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ON THE ISSUES OF DETERMINATION ADMINISTRATIVE TORT

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Administrative tort has rationally explainable causes, conditions, and other forms of its occurrence and functioning, clarification of which would be contributed by determination. It is the category of determination can reveal conditioning, identify the causes, conditions and trends in the development of administrative tort.

Keywords: administrative tort, administrative offences, determination, criminality, factors.

At clarifying the content of administrative tort the problem of determinism is of crucial importance. By the general rule, a concept, which involves strict causation of one event by other, associated with a possibility of unambiguous prediction, was being understood as determinism for a long time.

The current stage for development of knowledge determines the further evolution of the concept of determinism, which goes in the direction of its greater generalization. Detection of what is called statistical determination is not just the definition of a new specie or type of determination, but the establishment of a new method of its implementation. The kind of determination can be the same –causation, but causality can exist in the form as dynamic (single-valued), and statistical laws. Now the question is not only to enrich the knowledge about the different ways of determination (to which is added, in particular, the distinction between physical and informational methods of determination), but also about the identification of different types and kinds of determinism.

Philosophical Encyclopedic Dictionary defines determinism as the doctrine of objective, well-formed interrelation and interdependence of various phenomena of the material and the spiritual world, the central core of which (determinism) is

the provision on the existence of causality. Moreover current determinism assumes various forms of interrelation of phenomena, many of which are expressed in the form of interrelations without direct causal character, that is, do not explicitly contain a moment of generation one by another. This includes the spatial and temporal correlations, functional dependencies, symmetry relations, probabilistic connections, etc. [19, 148-149].

Despite the fact that even today the category of determinism is defined as a doctrine of causation, but new researches have shown, that the relations of determination are very diverse and cannot be reduced to one even universal type – causality. Any determination should not be associated only with causality. This view is getting increasing recognition and now seems adequate to the real situation in the world and also reflects, among other things, determination of administrative tort.

However, the issue of determination of administrative tort is related to certain methodological difficulties associated primarily with known uncertainty of the concept of "determination". Lexical interpretations do not clarify the issue. In them we have encountered some similar concepts, "determinant" – qualifier [17, 192], "to determinate" – define, stipulate [17, 192], but they do not contain the definition of the concept of "determination".

Resorting to legal literature shows that in some cases the determination is considered as logical connections between processes, phenomena and states [11, 87], in others – as various forms of dependence between phenomena [7, 103], but, at this, a detailed definition of the concept of "determination" is not given.

Within the framework of our study under determination we suggest to understand a complex and diverse process, the result of interaction of many different in power and form of expression, divergent, discordant factors.

The issues of determinism, determination are sufficiently well developed in philosophy. For a long time philosophers have been researching the causes, conditions of existence of various phenomena. In connection with this, has been accumulated rich methodological material on causality and of other types of impact of determination.

The relevance of this approach to the study of administrative tort is that determinism is generally a basic principle, the methodological basis of all cognitive and socially-transformational actions of people [5, 106, 2, 30], including legal practice. It provides an opportunity to see the impact of various factors of reality on administrative tort [7, 101]. Thus, upon further thought, exactly deterministic explanation leads to the detection of the full range of events, phenomena or processes that affect the phenomenon under study.

Determinism is a doctrine on the universal conditionality of objective phenomena. The basis of this view of the world is a universal interrelation of all phenomena. The initial categories of determinism are the concepts of interrelation and interaction. Interaction is manifested in mutual change of things. Here things are factors, through actions of which the attitude to determination is implemented. The existence of universal interrelation of all phenomena and processes is a presupposition of the principle of determinism. Thus, determinism is a general doctrine, which recognizes the existence of a universal interrelation and denies the existence of any phenomena and things outside of this universal interrelation [9, 8]. At present, in administrative law in the study of administrative offences only the causes and conditions are subject to study when other interrelations are not taken into account. Either, the causes and conditions are equated by some authors [14, 238]. Consideration of determination allows take into account the largest number of interrelations, which influence committing administrative offenses.

We agree with E. E. Genzyuk, that should be abandoned the detection of causes and conditions of administrative tort as offered by most experts in the field of administrative law, and consider determination through factors [3, 96], this will allow to take into account the largest number of interrelations and dependencies that lead to the commission of administrative offenses.

