Universal Decimal
Classification 342.9

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DELIVERY OF CITIZENS TO POLICE AS AN ADMINISTRATIVE PROCEDURE

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The article with the involvement of the judicial practice analyzes the provisions of the Federal Law of February 7, 2011 № 3-FL "On Police" and other legal acts regulating the grounds and procedures for the implementation by police of such an administrative procedure as delivery of citizens to the premises of police stations and other equivalent areas. It provides an interpretation of the most complex for practical application norms of the law, dealing with the mentioned administrative procedure. The articles contains a well-argumented conclusion that enshrining of norms, according to which delivery of citizens to police and their detainment appear as independent measures of state coercion or administrative procedure, but not a single logically separate sequence (totality) of administrative actions, called in general "detainment", is not conducive to ensuring adequate legal protection of citizens against administrative (police) arbitrariness.

It is noted that the detainment of citizens by police must be regulated by law as a constituent, and optional, component of their detention. This article contains specific legislative solutions, the embodiment of which in the Federal Law "On Police", in author's opinion, will allow significant strengthening of the legal safeguards for abiding by police the constitutional right of everyone to liberty and personal security.

Keywords: police, delivery of citizens, forced reconduction, detainment, administrative procedure, premise.

Administrative procedure is a logical isolated sequence of administrative actions in the exercise of a state function (provision of public services) with the final result and allocated in the execution of the state function (provision of public services). Although this definition is fixed only on a sublegislative level[1], it is rather meaningful and without any clarification explains why classical coercive (protective) police measure, applied in any of the contemporary countries, – delivering people to the police can (and should) be considered as an administrative procedure.

Not surprisingly that the "delivery" is on the list of 24 administrative procedures provided for in paragraph 31 of the Administrative Rules of the Ministry of Internal Affairs of the Russian Federation, which is related to the execution of the state function of control and supervision over compliance with the requirements of road safety, approved by the order of the MIA RF No. 185 from March 2, 2009 (hereinafter – the Administrative Regulation), and performed in the implementation of the said state function by employees of the State Traffic Safety Inspectorate of the MIA RF authorized to draw up protocols on administrative offences in

1 See: Resolution of the Russian Federation Government No. 373 from May 16, 2011 "On the Development and Approval of Administrative Regulations for Performing State Functions and Administrative Regulations for Rendering State Services" [Postanovlenie Pravitel'stva Rossiiskoi Federatsii ot 16 maya 2011 g. № 373 «O razrabotke i utverzhdenii administrativnykh reglamentov ispolneniya gosudarstvennykh funktsii i administrativnykh reglamentov predostavleniya gosudarstvennykh uslug»]. SZ RF – Collection of Laws of the RF, 2011, no. 22, art. 3169; no. 35, art. 5092; 2012, no. 28. art. 3908; no. 36, art. 4903; no. 50 (part 6), art. 7070; no. 52, art. 7507; 2014, no. 5, art. 506.

the field of road traffic, local district police officers, as well as by other police officers in the established order[2].

It should be emphasized, however, that the administrative procedure does not become such only because it is enshrined in the normative legal act called "administrative regulation". Currently many administrative procedures performed, inter alia, by the police, are still governed by federal laws, presidential and governmental acts, as well as issued in accordance with them instructions, provisions, statutes and other traditional normative legal acts of the Ministry of Internal Affairs of Russia. And their comparison with administrative regulations, contrary to the opinion of some authors, does not always indicate that the last – "are procedural acts of "new generation" that govern administrative procedures contained therein "at a fundamentally different level" [3]. An example is the departmental legal regulation of delivery citizens to police: this administrative procedure is "described" in the Charter of patrol and inspection service of the police (paras. 260-275), approved by the order of Ministry of Internal Affairs of Russia from No. 80 from January 29, 2008 (hereinafter – the Charter) [4] and not containing the term "procedure" at all, significantly in more details than in the Administrative Regulation (paras. 187-190).

Consideration of citizens' delivery to police as an administrative procedure is of scientific and practical interest, especially in terms of respect for human rights and civil rights, improvement of administrative and legal regulation of police activity.

The main legislative act, defining the grounds and procedure for the delivery of citizens to police, is the Federal law No. 3-FL "On Police" from February 7, 2011 (hereinafter – Law on Police) [5]. In accordance with paragraph 13 part 1 article 13 of this law in order to fulfil police officers' duties they have the right "to deliver citizens, that is, to carry out their forced reconduction in the premises of a territorial body or police units, in the premises of a municipal authority, in other premises

2 Konsul'tant Plus. Professional version [Electronic resource], Moscow: 2015..

3 Davydov K. V. Administrative Regulations of Federal Executive Bodies of the Russian Federation: Theory Issues [Administrativnye reglamenty federal'nykh organov ispolnitel'noi vlasti Rossiiskoi Federatsii: voprosy teorii]. Under edition of Yu. N. Starilov, Moscow: NOTA BENE, 2010, p. 32.

