawmakers increasingly demonstrate this approach (see, for example, Federal laws "On Introduction of the Water and Forest Code of the RF).

Third, the expansion of the scope of administrative and judicial protection of public relations. This process is logical, it is linked to the dynamics of social relations' development, in particular in the sphere of economy, public security, etc.

So, the CAO RF was added by provisions on liability for violation the legislation on Placement of Orders to Supply Goods, Carry out Works and Render Services for Meeting State and Municipal Needs (articles 7.29-7.32); for non-compliance by a carrier with requirements of the Russian Federation legislation on Obligatory Insurance of Civil Liability of the Carrier (articles 11.31); for violation the legislation on Participation in Shared Construction of Multi-family Homes (article 14.28); for violation the established procedure of the collection, storage, protection and processing of information that constitutes a credit history (article 14.30); for violation the legislation of the Russian Federation on Tourist Activities (14.51), etc. But there has been a tendency of excessive, in our view, detailing of the legal and administrative restrictions, which affects the amount of the CAO RF. This is especially typical for chapter 12, "Administrative offenses in sphere of road traffic", to which, it seems, they try to place all the paragraphs of traffic rules. Obviously, there is needed a balance between narrative and blanket designs of administrative-tort norms.

Fourthly, increasing the rigidity of the administrative penalties. This is particularly evident in the changes made to the article 3.5 of the CAO RF "Administrative Fine", addition to the Code a new type of administrative punishment – administrative suspension of activity (article 3.12), increasing the size of penalties in many articles of the Special Part. This trend is due to, on the one hand, the increasing of public danger of a number of administrative offenses (e.g., violations of road traffic) [3], on the other hand to the extensive decriminalization of previously criminal acts (the reform of the criminal law of 2003), the expansion of the number of contiguous offenses and administrative offenses. Such changes in administrative delinquency demanded also the revision of attitude to the nature and volume of rights' restrictions that constitute the content of administrative penalties, which affected a significant increase in the amount of administrative fines, increase in terms of deprivation of the right to drive vehicles, expanding the scope of the administrative suspension of activity, etc. Increasing the size of an administrative fine again actualizes the problem of delimitation of administrative and criminal responsibility. Administrative Code and the Criminal The Code on Administrative Offences and the Criminal Code of the RF sets almost the same maximum size of a penalty set to absolute value (up to one million rubles for legal entities, and in the cases provided for in articles 14.40, 14.42 of the CAO RF – five million), and calculated according to the rules of multiplicity to income, revenue, unpaid taxes, customs fees, etc., that blurs the boundary between two types of legal responsibility. It is clear that the social danger of many administrative offenses sometimes exceeds the threshold of criminal deeds (e.g., violations of the law on the Continental Shelf, Economic

Zone of the Russian Federation, etc.). Apparently it's time to listen to the opinion of leading experts in the field of criminal law (A. V. Naumov, N. F. Kuznetsova, etc.) who offer to provide for responsibility of legal persons in the Criminal Code of the RF. In the draft of the Criminal Code of 1996 was provided for such opportunity, but lawmakers did not consider it necessary to establish criminal responsibility of organizations. A pity!

Fifth, have been defined two trends of development for the system of administrative jurisdiction subjects: 1) extension of administrative and jurisdictional competence of judges and 2) increasing the range of branch bodies, authorized to consider cases on administrative offenses. The first one deals with the increasing complexity of cases on administrative offences and expansion of administrative penalties, application of which is assigned by law to the competence of judges. Indeed, there has been formed judicial-administrative jurisdiction, and this phenomenon has already attracted the attention of researchers [10]. The second trend has led to the fact that virtually all of the federal bodies of executive power exercising control and supervising functions, have gained also jurisdictional ones. Such merging of functions of one and the same subjects challenge the objectivity of considering cases on administrative offenses, what is evidenced by the results of consideration of complaints on decision on administrative offenses. Canceled or changed every three of five appealed decisions of non-judicial bodies of administrative jurisdiction [12, 39, 7, 45-63].

