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THE INTERRELATION OF THE PRINCIPLES OF ADMINISTRATIVE-TORT AND CRIMINAL PROCESSES[1]

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The author notes the presence of commonality, mutual dependence and conditionality between administrative-tort and criminal processes, including as a result of the nature of penalties both criminal and administrative.

Interrelation of administrative and criminal responsibility is manifested in the main areas of related and border compositions of administrative offences and crimes.

Here is stated about the apparent lack of adjustedness and coherence between administrative-tort and criminal policies of the state, as well as about the presence of gaps in the coherence of administrative-tort and criminal processes.

Keywords: administrative law, administrative-tort law, criminal process, principles of administrative-tort law, principles of criminal process, principles of administrative-tort process.

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The most important element that characterizes the content, as well as predetermines the structure and functions of any process, it is the system of its principles. Under legal principles in the theory of law understand the guidelines (ideas, beginnings) enshrined in legal norms. They characterize its content, enshrine the patterns of development and define the mechanism of legal regulation [28, 32-33]. Principles of law are "ideological spring" [4, 225] of the whole mechanism of legal regulation, fundamental principles that characterize the content of the norms of law-enforcement acts, show the major directions of their functional effect on public relations [3, 261-262].

In this regard, it is positive that the theoretical problem of developing an optimal system of principles of the Russian administrative-tort process, which has not yet received a full-fledged comprehensive resolving both in legislation and in doctrinal scientific interpretation, in some volume has been analyzed in a number of studies [5; 8; 16; 17; 23; 7-10; 26; 6; 29]. Indeed, "the assertion of the need for complete, consistent and accurate legislative regulation of the principles of administrative and jurisdictional process, which, unfortunately, is not observed in the legal norms of the Code on Administrative Offences of Russia, deserves support" [9, 74-75].

A. P. Shergin analyzing administrative and jurisdictional process as a procedural component of the legal regulation of administrative responsibility and an independent kind of legal process, convincingly justifies the need for an independent codification of the procedural form of administrative responsibility (Administrative-jurisdictional Code of the RF) [26, 4-5], what "involves reference to the fundamental characteristics of legal process. In the procedural science these include principles, functions, and stages. They are the girders of any legal process, form its normative model" [5, 26].

The most authoritative Russian legal scholar very aptly points out that at present can be only offered a model system consisting of the following principles of proceedings on cases of administrative offences: legality, language of the process, presumption of innocence, adversarial proceedings, level arrangement, right to appeal against the decision on a case. A. P. Shergin emphasizes that for constructing of this type of legal process the principles of adversarial proceedings and level arrangement are of special significance.

At that, the principle of adversarial proceedings essentially determines the functional orientation of proceedings on cases of administrative offences. The functions of this type of legal process, in accordance with this principle, are administrative prosecution and protection of the rights and legitimate interests of the participants of proceedings on cases of administrative offences.

At the same time, “the principle of level arrangement reflects the duration of the procedural activity on cases of administrative offences… a clear definition in the Code on Administrative Offences of the RF (hereinafter CAO RF) of all the instances of the considered kind of legal process is needed” [26, 6]. Introduction of supervisory procedure gave a certain impetus to the development of this principle [12].

It seems that the principles and other quality features of the Russian administrative-tort process are most clearly revealed when it is compared with other procedural forms of domestic legal system. Such studies contribute to the disclosure of the essence of administrative-tort process, search for the faces of interaction and cross-fertilization of procedural industries and institutes, standardization of terminology.

Administrative -tort process is most closely interacts with administrative-tort law, as well as: 1) with arbitration proceedings in part of a large block of the procedural norms governing the exercising of administrative responsibility [22]; 2) with criminal proceedings [25].

An important substantive-legal prerequisite of existence commonality, mutual interdependence and interconditionality between administrative-tort and criminal processes is the relationship of administrative and criminal responsibility.

O. E. Leist, on the basis of law-enforcement nature of sanctions, divides them into two main types: justice restorative and punitory punitive ones [14, 62]. First ones are aimed at elimination of direct injury to the rule of law. The task of the second ones is the general and private prevention of offences, the correction and re-education of delinquents.

Exactly to punitive sanctions usually refer both criminal-legal and administrative sanctions [14, 63]. Since the measures of administrative and criminal responsibility often seek to protect the same objects of legal protection, enforcement tasks of administrative responsibility, enshrined in article 1.2. CAO RF and tasks of criminal law, provided for in part 1 article 2 of the Criminal Code of the RF, are similar in many ways.