4 See: Bulletin of Normative Acts of Federal Executive Bodies [Byulleten' normativnykh aktov federal'nykh organov ispolnitel'noi vlasti]. 2008, no. 27; 2009, no. 16; Russian Newspaper [Rossiiskaya gazeta]. February 19, 2010; April 27, 2012; April 9, 2014.

5 See: Collection of Laws of the RF [SZ RF]. 2011, no. 7, art. 900; no. 27, art. 3880, 3881; no. 30 (part 1), art. 4595; no. 48, art. 6730; no. 49 (part 1), art. 7018, 7020; no. 49 (part 5), art. 7067; no. 50, art. 7352; 2012, no. 26, art. 3441; no. 50 (part 5), art. 6967; 2013, no. 14, art. 1645; no. 26, art. 3207; no. 27, art. 3477; no. 48, art. 6165; no. 52 (part 1), art. 6953; 2014, no. 6, art. 558, 559, 566; no. 30 (part 1), art. 4259; no. 42, art. 5615; no. 52 (part 1); 2015, no. 7, art. 1021, 1022, 1105; no. 14, art. 2008.

with a view to settlement the issue of detention of a citizen (if the issue cannot be resolved at the place); establishment of identity of a citizen if there is reason to believe that he is wanted as hiding from inquiry bodies, investigation or court, or as deviating from punishment or as missing; protection of a citizen against a direct threat to his life and health, if he is not able to take care of himself, or if the danger cannot be avoided otherwise, as well as in other cases stipulated by the Federal law with the drafting up a protocol" in the manner prescribed by parts 14 and 15 article 14 of the Law on Police.

The Law of the Russian Federation "On Militia" from April 18, 1991 that became invalid with the passing of the Law on Police did not contain such norms. I believe that due to their lack of certainty they need not only the proper interpretation, but also, to some extent, improvement.

Coercive nature of delivery is that in case of failure or refusal to follow to specified by police officer place a citizen can be delivered there with the use of physical force and then (depending on the nature of resistance) brought to administrative responsibility under part 1 article 19.3 of the CAO RF or criminal responsibility under the relevant article of the Criminal Code of the Russian Federation.

Paragraph 13 part 1 article 13 of the Law on Police binds the ability to deliver citizens to police with the presence of one of the four legal grounds.

The first legal ground is the solution of the issue of citizen's detention. Lawmaker for the first time singled out such a goal (ground) of delivery citizens to police. This is a very common practice, when citizens are delivered to police by the most numerous category of police officers who have the right to decide on the application of only administrative but not criminal-procedural and other kinds of detention (Patrol-Guard Service, Road Patrol Service, precinct police commissioners, etc.). The decision to detain delivered citizens in accordance with the Code of Criminal Procedure and other legislation is taken by other officials.

All the categories of persons, who may be subject to police detention, are mentioned in paragraphs 1-13 part 2 article 14 of the Law on Police. It is obvious that delivering a citizen to police in order to address the issue of his detention would not comply with the requirements of the law in the absence of circumstances that may serve as grounds of detention. These circumstances, as it known, are provided for in the Code of Criminal Procedure of the Russian Federation, CAO RF, the Law on Police and other federal laws.

In other words, a police officer, who delivers a citizen to police to decide on his detention, must necessarily have any actual data that allow to suspect a person of committing a crime or an administrative offence, or evasion from enforcement

of administrative punishment in the form of administrative detention, imposed by court coercive measures of a medical nature, etc., i.e., that such citizen belongs to one of the categories of persons listed in paragraphs 1-13 part 2 article 14 of the Law on Police.

It is noteworthy that delivering of citizens for addressing the issue of their detention is allowed by the Law on Police only "if there is no possibility to solve the problem on the spot». This wording, obviously, if we assume the laws of logic, outlaws the natural practice of delivery citizens to police , the issue of detention of which, in view of the current situation, has already been positively solved by police officers on the place (of incident).

Despite the provision of the Law on Police, paragraph 187 of the Administrative Regulation stipulates the taking by a police officer "the decision on administrative detention of a person who committed an administrative offense entailing administrative arrest" as one of the grounds of delivering. Moreover, according to the results of consideration the application of citizen Ch. V. on the recognition certain provisions of the Administrative Regulation, including its paragraph 187, as partially invalid, the Supreme Court of the Russian Federation confirmed that this provision does not contradict the current legislation on administrative offenses. As stated in the decision of the Supreme Court of the Russian Federation No. AKPI12-245 from March 27, 2012 "in accordance with part 4 article 27.5 of the Code on Administrative Offences of the RF, the term of administrative detention of a person is calculated from the moment of delivery in accordance with article 27.2 of the CAO RF, which confirms the necessity of delivery of a person in each case, when the decision on his detention is taken. In case of an administrative offence punishable with an administrative arrest, a police officer may decide to detain that person, and in this case it is subject to delivery" [6].