Sixth, least of all the novelization of the CAO RF has touched its procedural section and this to certain extent, is justified. Rules for consideration of cases on administrative offenses should be stable. Changes in procedural norms of the Code were generally reduced to clarifying the set of officials authorized to take measures to ensure proceedings on cases on administrative offences (delivery, administrative detention, etc.), more precise regulation of certain norms on the rights' guarantees of participants of an administrative and jurisdictional process. But these changes affect only separate norms. It is obviously closely for the fourth section in the CAO RF. Its content, its principles (in addition to general principles of the legislation on administrative offences), the need for a clear definition of the functions and subjects that exercise them, the enshrining of instances in the system of subjects of administrative jurisdiction, and etc. provide a strong reasons for the development and adoption of a separate Administrative-Procedural Jurisdictional Code of the RF, as have long been writing colleagues – scientist studying administrative law.

Seventh, there is a legislative consolidation of the norms on administrative responsibility of public officials and individuals connected with government

institutions. For example, the spread from 22.08.2009 of disqualification for persons holding positions of public civil service (federal or regional), as well as the post of municipal service; the introduction of new administrative offences, including non-compliance by officials of state control (supervision) with the requirements of the legislation on the state control (supervision) (article 19.6.1), violation of the legislation on the organization of rendering public and municipal services (article 5.63). Further design of structures of offences, it seems to us, will be associated with the implementation of anti-corruption policy of the state.

Finally, about some recent innovations of the CAO RF, the substantiation of which is questionable. It is, above all, about the Federal Law No. 210-FL from July 24, 2007 "On Amendments to the Code on Administrative Offences of the RF", which made significant changes to the regulation of administrative responsibility for offenses in the field of traffic safety. Outset that we do not in any way question the need for greater accountability for these offences, the effects of which have become truly a national disaster (each year more than 30 thousand people die on the roads). But normative solution to this important problem of the said Federal Law cannot but cause reasonable concern. Most amendments to the CAO RF, introduced by the Federal Law No. 210-FZ from July 24, 2007, are tied to a new kind of fixing traffic violations – through working in automatic mode special technical means which have the functions of photography and filming, video (part 3 article 28.6 of the CAO RF). Many countries have such norms, and they are successfully applied in the practice of supervision in the field of road safety. But this, we emphasize, private innovation has led to adjustments in principles of administrative-tort legislation. First, has been "adjusted" the principle of presumption of innocence. From Part 3 of article 1.5 of the CAO RF, which enshrines the provision that the person brought to administrative responsibility is not required to prove his innocence, has been made an exception. To article 1.5 of the Administrative Code has been added a note under which the provisions of part 3 of the article must not be applied to administrative offenses provided for by chapter 12 of the Code, in the case of fixation by operating in automatic mode special technical devices having functions of photography and filming, video, or by means of photography and filming. This normative decision is regrettable. It is hardly necessary to prove that the content of the norms of the CAO RF shall comply with the principles of administrative-tort legislation, and not vice versa. And "amendment" in the principle of presumption of innocence, which is based on the provisions of article 49 of the Constitution of the Russian Federation, was unwise. Second, the innovation under consideration has caused adjustment of general rules of imposition an administrative penalty. Article 4.1 of the CAO RF is

supplemented by part 3, according to which in the cases provided for in part 3 of article 28.6 of the CAO RF is imposed an administrative fine, the amount of which should be the smallest in the range of sanctions of the Special Part CAO RF, that is, essentially the choice the size of an administrative fine (and only it) does not depend on the nature of an offense and identity of an offender (see part 2 article 4.1 of the CAO RF), but on the method of fixation violations of the traffic rules! Moreover, the reducing the size of an administrative fine is presumed in respect of persons committing the most dangerous traffic violations (exceeding the set speed, driving, when traffic lights prohibit it, etc.). Exactly for fixation of such violations is planned to install operating in automatic mode special technical means which have the function of photography and filming, video recording. It should be added that the principle of individualization of punishment is hardly applicable to many articles of chapter 12 of the CAO RF, as they set an absolutely certain amount of an administrative fine.

Reformation of principles of administrative-tort legislation continues. One can only hope that the Russian Constitutional Court will give its assessment to such reform of principles of the legislation on administrative offenses and Basic Law of the country.

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