One should agree with the view of K. K. Goryainov, who believes that "by factor should be understood a certain property of social processes and phenomena, their interdependent combinations, to be the engine, parameter in the formation and changes of the state of criminological situation" [4, 24].

Causality, as V. I. Lenin said, - "is just a small piece of the world interrelation, but ... piece of not subjective, but objectively real connection" [12, 114].

The concept of "factor" is extremely broad in scope and is used to refer to different types of determinants: causes, conditions and circumstances, moreover the factor denotes not only a phenomenon, process and state, but also context and situation.

Though causality is considered as an essential, major factor determining administrative tort, but is not the only measure of impact on it. Analysis of literature allows highlighting such types of determinations as conditional, functional, inspiring, system determination and correlation.

B. F. Kevbrin rightly points out that in the notion of determinism "is fixed the existence of determining factors (the unity of forces, interactions, etc.), by virtue of which the development process is ensured" [8, 123].

Continuing, B. F. Kevbrin points out, that "there are many kinds of social determination, which are the internal conditions of the development of social organism as a system. The main are the following: 1) intellectual determination (or determination by the level of development of science and education); 2) determination by the level of mechanization; 3) informational one; 4) spiritual (or determination by the level of development of culture, religion); 5) determination by mentality; 6) determination by the level of economic development; 7) political (ideological) one; 8) legal one; 9) determination by the state of environment; 10) organizational one (determination of public authorities); 11) personal one; 12) targeted one" [8, 177]. This list of types of determination is quite wide, but it can be significantly expanded and added, for example, by the determination of resource, time, meaning, institutions, corporations, morals, values, etc. Each of them in some way influences on administrative delinquency as a system phenomenon.

With the deepening of knowledge the task of researcher is to determine the extent and intensity of interaction, mutual influence of identified factors, set between them functional and causal nexus. As a result certain factors, which have a causal relation with the commission of offenses, are considered to be its causes, others act as conditions promoting to it.

Solution of the most complex tasks, related to the search for ways to effective combating administrative delinquency, is hampered by the fact that, first, there are a large number of factors; second, these factors, as well as connections between them, are constantly changing; third, objective factors usually act not directly, but mediating the minds and actions of people, their psychology. Finally, it must be recognized that many mechanisms of this action have not yet been studied, and apparently they are different for different types of offences.

As noted by M. I. Nikulin, the study on the factors of administrative tort allows to achieve two goals:

a) to show that the emphasizing of the category of "factors" is justified theoretically and practically necessary;

b) to draw attention to the diversity and interconnectedness of the problems in studying the causes and conditions that promote delinquency, and development of measures to prevent them [14, 259].

There are no unambiguous factors that have only a positive or negative orientation in public life. Each of them has tort and anti-tort aspects. The first is a kind of "background" of administrative delinquency, the second – is the adverse party. The more tort lesion of this or that social phenomenon, the greater the risk of becoming a breeding ground for administrative delinquency, one of its causes.

However, most of tort factors do not generate commission of offenses; they seem to create prerequisites that objectively facilitate its existence. They act along with the anti-tort factors, and the stronger the impact of the latter, the more they counter the commission of offenses.

As has already been noted, there are not only positive or negative effects in real life. Let's take, for example, such attributes of a modern society as democracy, freedom of discussion, information, rallies, meetings, etc. They can be considered as the principles of society and as real-life phenomena, which, of course, is far from univocal. As principles of social life their progressive and constructive role is quite obvious and requires no additional arguments. As for the implementation of these principles and real estimation them as social phenomena, here we face not only its positive but also negative aspects, which are often of criminal nature. There are facts where under the slogans of democracy, freedom provoke interethnic conflicts, create formation of an extremist orientation, form and act unconstitutional nationalist formations with a clearly aggressive goals, organize economic sabotage, etc.

The mechanism of factors' influence on committing of administrative offenses is complex and ambiguous. On this basis, we can speak on the impact of any of them only with a certain degree of conditionality, because positive or negative impact of this or that aspect of social life (phenomenon, process) depends on a particular combination of factors.