Such reasoning, however, looks unconvincing, given that part 1 article 27.2 of the CAO RF "Delivery" includes the only basis to deliver citizens, namely "for the purpose of drawing up a record of an administrative offence, where it is impossible to draw it up at the place of detecting the administrative offence and where it is obligatory". Hence it follows that, if at the place of detection of an administrative offense, even if that may entail imposition of administrative detention, it is possible to draw up a protocol on administrative offense, the delivery of a citizen to police is prohibited.

Surprisingly, but the Appeals Board of the Supreme Court of the Russian Federation having considered the appeal of the citizen Ch. V. against the decision

6 Decision of the Supreme Court of the Russian Federation No. AKPI12-245 from March 27, 2012 [Reshenie Verkhovnogo Suda Rossiiskoi Federatsii ot 27 marta 2012 g. № AKPI12-245]. Konsul'tant Plus. Professional version [Electronic resource], Moscow: 2015

of the Supreme Court of the Russian Federation No. AKPI12-245 from March 27, 2012, came to the conclusion that, in particular, paragraph 187 of the Administrative Regulation, which provides for as one of the grounds for delivering the taking by a police officer "the decision on administrative detention of a person who has committed an administrative offense entailing administrative arrest", not only meets the norms of the CAO RF, but also the norms of the Law on Police that "directly regulates the considered legal relations" [7]. However, anyone who will compare the analyzed provision of paragraph 187 of the Administrative Regulation and paragraph 13 part 1 article 13 of the Law on Police, will notice their apparent discrepancy. The Law on Police clearly shows that, if the issue of detention is positively solved by a police officer at the place of contact with a citizen, delivery to police cannot be applied.

Such a norm of the Law on Police, of course, defies common sense, but it is hardly correct to amend it through judicial or sublegislative and, all the more, departmental law-making. Appropriate legislative solutions are needed.

It seems that the real intention of the legislator was to limit the right of police officers to deliver people to premises to those cases where it was impossible to solve on the spot an issue, which requires police intervention, without detention of citizens. A similar restriction is contained in article 27.2 of the CAO RF, according to which the delivery of citizens is carried out by the police officers in order to draw up a protocol on administrative offence in case of impossibility of its drawing up on the spot of administrative offence if the drawing up of the protocol is obligatory. And in this part, the paragraph 187 of the Administrative Regulation, providing for "the impossibility of drafting up a protocol on administrative offence at the place of identifying the administrative offence if the drawing up of a protocol is obligatory" as a ground for delivery, is in full compliance with the law.

Thus, the wording "in case of impossibility to resolve this issue on the spot" with regard to the right of the police to deliver citizens to address the issue of detention, from my point of view, obliges a police officer to take all possible measures at the place (taking into account the information available, existing organizational and technical resources, the number of police officers, temporary restrictions, compliance with requirements of ensuring safety of police officers and surrounding citizens, etc.) to resolve the situation requiring police response, without delivery of a citizen to police (for example, make sure of the veracity of the oral statement of any person about an offence by a specific citizen; carry out

7 Ruling by the Appeals Board of the Supreme Court of the Russian Federation No. APL12-393 from June 28, 2012 [Opredelenie Apellyatsionnoi kollegii Verkhovnogo Suda Rossiiskoi Federatsii ot 28 iyunya 2012 g. № APL12-393]. Konsul'tant Plus. Professional version [Electronic resource], Moscow: 2015.

an express-poll of a person, peculiarities of his appearance, behavior, actions, time and location of which give reason to suspect him of having committed an offence, establish his identity by checking documents or with help of nearby witnesses; carry out at the place personal inspection of a citizen if there is evidence that he has got weapons; get the explanation of a person committed an administrative offence, draw up a protocol on the offence on the spot (in any suitable premises, service vehicle), etc.).

Measures taken by police officer at the place of contact with the citizen can exhaustively settle the situation and eliminate the need to deliver it to police and subsequent detention. If, in this situation, the police officer is sure that without the detention of a citizen his duties will not be executed properly (for example, in front of the police officer somebody is committing a violent offense) or the measures taken allow the police officer to make sure (at least not eliminate his reasonable suspicion) that the person shall be detained, he delivers the mentioned person to internal affairs body.

Returning to the paragraph 187 of the Administrative Regulation, which considers a police officer's "decision on administrative detention of a person committed an administrative offence entailing administrative arrest" as a ground for delivery, we should pay attention to one more fact. Under part 1 article 27.3 of the CAO RF, administrative detention can be applied in exceptional cases, if it is necessary to ensure proper and timely consideration of an administrative case, execution of a decision on the case of administrative offense. Thus, the grounds for delivery citizens to police in this case must match with the objectives of administrative detention. At that, unlike the Administrative Regulations, the CAO RF quite normally allows delivery and detention of citizens by police officers in connection with any committed by them administrative offences, including those that do not entail administrative arrest.

Against the background of the provisions of the CAO RF, emphasizing by the paragraph 187 of the Administrative Regulations of such ground for delivery citizens to police, as decisions of its employee on administrative detention of a person who has committed an administrative offence, entailing administrative arrest", in practice could be interpreted as assignment of duties of police officers to carry out similar administrative procedure in all cases, regardless of the situation.