Institute of administrative responsibility in Russia was formed and began to develop in the second half of the XIX century [18, 151-152], interacting with criminal responsibility. A. I. Elistratov analyzing the relevant legal sanctions, noted that “the study of the peculiarities of administrative torts that consist in violation of administrative orders leads some scientists to an attempt to create special “administrative-criminal law” on the verge of criminal and administrative law [10, 434]. The ratio of misconduct and crimes according to Russian Imperial Law has been sufficiently enough analyzed by A. B. Agapov [1, 141-200; 2, 74-135].

In modern Russia, the relationship between administrative and criminal responsibility is manifested in the following key directions.

First, as in the Soviet period, there is a vast array of related and border compositions of administrative offences and crimes [15, 245-249]. In this case, due to the decriminalization of many previously criminally punishable offenses the social danger of a number of administrative offenses has increased, the structure of their legal compositions has become more complex [26, 5].

Second, in the criminal law of Russia revive compositions of offenses with administrative prejudice that are unique only to the Soviet period [11]. It seems that this "novation" evidences the erosion of clear boundaries between administrative offenses and criminal deeds: "Repeated administrative offense remains exactly an offense. … disjunction of two administrative offenses cannot make a single crime. Each of them separately does not possess the necessary level of social danger. Also, the danger is not formed through disjunction of the mentioned offences [6, 79].

Third, according to part 3 article 2.1. CAO RF, should be applied interrelation of administrative and criminal responsibility that has appeared in our country in the early 1990s and is characteristic to the Soviet period. We are talking about the cases where for committing the same wrongful acts individuals are brought to criminal responsibility, and legal entities – to administrative responsibility.

Given plane of interrelation of administrative and criminal responsibility, alongside with the institute of administrative responsibility for the commission of one and the same offense of individuals and legal entities, in view of the obvious fiscal interest of the state to expand the circle of persons who are imposed an administrative fine, has been subjected to severe criticism in administrative and legal literature.

Really, "what is it: a kind of dual responsibility or a two-pronged responsibility? Maybe, this is a sort of enshrined in civil law joint and several responsibility or subsidiary responsibility? … It is clear that splitting of responsibility leads to irresponsibility" [7, 105-107].

There is a clear lack of adjustedness and coherence between the administrative-tort and criminal-legal policy of the state. As a result, "the tightening of sanctions of administrative-legal norms "draws near" administrative responsibility to criminal responsibility ... for a significant number of persons brought to administrative responsibility an amount of fine, even minimal, established for the commission of an appropriate administrative offense is "unsupportable" and, therefore, becomes not a measure of responsibility, but measure of the financial and psychological pressure on these persons" [18, 6]. Paradoxically in terms of the elementary

requirements of the quality of legislative technique, but the maximum term of imposed "compulsory works" under article 3.13. CAO RF (up to 200 hours) may be an order of magnitude greater than the minimum term of serving "compulsory works" under article 49 of the Criminal Code of the RF (from 60 hours). The names of these measures of administrative and criminal responsibility in CAO RF and Criminal Code of the RF are identical.

However, it seems that the internal coherency of legal policy of the state in the sphere of interaction of administrative-tort and criminal processes is even worse. July 1, 2012 marked 10 years since the entry into force as of the CAO RF and the Code of Criminal Procedure of the RF. But so far, both of these Federal Codes still have not been filled with the norms required for a full procedural-legal implementation of interrelation of administrative and criminal responsibility.

Thus, in the Code of Criminal Procedure of the RF, and now, in spite of the often shortened limitation periods for bringing to administrative responsibility, there are no norms on transfer of materials of pre-investigation checks or copies of materials of criminal cases to bodies (officials) authorized to carry out proceedings on cases of administrative offences.

Meanwhile, exactly 10 years ago, the legislator was proposed, for example, the following option to resolve this gap:

1. Supplement article 148 of the Code of Criminal Procedure of the RF by new fourth part read as follows:

"If check materials contain data on an administrative offense, the prosecutor, within five days from the date of the judgment on refusing to institute criminal proceedings considers the issue on institution an administrative case and (or) on the transfer of materials for resolution in administrative proceedings to an appropriate body or official".

2. Add sixth part to article 213 of the Code of Criminal Procedure of the RF:

"If investigation detects the facts requiring application of measures of administrative punishment, the investigator indicates this in the decision to dismiss the criminal proceedings and prosecution, and the prosecutor within five days from the date of issuance of this decision considers the issue on institution an administrative case and (or) on the transfer of copies of materials of the criminal case for resolution in administrative proceedings to an appropriate body or official" [25, 20].

Simultaneously, in CAO RF there are no provisions requiring body (official), which conducts proceedings on a case concerning an administrative offense, in the case of evidence of a crime *immediately* to transfer the case materials to the prosecutor, investigator or body of inquiry.