V. N. Kartashov does not give the notion of mechanism of determination, and notes that in relation to any legal phenomena the mechanism includes the following elements: first, the different types (subtypes) of factors (natural, social, domestic, etc.), which disclose the specifics, the diversity of determining circumstances; second, forms, i.e., ways of influencing on legal phenomena and processes of relevant factors of reality (causal, conditional, inspiring, correlation, structural, functional, regulatory, assuring); third, the levels and scale of determining impact; fourth, the power of determination, which discloses the size, degree of intensity of influence by certain circumstances (factors and methods, forms) on certain legal phenomenon; fifth, the stages of impact; sixth, carriers of determination; seventh, the result of (legal and other social) determining impact [7, 102, 6, 29-30]. At the same time, the mechanism involves the interaction in a specific sequence of not one but various elements and processes that involve the occurrence of any phenomena. In our case, determination assumes that only factors impact on administrative tort and therefore we can only speak of the presence of determination, but not about its mechanism. Presence of methods, types, kinds, stages of impact is only relevant to determining factors, and other processes, states are not observed.

Misconduct cannot be explained only by focusing on the circumstances directly preceding it. Here is always realized a complex set of subjective (personal) and objective (situational) interacting factors that are different in nature and usually associated with it.

Consequently, all of the factors of different types of administrative tort determination can be both objective and subjective as contradictory, interacting parties of any activity.

Objective factors – all the natural and social factors, which in respect to this actor act as independent of consciousness, determine its mind and activity, and to which its activity is aimed. In the category of objective conditions social phenomena from their essential position act as incarnation of historical necessity. The subjective factor of a historical process – it is that is opposed to the objective conditions, what preserves or changes them, what is objectified to objective conditions by follow-up activities. As pointed out by V. N. Kudryavtsev, "... a specific situation creates a volitional act not by itself, but only in interaction with the personality of a certain person, refracting through its interests, views, habits, psychological features, and other individual traits" [10, 15].

As we have already noted, most of studies do not explore factors, but causes and conditions that induce administrative tort. However, either causal or conditional determination is the variant of determination in general.

V. I. Remnev was one of the first who classified in administrative delictology the causes and prerequisites of offenses. According to his classification there are "common causes and prerequisites of offences (economic, political, ideological, legal, organizational, cultural, and educational); causes and prerequisites associated with a specific professional situation (lack of control, impunity of offenders, "pressure from above", conniving violators by managers and so on); circumstances relating to the personality of an offender, firstly, of an official (such as deficiencies in qualifications, ignorance of law, false understanding of "case objectives", commitment to implement a plan "at any cost", etc.), and secondly, of a citizen who is not an official (low educational and cultural level, system of values, disregard for the law, etc.)" [16, 13].

For example, according to A. P. Stolbovoi the most typical reasons of administrative tort are: a) lack of legal awareness of citizens and officials about administrative law norms and, above all, ones that are set in the field of public administration; b) lack of administrative and legal education of workers; c) influence of negative anti-social environment; d) idleness; e) household and workplace disorganization, etc. [18, 8]. Of course, we cannot completely deny the possibility of the impact of

these phenomena and processes on administrative delinquency in general and on specific types of administrative offenses.

In turn I. K. Petrunina analyzing the results of such type of administrative offenses as violations of trade rules with vodka and other alcoholic beverages, indicate that the causes of these offenses are: "causes linked to the identity of an offender – desire for profit, flouting rules, carelessness, desire to fulfill the plan of trade at any cost and causes associated with a particular professional situation – lack of control, low level of awareness of administrative legislation, lack of effective application administrative responsibility measures" [15, 84]. And then the author writes that the "knowledge of the totality of common and specific causes of administrative violations in trade, which expresses the complex interrelation of objective and subjective factors and circumstances in violation of the rule of law, leads to the conclusion of the immediate causes of administrative misconducts in this sector, which are the current situation" [15, 84].

In the examples the authors mix causal and conditional determination of administrative delinquency.

The essence of *causal* determination is that it serves to indicate the necessary genetic connection of phenomena, one of which (called cause) leads to another (known as a consequence) [19, 329].