So, October 11, 2003 Mr. G. g was delivered to the Leninsky Regional Department of Internal Affairs (RDIA) of Ivanovo city and subjected to administrative detention from 19:45, October 11 till 09:00 October 12 in connection with the commission of an administrative offense under article 19.3 of the CAO RF that could

result in administrative punishment in the form of administrative arrest. Along with the protocol on the specified administrative offence, operational duty officer of Leninsky RDIA also drafted up a protocol on administrative detention under articles 27.3-27.7 of the CAO RF in respect of Mr. G.

Mr. G. appealed in court the administrative detention applied in respect of him.

The decision of the Deputy Chairman of the Supreme Court of the Russian Federation on this case No. 7-AD04-2 from April 11, 2005 notes that in violation of part 1 article 27.4 of the CAO RF the grounds for detention of Mr. G. were not identified in the protocol on administrative detention. Arguments of the duty officer of RDIA about that the detention was due to the need to establish presence of Mr. G. in the consideration of the case by the justice of the peace, according to Deputy Chairman of the Supreme Court of the Russian Federation could not be considered justified, since Mr. G. had his permanent residence in the city of Ivanovo, family and there was no data about his intention to evade appearance in court. According to the results of the proceedings, the protocol of administrative detention of Mr. G. was declared illegal[8].

This example is quite demonstrative. Many police officers believe that a person against whom there are administrative proceedings, considered by the court and which may lead to an administrative penalty in the form of administrative detention, must always be delivered to an internal affairs agency and stay there until the consideration of the case by judge in the room for administrative detainees. And operational duty officer of Leninsky RDIA of the city of Ivanovo with certain discretion in dealing with the issue of administrative detention of Mr. G. acted, as they say, in accordance with the usages of law enforcement practice. The possibility to let Mr. G. go before consideration of the case by the justice of peace most likely has not only been considered by them, but even has not been perceived as allowable by law. It seems that exactly for this reason, in order to avoid such practices, Deputy Chairman of the Supreme Court of the Russian Federation during the proceedings on Mr. G.'s case made an important legal position that says "the mere fact of drawing up a protocol on administrative offense in relation to a person, for

8 See: Bulletin of the Supreme Court of the Russian Federation [Byulleten' Verkhovnogo Suda Rossiiskoi Federatsii]. 2005, no. 11, pp. 7-8. From my point of view, it was necessary to invalidate not the protocol on administrative detention, but administrative detention itself. A detailed analysis of this judgment, see : Malakhova N. V. Towards the Issue of Legality of a Decision of Administrative Detention [K voprosu o zakonnosti prinyatiya resheniya ob administrativnom zaderzhanii]. Zakon Rossiiskoi Federatsii «O militsii»: 15 let na zashchite prav i svobod grazhdan: Mat-ly nauch.-prakt. konf. – Federal Law of the RF "On Police": 15 Years of Protection the Rights and Freedoms of Citizens: Materials of scientific-practical conference, April 21, 2006, Moscow: Moscow University of the RF MIA, 2006, pp. 97-102.

which he may be sentenced to administrative arrest, cannot serve as a ground for administrative detention of the person"[9], and therefore, I would add for myself, its delivery to police.

The second legal ground of delivery, under paragraph 13 part 1 article 13 of the law on Police, is establishment of identity of a citizen if there is reason to believe that he is wanted as hiding from inquiry bodies, investigation or court, or as deviating from the execution of criminal penalties or as missing. Most often this refers to cases where a police officer discovers a citizen who is similar in description with a wanted person. It should be stressed that the Law on Police does not require police officers (from our point of view, this refers to the number of its shortcomings) in a mandatory order to establish identity of a person, who is similar in description with the wanted person, by his documents before the decision on delivery the citizen to police. However, if there is such a possibility, the police officer must use it (of course, with the necessary precautions). This requirement derives from the principle of reasonable sufficiency to limit citizens' rights and freedoms, which corresponds to the spirit of the Law on Police, but, unfortunately, has not obtained its full embodiment in the text.

In his time, taking part in work over the official draft Law of the Russian Federation "On Militia"[10] from April 18, 1991, and 20 years later over the official draft Law on Police Act, the author offered to devote this principle an independent article. The Law on Police Act was added only by one of the four parts, and only as a snippet of article 6 "Legality" (part 2). The other three parts on the principle of reasonable sufficiency in restricting rights, freedoms and lawful interests of citizens, rights and legitimate interests of organizations, which were not included in the official draft law, had the following content:

"The police, in accordance with the Federal Law, restrict the rights, freedoms and legitimate interests of citizens, rights and legitimate interests of organizations, if without this its mandated responsibilities cannot be fulfilled.

Police, in accordance with the Federal law, shall elect such mode of action, which at the prevailing situation in the smallest degree restricts the rights, freedoms and legitimate interests of citizens, rights and legitimate interests of organizations.

A police officer, in carrying out its work, should not put others and, whenever possible, himself at unjustified risk".

