Universal Decimal
Classification 342.9

Lipatov E. G.

ADMINISTRATIVE OFFENCES LEGISLATION OF THE RUSSIAN FEDERATION AS A WAY OF A REPRESSIVE IMPACT ON SOCIETY[1]

Lipatov Eduard Georgievich,
Doctor of law, Head of the Chair of administrative and criminal law at P. A. Stolypin Volga Region Institute of Management (Russian Academy of National Economy and Civil Service), Saratov.

The author argues that the activities of officials of public authorities for bringing to responsibility are due not only to a committed offense, but also to the desire to demonstrate to the political leadership their loyalty and the proper understanding of the strategic objectives facing the state.

Based on the fact that the statutory basis for bringing to administrative responsibility is extensive, complex and controversial legislation, here is proved the possibility of the use of administrative-legal norms for implementation of a political order.

The author proposes the classification of acts of management, adopted in violation of the law.

Keywords: administrative offences, crimes, legislation on administrative offences, administrative responsibility, criminal responsibility.

[1]Published on materials of VII All-Russian scientific-practical conference with international participation «Theory and practice of administrative law and process» (Rostov-on-Don — Krasnodar — Nebug — 2012)

Common place of public and professional consciousness has been occupied by the fact that prohibiting norms contain certain repressive potential, since they are of protective nature, the basis for their implementation is an offense and application of these norms is associated with bringing to responsibility. The most pronounced forms of enshrining prohibiting norms are criminal legislation and legislation on administrative offences. However, not always implementation of prohibiting norms turns into the policy of state repression. As a rule, this characterizes an extreme form of deformation of law-enforcement activity, in most cases the implementation of protective norms takes place in lawful law-enforcement form.

The point, the moment, in which the deformation of the whole procedure of ensuring legality and the rule of law takes place, is of interest. It appears that the repressive capacity of the legislation is implemented exactly when the law-enforcement mechanism is driven by political will, and becomes a way to solve state tasks. In this case, the activities of the officials of public authorities for bringing to responsibility are due not only to a committed offence, but also to the desire to demonstrate to the political leadership their loyalty and the proper understanding of the strategic challenges facing the state. In such a situation, consideration of cases turns into a political "campaign", in which the culprits are known in advance. Legal criteria for an enforcement procedure in this case lose their independent significance and become only the formal terms that must be met in order to prosecute the subjects that have been indicated in advance "by the top". We often have to be witnesses of the scene, when the political leadership of the country or region expresses dissatisfaction with the work of oversight bodies or their inaction, the reason of which is the unsatisfactory situation in this or that area. As a rule, the response of the competent authorities does not make us wait. They quickly initiate criminal or administrative cases, begin a frantic search for perpetrators, consideration of cases occur without taking into account their essence. Of course, the discontent of senior management is based on real social problems, and it puts good goals, but the turned into "flurry" complicated procedure of case consideration, multiplied by the traditional for the bureaucracy desire to do a good turn and "to respond to the challenges of the time", makes the procedure of bringing to responsibility a repression.

In this aspect the most vulnerable to the repressive use the legislation on administrative offences. If criminal-law mechanisms are enough regulated and do not allow to take liberties with them, then normative basis for bringing to administrative responsibility is extensive, complex and controversial legislation that facilitates

the procedure of use of administrative-legal norms in order to fulfill a political order. In addition, the lack of a unified practice of bringing to administrative responsibility and its regional differentiation become a fertile field for such a consideration, which more satisfies the interests of political leadership, rather than meets the objectives of justice.

The lack of clear criteria for the distinction between administrative and criminal offences has become one of the major threats of the development of state repression in the sphere of administrative law-enforcement. Thus, the objective aspect of many administrative offenses is failure to comply with managerial rules by officials, the execution of which is their duty. With that, article 293 of the Criminal Code of the RF "Neglect of Duty" defines corpus delicti as non-performance or improper performance by an official of its duties due to a dishonest and careless attitude to civil service, if this has involved the infliction of a considerable damage or substantial breach of the rights and lawful interests of individuals or organizations, or of the legally-protected interests of society and the state. Practically this corpus delicti differs from many administrative offences only by general characteristic of harmful consequences – *"considerable damage or substantial breach of the rights and lawful interests of individuals or organizations, or of the legally-protected interests of society and the state"*. At that, this characteristic has not received full and complete interpretation except for the cash equivalent of the considerable damage. It should be noted that the concept of *"substantial breach of the rights and lawful interests of individuals or organizations, or of the legally-protected interests of society and the state"* is the only consequence of one more corpus delicti – "Abuse of Official Powers" (part 1 article 286 of the Criminal Code of the RF). The official interpretation of this concept has turned in a discretionary power of law enforcement agencies, what has given rise to two types of consequences