The ancient sages said that "true knowledge is the knowledge of causes". Aristotle wrote: "... there is something, if there is its cause, and that something does not exist if there is no cause; because a cause and something what it causes co-exist, and nothing exists without cause ..." [1, 252-253].

The causes of administrative delinquency, we believe, lie in subjective plane, in the personality of an offender.

A phenomenon is conditional upon certain conditions, which are sometimes more serious impact than cause.

Condition is a category of philosophy, which denotes the attitude of a subject to surrounding reality, phenomena of objective reality, as well as to itself and its inner world. The subject acts as something conditioned, and the condition acts as a relatively external regarding the subject diversity of objective world.

The condition must be distinguished from the concept of cause, because unlike the cause, which directly generates this or that phenomenon or process, the condition creates an environment, in which the latter occur, exist and develop [20].

Conditions that may affect the committing of administrative offences are also varied: economic, political, social. For the most part exactly conditions are indicated by the above authors.

Accompanying, necessary and sufficient conditions are emphasized in the philosophical literature. These categories, in our view, are also of value in tort study. Thus, "under the accompanying conditions understand mainly circumstances of time and place, which have no direct influence on what is happening ... The most important are necessary conditions, without which the phenomenon could not occur. Totality of all the necessary conditions constitutes sufficient conditions. When there are sufficient conditions and a cause, the result comes with necessity" [10, 18].

E. E. Genzyuk notes that it is possible to talk about these kinds of factors affecting administrative tort: of socio-demographic nature (factors associated with urbanization, migration, changes in demographic structure of the population, etc.); of economic nature (factors associated with the problems of welfare, unemployment, economic and industrial infrastructure, etc.); of social and socio-psychological nature (factors associated with the weakening of traditional forms of social control over an individual due to urbanization, the role of family in upbringing children, women's employment, educational level of population, the condition of mental and physical health of certain special groups); of organizational and legal nature (the factors conditioned by the state of normative-legal support at the level of constituent territory of the federation, local self-government bodies, by professional preparedness of representatives of the authority, civil servants, officials, etc.) [3, 98-99]. In addition to the designated groups of factors in recent times political factors should be considered relevant, besides, personality factors, personal attitude to the current system of legal rules, its directives, desires, needs and interests are of the most importance in the framework of administrative delinquency.

While supporting the idea of replacing the causes and conditions of committing administrative offenses by factors N. P. Myshlyaev offers to select two groups of factors administrative delinquency [13, 54-55]. To the first group he proposes to include administrative tort factors that do not depend on the activities of bodies of prevention, in particular of internal affairs bodies.

The most important of these are:

- objective contradiction between economic needs and opportunities of the modern Russian society – of individual social classes, groups, individuals;

- general decline in living standards, and in some groups of society below the level of physiological survival rates;

- certain determinations in the field of social psychology that are manifested in distorted needs, interests, goals, attitudes, moral values and legal consciousness of perpetrators of offenses;

- destruction of the traditional Russian patterns of behavior, generally accepted norms of morality and ethics expressed in increased alcoholism and drug abuse, family breakdown, legal nihilism, the prevalence of the ideology of greed, violence and cruelty, etc.

Other group of factors that contribute to the commission of administrative offenses is directly related to the activities of law-enforcement bodies and other bodies of prevention. In content these factors are divided into a) associated with insufficiency of normative-legal support of prevention activity of all bodies of prevention and b) organizational factors.

As seen, in the designated classification, the author does not divide factor into objective and subjective ones. Also, in our opinion, in respect to the activity of bodies of prevention administrative delinquency, it is insufficient to select only two factors. We also consider important the logistical, HR, financial and economic factors, which largely influence on the results of prevention activities of authorized entities and, accordingly, the level of administrative tort.

Emphasizing of imperfection in mechanisms to ensure implementation of administrative-legal norms as an independent factor, which significantly influences on administrative tort, is of great importance.

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ON SOME ISSUES OF METHODOLOGICAL FOUNDATIONS IN STUDYING THREATS TO PUBLIC SECURITY

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This article investigates the sources of threats and conceptual approaches to the formation of public security's threats assessment. Is alleged that the sources of danger to the vital interests of society will be not factors and conditions, but causes and conditions that determine the development of certain actions and events, which in our situation constitute a threat to public safety. To further research are offered two major threats to public security: subjective intention and objective possibilities of infliction harm, which can be represented as kinds of threats.