9 Bulletin of the Supreme Court of the Russian Federation [Byulleten' Verkhovnogo Suda Rossiiskoi Federatsii]. 2005, no. 11, p. 8.

10 See: Solovei Yu. P. Legal Regulation of Police Activity in the Russian Federation [Pravovoe regulirovanie deyatel'nosti militsii v Rossiiskoi Federatsii]. Omsk: Higher Police School of the RF MIA, 1993, p. 216; Solovei Yu. P. New Federal Law "On Police" (draft) [Novyi Federal'nyi zakon «O politsii» (proekt)]. Zakonodatel'stvo i praktika – Legislation and Practice, 2002, no. 1, p. 75.

I believe that at the present time, these provisions (along with the already contained in part 2 article 6 of the Law on Police) are worthy of inclusion in chapter 2 "The Principles of Police Activity" of the said law as a separate article with the name of "Reasonable sufficiency in the restriction of the rights, freedoms and legitimate interests of citizens, the rights and legitimate interests of organizations".

The third legal ground of delivery is protection of a citizen against a direct threat to his life and health, if he is not able to take care of himself, or if the danger cannot be avoided otherwise. The norm about this kind of delivery by itself refers to the novelties of the Law on Police. Sources of threat to human life and health may be different, the main thing is that he is not able (because of age, health or other reasons) to take care of his security, or (due to the lack of time, money, etc.) it is impossible to avoid the threat in another way. It should be emphasized that the threat to life and health must be direct, obvious to a police officer and surrounding people. It is about delivery to police, for example, citizens who are in public places and are not able, due to an illness, to call (remember) their name, place of residence, understand where they are; citizens who have attempted suicide, or have expressed the signs of mental disorder and their actions create a danger to themselves and others; citizens, whom the surrounding people have accused of a felony and are trying to arrange a lynching, etc. It should be emphasized that delivery to police of such a category of citizens can be also exercised against their will in other situations provided for under the Law on Police.

The fourth legal ground of delivery citizens to police is "other" cases stipulated by the Federal law, at that, not only by the Law on Police (e.g. its paragraphs 14 and 15 part 1 article 13), but also by other legislative acts. Thus, in accordance with article 27.2 of the CAO RF, police officers may carry out delivery of citizens when identifying the administrative offenses which, in accordance with article 23.3 of the CAO RF, are considered by internal affairs bodies (police) or administrative offenses the protocols of which, in accordance with paragraph 1part 2 article 28.3 of the CAO RF, are drawn up by internal affairs bodies (police). In addition, when officials authorized to draw up protocols on administrative offences identified by them ask for help police officers, they have the right to deliver citizens to police in connection with the commission of any administrative offence. Such assistance to the mentioned officials may be also provided by the police through the use of administrative detention (article 27.3 of the CAO RF).

As another example we may consider paragraph 1 part 3 article 11 of the Federal Law No. 35-FL "On Combating Terrorism" from March 6, 2006 allowing on the territory (objects), within which (in which) there is a legal regime of counter-

terrorist operation, in accordance with the legislation of the Russian Federation, for the period of counter-terrorist operation, application by police such measures as verification individuals' documents certifying their identity, and in the absence of such documents – delivering the said persons to internal affairs bodies of the Russian Federation (other competent authorities) for establishment of identity.

A person is deemed delivered and delivery completed after he or she reached the threshold of a building where territorial authority or police premise, municipal body premise, other official premises. "Other official premises" referred to in the Law on Police, in our view, may be considered any place suitable for implementation of police procedural and other official actions, in which he may lawfully be, for example, a stationary post, police car, etc. Ignoring of this circumstance sometimes leads to judicial errors.

So, Mr. B. N. appealed to the Supreme Court of the Russian Federation to declare inoperative the norms of paragraph 6 subparagraph "a" clause 70 of the Administrative Regulation regarding providing the right of a police officer (hereinafter – employee) to offer the road user to get out of the vehicle when his participation is required in exercising procedural actions. According to the applicant, the contested provision is contrary to parts 4 and 4.1 article 28.2, paragraph 4 part 1 article 29.7 of the CAO RF. As indicated in the application by Mr. B. N., an employee is entitled to draw up a protocol on administrative offence in the absence of the person against whom the case of an administrative offense has been initiated, but the giving of explanations and comments is the right of the said person, and not his obligation; when making decision on administrative punishment at the place where the offence was committed, the personal presence of the person, against whom the administrative offense has been initiated, is also optional. However, in law enforcement practice, there are cases when the right of an employee to offer road user to get out of the vehicle is regarded as implying an obligation of the driver to commit this action for drawing up in respect of him a protocol on administrative offence or taking a decision on administrative offence. Refusal of the applicant to get out of the car in such cases may lead to bringing to responsibility under part 1 article 19.3 of the CAO RF (disobedience to a lawful order of a police officer).