First, it has become possible to bring to criminal responsibility for negligence or for abuse of official powers virtually any official who has taken with violation any managerial act, even if there are no pronounced harmful consequences. This is made easier by the fact that in these offences there is no such sign as personal interest, personal motive. All this allows estimating of an average official misconduct (violation of administrative legislation) without personal motive and clearly defined consequences as a crime against the state, the interests of public service and service in bodies of local self-government. Considering the complexity of administrative legislation, controversy of managerial norms, lack of unity of their proper understanding, the subject of criminal prosecution can become almost any official who has taken a defective managerial act. There is a lot of evidence of how

uncertainty of these compositions enables to use them to settle scores and put administrative pressure.

Secondly, there is an opportunity during the proceedings on cases of administrative offences to change the status of these cases, transferring them into the category of criminal ones. Quite often this or that case is initiated as administrative, and ends as criminal. At that, such dynamics is not always justified by the interests of justice. In recent years, we can see that the heads of the state focused their attention on the lack of effectiveness of placement public and municipal orders. This criticism was based on the information about the development of corruption in the field placement public and municipal orders. Response to the criticism of law enforcement agencies was expressed in the fact that without the ability or needed professional level to prove the corruption component in cases relating to the placement of orders, they in an emergency procedure began to try to prosecute officials of customers for any violation of the rules for placement orders under articles "Neglect of Duty" or "Abuse of Official Powers". In fact, there was a process of transformation of cases on administrative offenses into criminal ones, what can be characterized as repressive policy aimed at addressing the tasks set by the political leadership. All this even more discredited the process of criminal prosecution, and the set goals were not achieved.

It would be possible to optimize the procedure of bringing to responsibility for violation of administrative norms through classification of defective managerial acts (as a form of improper performance of duties by officials) on the basis of the legal means of influence on them. By this criterion it seems appropriate to distinguish the following types of defective managerial acts, i.e., taken in violation of the law:

- acts, the subject of complaint of which can be only a natural or legal person, whose rights have been violated. In themselves the violations of the procedure for the adoption of these acts are not the reason for their termination, they only give rise to rights and obligations of persons to their appeal. Without an appeal procedure of these acts on the part of subjects, whose rights have been violated, there is no possibility of criminal or administrative prosecution of officials, who has taken these acts;
- acts adopted by officials in the implementation of organizational- administrative powers. These acts may be contested as by natural and legal persons, and by competent public authorities. This type of acts is subject to monitoring and oversight of executive power bodies. Adoption of these acts generates administrative responsibility of officials. This type of managerial acts cannot lead to "*substantial breach of the rights and lawful interests*

of individuals or organizations, or of the legally-protected interests of society and the state", since they are adopted regarding the issues of corporate nature. Consequently, officials, who have adopted these acts, cannot be criminally prosecuted under articles "Neglect of Duty" or "Abuse of Official Powers".

- acts adopted in exercising of powers of authority. These acts can lead to "*substantial breach of the rights and lawful interests of individuals or organizations, or of the legally-protected interests of society and the state"* and taking into account the circumstances of a case, there is possible the criminal prosecution of officials under articles 286 and 293 of the Criminal Code of the RF.

Such classification of unlawful administrative acts would differentiate the responsibility of officials for their adoption and would limit abuses in consideration of these cases.

References:

1. Code on Administrative Offenses of the Russian Federation from December 30, 2001, No. 195-FL [Kodeks Rossiiskoi Federatsii ob administrativnykh pravonarusheniyakh ot 30 dekabrya 2001 № 195-FZ]. *System GARANT* [Electronic resource], Moscow: 2012.

2. Criminal Code of the Russian Federation from June 13, 1996, No. 63-FL [Ugolovnyi kodeks Rossiiskoi Federatsii ot 13 iyunya 1996 g. № 63-FZ]. *System GARANT* [Electronic resource], Moscow: 2012.