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PROBLEMATIC ISSUES OF DETERMINATION A LEGAL ENTITY'S GUILT OF AN ADMINISTRATIVE OFFENCE

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Clear tendency to increasing the number of public relations protected by measures of administrative responsibility, and to a significant tightening of administrative penalties is noted in the article. Argues that a legal entity is a special social and legal phenomenon (tool of civil turnover), which cannot be mechanically endowed with subjective characteristics of a man. Therefore there is given a justification of bringing to administrative responsibility certain leaders of legal entities or other competent officials with delictual dispositive capacity who are guilty for violations.

Keywords: administrative offence, guilt, guilt of a legal entity, guilt determination, administrative offence of a legal entity, administrative responsibility of a legal entity.

The problem of combining public and private interests in the economic sphere, interrelation the systems of legal centralization and decentralization, formation the mechanism of state regulation of entrepreneurial activity is extremely topical for today›s Russia [9].

Active participants in economic activities are legal entities. The problem of guilt of a legal entity is undoubtedly one of the most topical in the current administrative and tort legislation. Existing problems in determining the guilt of legal persons, cannot but affect matters of punishability (inevitability of punishment) for an intentionally committed wrongful act. The system of punishment for administrative offenses committed by legal persons does not differ a great variety, but in spite of the need to respect the principle of individuation, of the four available types of punishment there is only one most commonly used. Studying administrative responsibility for offenses in the field of entrepreneurial activity A. V. Drozdov reasonably noted that "the system of administrative penalties has a direct or indirect economic orientation of sanctions", while "the system of administrative penalties is characterized by the dominant value of an administrative fine" [4, 20].

As note N. Lukyanov and N. Borisova "growth of crimes was the reason to issue orders, calls for tightening measures taken. This was followed by a surge of fair indignation excessive sanctions and quibbling, which found reflection in the press. In response, the administrative practice softened leading to excessive liberalism and connivance. The number of offences was growing again, and everything started over again. Thus, the sanctions were being reconsidered from time to time – one day towards mitigating, another day towards tightening. But the question, what kind of measure from a wide range of sanctions in each particular case had to be applied, remained unresolved" [7, 43].

In recent years the Federal legislator have been showing a clear tendency to increasing the number of public relations protected by measures of administrative responsibility, and to a significant tightening of administrative penalties, in particular to increasing the size of an administrative penalty for committing certain types of administrative offenses.

As points out in his work P. I. Kononov "law enforcement practice ... clearly does not correlate to the repeatedly expressed by the Constitutional Court of the Russian legal position, according to which the measure of an administrative penalty must be proportionate to the committed offense and not turn from the measure of impact to the tool of suppression of economic independence and initiative, excessive restriction the freedom of entrepreneurship and private property" [6].

The need for effective participation of legislators in resolving the issue of punishability, application of effective measures of responsibility, thorough regulation of legally significant signs of administrative offenses in respect of collective subjects of legal relations requires theoretical understanding.

V. V. Kizilov binds the procedure for determining guilt of legal entities to a particular tendency – "legislator encourages law enforcer to transforming the Code on Administrative Offences of the RF to the tool of generating country's revenue" [5]. Guilt of a legal entity is an evaluation category, criteria of which are established by the legislator and depend on the conducted in the country legal policy. Reluctance to reveal officials of collegial bodies guilty of an offense is connected to the possibility of imposing a penalty in respect of a legal entity in a larger size. Guilt, which, in essence, is a mental attitude of a person to committed by it deed, for legal entities in contrary is determined on the base of harmful effects, damage inflicted. To judge the wrongfulness of misconduct by its punishability as not completely reliable as to determinate the guilt of a person proceeding from the amount of damage inflicted.

We must finally decide, – writes P. I .Kononov, – is CAO RF a legal instrument to replenish the federal budget or still to combat with violation of the current legislation and prevent such violations [6].

Lawmaker's recognition the ability of a legal entity to commit a guilty deed is vulnerable from the position of the general theory of law. After all, the very concept of "legal person" is a peculiar result of an evolution of civil-legal relations, the system of legal and economic characteristics of a collective subject of law, in fact, an abstraction, designed to optimize developed relations of civil turnover. If we take into account the signs of guilt as a theoretical-legal categories, then we are to involuntarily assume mental (i.e., intellectual, volitional, emotional) attitude of enterprises and organizations to the process and the results of their operation. We share the view of E. V. Bogdanova that a legal entity is a special social and legal phenomenon (an instrument of civil turnover), which cannot be mechanically given subjective characteristic of man. The people may be similar only to people, but not to legal constructs [3, 25-26].

As we see it, the subject of an administrative offense (both a crime and a disciplinary offense) should be recognized only a physical sane person who has reached an appropriate age. At detection of signs of an administrative offence in the territories, in the premises (or other objects) or documents of legal persons to administrative responsibility must be brought not "collective entities", but guilty of offenses specific leaders of these organizations and other competent officials with administrative delictual capacity. Legal entities are characterized by civil-legal responsibility, which has a pronounced compensatory nature.

However, some scientists try to prove the possibility of administrative responsibility of legal persons by the recognition of objective imputation [2, 485] or

artificial "splitting" of guilt of a legal entity to the "objective" and "subjective" [1, 348-349]. These concepts, in our view, are debatable. Obviously, that "legal responsibility without guilt" (the so-called objective imputation) is not shared by any theory of law or legislation. Attempt of "dual" interpretation of a legal entity's guilt, which is understood on the one hand as the pertain of its officials to the offense ("subjective guilt"), and on the other hand – as the pertain to the deed of a competent jurisdictional authority ("objective guilt"), in essence, is aimed to the justification of the "objective imputation". In our view, this approach is based on the valuation theory, which interprets guilt as an assessment by court (another subject of jurisdiction) of all the objective and subjective circumstances of an offence [8, 124; 10, 183]. Note, however, that the perception and evaluation by a jurisdictional authority of delinquent behavior are not part of the subjective aspect of an offense, but represent the certain stages of formal qualifications of deed.

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