Having examined the application of Mr. B. N., the Supreme Court of the Russian Federation found it not subject to satisfaction. According to the Court, "the literal interpretation of the norm allows concluding that it is not about the order or requirement of an employee, which is compulsory for the road user, but about the employee's right to offer the road user to get out of the vehicle when he is needed to participate in procedural actions. Accordingly, the unconditional duty of the road

user to perform such an offer does not derive from the contested norm. Paragraph 35 of the Administrative Regulation, which establishes that the actions on preparation of procedural documents, with exception of the cases provided for by the Administrative Regulation, must be carried out at the scene of commission (prevention) of an administrative offense, corresponds to the contested rule. At that, they may be drawn up in the premise of a stationary post of road patrol service, patrol car salon. This implies the right of the road user to use the appropriate offer and go into the premise of a stationary post of RPS or to take a seat in the patrol car.

In connection with stated *the applicant's argument that the failure of a driver to leave the vehicle for drawing up a protocol on administrative offense or making a decision on an administrative offense may lead to bringing to responsibility under part 1 article 19.3 of the CAO RF, is wrong* (italic is mine – *Yu. S.*) because this rule establishes responsibility for actions, which are expressed in direct refusal to obey orders (requirements) of an employee, in the physical resistance and countering him"[11].

After the fair refusal to Mr. B. N. regarding the satisfaction of his application for invalidation of the norm of paragraph 6 subparagraph "a" clause 70 of the Administrative Regulation, the Supreme Court of the Russian Federation, together with the motivation for its decision contrary to the law actually deprived the police officers the right to deliver the driver of vehicle stopped by them to the official premises and any other place that is suitable for implementation procedural actions with respect to him, in other words the right to demand (exactly demand, but not ask) to leave the vehicle and follow to a specified place for drawing up a protocol on administrative offense (which, incidentally, can encroach on objects other than road safety), and, consequently, the right to use physical force to ensure fulfillment of their demand and subsequent bringing of such a driver to administrative responsibility for disobedience under part 1 article 19.3 of the CAO RF or criminal responsibility for ruder forms of counteraction to legitimate activity of the police.

From my point of view, the deprivation of police officers the said right in respect to drivers of stopped by them vehicles is unjustified restriction of discretionary powers, no doubt given to them by part 1 article 27.2 of the CAO RF (the right to "deliver, i.e. forced reconduction of physical person... in order to draw up a protocol on administrative offence if it is not possible to do it at the place of identification of administrative offence if the drawing up of protocol is mandatory, in official premises) and paragraph 13 part 1 article 13 of the Law on Police (the right "to deliver citizens, that is, to carry out their forced reconduction in … official premise

11 Decision of the Supreme Court of the Russian Federation No. 1358-AKPI from February 28, 2013 [Reshenie Verkhovnogo Suda Rossiiskoi Federatsii ot 28 fevralya 2013 g. № AKPI-1358]. Konsul'tant Plus. Professional version [Electronic resource], Moscow: 2015].

with a view to settlement the issue of detention of a citizen (if the issue cannot be resolved at the place)").

The term for delivery of a citizen to an official premise of police is not determined by the Law on Police, however, part 2 article 27.2 of the CAO RF provides for that the delivery shall be made as soon as possible. It seems that, in the light of the principles of police activity embodied in the Law on Police, police officers should be guided by that provision in implementing delivery regardless of its grounds.

Analysis of the provisions of article 14 of the Law on Police leads to the conclusion that the maximum term of delivery, as well as the maximum term of detention citizens before (without) a judicial decision cannot exceed 48 hours.

It must be borne in mind that, in accordance with part 4 article 14 of the Law on Police the term for all types of detention, except for administrative detention (i.e. detention, carried out in accordance with the legislation on administrative offences) shall be calculated from the moment of actual restriction on the freedom of person's movement. Therefore, the time taken by a police officer on actions with the detained person on the spot and its delivery to police shall be counted in the term of detention.

As for administrative detention, its term shall be counted from the moment of delivery of a person to the premise of an internal affairs body (police) or to the premise of a local self-government of a rural settlement, and as for a person in a state of intoxication – from the moment of his sobering. In other words, the period for delivery of an arrested person under the CAO RF is not included in the term of administrative detention, and such legislative exception, in my opinion, is hard to explain by any rational reasons. But in this case, as in all others, a delivered person has the right to assistance of a lawyer (defence counsel) from the moment the restriction of his constitutional rights, especially to the freedom and personal inviolability, becomes real. As pointed out by the Constitutional Court of the Russian Federation, "the right to legal assistance of a lawyer is guaranteed to every person regardless of his formal procedural status, including the recognition him as a detainee and suspect, if empowered public authorities have taken measures in relation to that person that really limit freedom and personal inviolability, including freedom of movement – detention by official authorities, forced reconduction or delivery to the bodies of inquiry and investigation, incommunicado detention, as well as any other actions that substantially restrict freedom and personal inviolability" [12].