These and other gaps in the coherence of administrative-tort and criminal processes have much deeper reasons than it may seem at first. Despite the simultaneous entry into force of CAO RF and the Code of Criminal Procedure of the RF, in the first one the codification of administrative-tort process in a number of key parameters is much closer to the procedural model of the Code of the Criminal Procedure of the RSFSR rather than the Code of Criminal Procedure of the RF.

Thus, the definition of evidence on a case of administrative offence in part 1 article 26.2. CAO RF as *any actual data*, on the basis of which a judge, body, or official in charge of the case determines the presence or absence of an administrative offense, guiltiness of a person brought to administrative responsibility, as well as other circumstances that are important for the proper resolving of the case, is concordant with the definition of evidence on a criminal case under part 1 article 69 of the Code of Criminal Procedure of the RSFSR.. The definition of criminal-procedural evidence contained in article 74 of the Code of the Criminal Procedure of the RF, discloses them like *any information*, and not as *any actual data*.

Meanwhile, the definition of criminal-procedural evidence under the Code of the Criminal Procedure of the RF contributes to the strengthening of adversarial nature criminal proceedings, and according to Code of Criminal Procedure of the RSFSR – strengthening the principle of objective truth of process.

One should agree with assertion of A. P. Shergin that “it would be hardly possible effectively implement the existing norms on administrative responsibility under the old simplified procedure. Cannot be ignored the experience of the separated codification of substantive and procedural norms on administrative responsibility of other countries (Poland, the Republic of Belarus, the Republic of Ukraine, etc.)” [26, 5].

By developing a completely new theoretical model of stages, functions and principles of Administrative-tort Procedural Code of Russia the theoretical and practical lessons of 10 years of application of the Code of Criminal Procedure of the RF should also be taken into account. Particularly fruitful this analysis can be when thinking about the system of principles of the future updated Russian administrative-tort process.

Thus, it is positive that the principles of criminal proceedings do not “dissolve” in the chapter devoted to general provisions, as it used to be in the Code of Criminal Procedure of the RSFSR, and concentrated in chapter 2 of the Code of Criminal Procedure of the RF, which is specifically dedicated to them. This shows an improvement in the standard of legislative technique.

Compared with the Code of Criminal Procedure of the RSFSR in the Code of Criminal Procedure of the RF the regulation of the principles of criminal proceedings contains very serious changes that require, as a fairly approves A. P. Kruglikov, deep special analysis [13, 56]. However, such analysis is not possible in the present work, due to the limited scope of research. Describing the contained in the Code of Criminal Procedure of the RF separate the most significant changes in the system of principles of the criminal process, we note the following.

According to the Code of Criminal Procedure of the RF in a number of principles of criminal process there are not mentioned comprehensiveness, completeness and objectivity of the investigation of the circumstances of a case (objective truth), formerly provided for by article 20 to the Code of Criminal Procedure of the RSFSR. This principle of public criminal process as is emphasized [21, 63-67], and is not emphasized [20] by some authors.

At the same time in the Code of Criminal Procedure of the RF codify the principle of adversarial nature of the parties, provided for by part 3 article 123 of the Constitution of the Russian Federation: "Court procedure shall be conducted on the basis of parties' adversary nature and equality".

In accordance with article 15 of the Code of Criminal Procedure of the RF, in accordance with the principle of adversarial nature of the parties, functions of prosecution, defense and resolving of a criminal case are separated from each other and cannot be assigned to one and the same body or the same official. Court is not a body of criminal prosecution, does not come down on the side of prosecution or defense. Court creates the necessary conditions for the execution by the parties of their procedural obligations and the implementation of their rights. Prosecution and the defense have equal rights before the court.

Significantly, that enshrined in article 15 of the Code of Criminal Procedure of the RF principle of adversarial nature of the parties, in fact, declared Russia's desire for the perfect adversarial type of criminal process, suggesting that "a dispute of equal parties is resolved by an independent court" [19, 19].

Let's note in general much less detailed elaboration of the principles of proceedings on cases of administrative offences, compared to similar principles in criminal court procedure (both in law and theory).

At that, proceedings on cases of administrative offenses is fundamentally different from the criminal process because of availability of the principle of promptness [24, 289-296] that is not typical for the criminal court procedure.

The high quality of criminal-procedural form is predetermined by the key distinguishing feature of the method of criminal-procedural law – special procedural

procedure of institution, investigation, review and resolving of criminal cases, which ensures the compliance of the behavior of participants in a criminal process with the task of criminal procedure, a full, comprehensive and objective study and assessment of evidences, knowledge objective truth , proper application of measures of state impact by the court and the maximum social and educational effect of administration of justice [27, 46]. Improvements in the quality of procedural form of administrative responsibility and the development of the system of its principles are inextricably linked to the problem of rethinking the method of administrative-tort process.

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