12 See: Decision of the Constitutional Court of the Russian Federation No. 11-P from June 27, 2000 "On the case of verification the constitutionality of the provisions of part 1 article 47 and part 2 article 51 of the Criminal Procedure Code of the RSFSR in connection with the complaint of a citizen V. I. Maslov" [Postanovlenie Konstitutsionnogo Suda Rossiiskoi Federatsii ot 27 iyunya 2000 g. № 11-P «Po

Separate issues relating to delivery of citizens to police are regulated only at the departmental level. So, according to paragraph 268 of the Charter, delivery of citizens to police is carried out by special police transport, and in its absence – by cars owned by organizations and citizens. It is not allowed to use public transport, special-purpose vehicles (fire truck, cash-in-transit vehicle, ambulance (except for the cases when medical assistance is needed), as well as transport belonging to diplomatic, consular and other representations of foreign states, international organizations.

In accordance with paragraph 189 of the Administrative Regulation, delivery of a citizen could be carried out by his vehicle or a patrol car. In the case of delivery of a citizen by his vehicle, the vehicle shall be driven by a police officer.

In the opinion of the previously mentioned citizen Ch.V., who appealed to the Supreme Court of the Russian Federation to declare partially invalid certain provisions of the Administrative Regulation, including its paragraph 189, in these cases police officers are endowed by this normative act with the right drive the vehicle of a delivered person in violation of the current legislation. The Supreme Court of the RF denied Mr. Ch. V's application, stating the following: "Federal Law "On Police" gives the police the right to deliver citizens, that is, to carry out their forced reconduction in the premises of a territorial body or police units, in the premises of a municipal authority, in other premises with a view to settlement the issue of detention of a citizen, to detain vehicles that are wanted (paragraphs 13, 20 part 1 article 13). The procedure for the implementation of the rights granted to the police, unless it is subject to regulation by federal laws, normative legal acts of the President of the Russian Federation or normative legal acts of the Government of the Russian Federation, is determined by the federal executive authority in the sphere of internal affairs (part 3 article 13). Therefore, the provision provided for by the Administrative Regulation concerning the driving of a detained vehicle by a police officer cannot be regarded as exceeding of the rights granted to the police" [13].

Meanwhile, it is not about the procedure of exercising rights of police, but about its new right, since paragraph 37 part 1 article 13 of the law on Police does not provide for delivery citizens to police as a ground for use the vehicles of organizations

delu o proverke konstitutsionnosti polozhenii chasti pervoi stat'i 47 i chasti vtoroi stat'i 51 Ugolovno-protsessual'nogo kodeksa RSFSR v svyazi s zhaloboi grazhdanina V.I. Maslova»]. SZ RF – Collection of Laws of the RF, 2000, no. 27, art. 2882.

13 Decision of the Supreme Court of the Russian Federation No. AKPI12-245 from March 27, 2012 [Reshenie Verkhovnogo Suda Rossiiskoi Federatsii ot 27 marta 2012 g. № AKPI12-245]. Konsul'tant Plus. Professional version [Electronic resource], Moscow: 2015. See also: Ruling by the Appeals Board of the Supreme Court of the Russian Federation No. APL12-393 from June 28, 2012 [Opredelenie Apellyatsionnoi kollegii Verkhovnogo Suda Rossiiskoi Federatsii ot 28 iyunya 2012 g. № APL12-393]. Konsul'tant Plus. Professional version [Electronic resource], Moscow: 2015.

and citizens. Therefore, to use the specified transport in order to deliver citizens to police its staff must obtain the consent of the owner of the transport, even if it is the person who is being delivered to police.

A police officer during delivery of a person must provide precautions in case of attempt on the person's part or on the part of others to create conditions for escape or rescue, ensure that the delivered person does not threw or convey to anyone material evidence and does not get from anyone a weapon or other offensive means (paragraph 269 of the Charter). The importance of comply with this requirement is shown by the following case.

November 17, 2004 Tikhomirov and Surhoev were stopped on the street for document checks by police officers of the regiment of patrol and inspection service N., L. and Ju. Having checked identity documents of Surhoev and Tikhomirov, who submitted forged passport and driver's license, the police officers decided to deliver them to police station for identification and verification through data base of wanted persons, and reported about this to Tikhomirov and Surhoev. Not being aware of the involvement of these individuals to criminal activity, the police officers failed to detect during the personal search that Tikhomirov had the pistol "TT". Having placed Surhoev and Tikhomirov in official car, police officers went to the place of destination.

On the way to the police station Tikhomirov shot in the head of L., who was sitting in the driver's seat, and shot in the head Ju., who was sitting in the front passenger seat. N., trying to suppress criminal acts of Tikhomirov, intercepted his hands. During the fight Tikhomirov made from the same weapon random shots in the car. Surhoev punched N. to the body and tried to seize his sidearms – the pistol "PM", but could not do this because of counteraction from N., then leaped out of the car and tried to flee but was apprehended by the policeman Ju.

Tikhomirov, having freed from N. and thrown the pistol "TT", leaped out of the patrol car and fled.

Police officer L. died at the scene from gunshot wound[14].

Police practice strongly demands that all delivered by police officers (in particular by official transport) persons and things in their possession are subjected to a thorough inspection. However, the Law on Police (part 6 article 14) allows you to do so only in respect of "detainees" (i.e. already delivered to police). Citizens that are being delivered to police can be inspected only "when there is evidence that

14 See: Decision of the Presidium of the Supreme Court of the Russian Federation No. 112-P10 from July 28, 2010 [Postanovlenie Prezidiuma Verkhovnogo Suda Rossiiskoi Federatsii ot 28 iyulya 2010 g. № 112-P10]. Konsul'tant Plus. Professional version [Electronic resource], Moscow: 2015

these people are carrying guns, ammo, ammo for weapons, explosives, explosive devices, narcotic drugs, psychotropic substances or precursors either poisonous or radioactive substances" (paragraph 16 part 1 article 13 of the law on Police). In the vast majority of delivery cases police officers do not and cannot possess such information. It is therefore advisable, in my opinion, to add to the Law on Police a provision that authorizes police officers to implement personal search of citizens that are being delivered to police and their things, in the manner prescribed by the legislation on administrative offences. In turn, part 4 article 27.7 of the CAO RF shall allow the holding of such searches without witnesses, regardless of whether a police officer has reasonable grounds to believe that a person has arms or other objects used as weapons, or not.

A police officer, who delivers a person to internal affairs body, makes a report addressed to his superior. The report shall contain the following: name, surname, home address of the person delivered, the time, place, circumstances and grounds of delivery, the names and addresses of witnesses, as well as persons who have assisted in the apprehension and delivery (paragraph 270 of the Charter).

Unlike the previous Law of the Russian Federation "On Militia" the law on Police obliges police officers to draw up a protocol about every delivery of citizens to official premise. The protocol of delivery, which is drawn up in accordance with the requirements set by parts 14 and 15 article 14 of the Law on Police, contains the date, time and place of its drawing up, position, surname and initials of the police officer who has made the protocol, information about the delivered person, the date, time , place, grounds and motives of delivery, as well as the fact of the notification of close relatives or close ones of the delivered person.

Delivery protocol must be signed by the police officer, who has drawn it up, and the delivered person. If the delivered person refuses to sign the protocol, an appropriate entry is made in the delivery protocol. A copy of the protocol shall be given to the delivered person.

It appears that in cases when a person delivered to police is detained the delivery protocol may be not drawn up, because any entered to it information on a mandatory basis will be reflected in the detention protocol.

In general it can be argued that the "having enshrined" in the norms of the Law on Police and the CAO RF independent grounds of delivering citizens to police, obliging it to draw up a protocol on delivery (and not just, as it was before, on detention), the legislator has attempted to make this administrative procedure more "transparent". However, as shown by the analysis, legislative enshrining of norms, according to which delivery of citizens to police and their detention appear

as independent measures of state coercion or administrative process, and not as a single logical sequence (totality) of administrative actions, called in the whole "detention", is not conducive to ensure adequate legal protection of citizens against administrative (police) arbitrariness.

It appears that delivery citizens to police should be legally regulated as an integral, and optional, part of their detention. In this regard, in my opinion, it is necessary, firstly, delete paragraphs 13, 14 and 15 from part 1 article 13 of the Law on Police, that are devoted to delivery to police and other institutions of different categories of citizens, and enshrine the specified categories of citizens in part 2 article 14 of the Law on Police "Detention". Secondly, the initial sentence of part 2 article 14 of the Law on Police "The police have the right to detain:" shall be replaced by the words:

"The police in order to prevent offenses, establish identity, draw up a protocol on administrative offense, if the drawing up of a protocol is obligatory, to ensure the timely and proper consideration of a case on administrative offence and execution of decision taken on the case, to participate in procedural actions, to transfer to the relevant bodies or agencies a decision on detention on suspicion of committing a crime or to use other measures in accordance with the federal law have the right to detain, that is, to restrict the freedom, to hold in place and (or) as soon as possible reconduct (deliver) to police, an appropriate institution or any other official premise, as well as retain in custody in specially designated premises or special institutions of internal affairs bodies not more than three hours, unless other term is established by federal law:" (further the relevant categories of persons are listed).

Thirdly, it is necessary to adequately edit the provisions of part 2 article 14 of the Law on Police, which enshrine the categories of persons to whom detention may be applied (respectively, delivery as an optional part of detention), necessarily highlighting (now it is not) the following categories:

- persons caught in the committing of a crime or administrative offence or immediately after the committing;
- persons referred by victims or witnesses as perpetrators of a crime or an administrative offence;
- persons on themselves or on their clothes, with them or in their dwelling having clear traces of a crime or an administrative offence;
- persons in respect of whom there are other not provided for in this Law data that give reason to suspect them of committing a crime or an administrative offense, if they tried to escape or do not have place of stay or residence, or their identity is not established;
- persons at the scene that could be witnesses of a crime.

It seems that the adjustment of the Law on Police in the proposed direction and the development on its basis of new provisions of relevant administrative regulations, which are devoted to administrative procedure of detention (including delivery) citizens by the police, will significantly strengthen the legal safeguards for compliance by the police of constitutional right everyone to freedom and personal inviolability.

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