Keywords: public security, methodology, threat, conditions and factors, legislative concept of security threat.

"Ensuring security" as a legal category covers separate directions of state activity to prevent, reveal and neutralize threats to its security. As we have already pointed out, the existing legislation of the Russian Federation unfortunately enshrines not only the notion of "public security", but also notions of various types of threats to public security.

We consider it necessary not only to develop the methodological foundations of the study threats to public safety, but also to clarify the sources of threats and conceptual approaches to the formation of assessment for threats to public safety.

Moreover, as rightly pointed out in the scientific literature, the objective of public safety not only to protect the interests of a particular object, but also to reduce, diminish, eliminate, prevent hazards and threats [12, 16]. This means that public security can be ensured both through activities aimed at its protection from existing threats (offenses relapse, etc.) and by averting, prevention, termination, neutralization the very threats undermining public security. In practice it is appropriate to use both variants of ensuring public safety. Threats to public security to a large extent determine the direction of activity and competence of public authorities that ensure it, their use of administrative coercive measures.

Detection the types of threats to public safety and suggestion measures for their elimination are not possible without understanding the concepts of threats.

Concerning understanding security threats and its normative enshrining the point of view of the subjects of law-making is constantly changing. However, the lack of uniformity lets to conclude about the complexity and sophistication of the threat not only as a legal category, but also as a phenomenon.

For example, in the Russian Federation Law "On Security" under the threat of security offered to understand the totality of conditions and factors that endanger the vital interests of an individual, society and the state. Real and potential threat to security objects, which proceeds from the internal and external sources of risk, determines the content of activities to ensure internal and external security (see article 3 of the Law) [1]. It is likely that the legislator used the notion of threats given in philological dictionaries. In the Explanatory Dictionary of Russian Living Language of V. I. Dahl' threat means "to menace, try to frighten, bring danger, and keep someone in fear, under apprehension" [6, 470]. In the four-volume dictionary of the Russian language under "threat" understand "promise to cause any harm, trouble, bringing danger to somebody, distress, unhappiness, unpleasant event" [13, 462]. In another dictionary of the Russian language the concept of threat is formulated in two meanings: "intimidation, promise to cause somebody harm, evil; possible danger" [10, 823].

And if the previous RF Law "On Security" contained specific definitions, then the currently valid Federal Law "On Security" [2] does not contain the concepts of security threats, and moreover there is no even the concept of security.

Analysis of the legal literature on the issues of safety and security threats also leads to the conclusion about a diversity of approaches to determination security threats.

So, according to K. A. Strelnikov, the threat is the most concrete form of manifestation of social danger created by purposeful activity. If a threat has been realized

and adverse economic, political and social consequences have come, then we can talk about an emergency situation [18, 11]. However, it appears that a threat may arise not only as a result of purposeful activity, but also by the occurrence of natural and man-made disasters.

Also, some authors understand security threat as a totality of conditions and factors of specific sphere that endanger the vital interests of an individual, society and the state; and under security risks they consider the possibility of unwanted consequences of a process, phenomenon or fact, which is measured by the probable amount of loss [14, 336]. Delimitation of conditions and factors by a particular sphere, and the difference of the proposed definition from the definition of the RF Law "On Security" are not entirely clear.

Definition and types of threats to public security offered by A. I. Stahov seem to be interesting. Threat to security in the legal system of the Russian Federation, in his opinion, consists of natural and man-made environmental factors that endanger constitutional and legitimate interests of an individual, society, the state and the nation, as well as offenses and legal incidents (conditions) that contribute to the emergence and (or) development of such factors [15].

Further, the author, based on the logical analysis of the legislative concept of security threat, argues that the category, in fact, is a totality of separate sources of danger to the vital interests of an individual, society and the state, called conditions and factors creating danger to these interests.

From this point of view, in the legal system of the Russian Federation the sources of risk to vital interests of an individual, society and the state are:

1) factors that create the risk to constitutional and legal interests of an individual, society, the state and the nation;

2) conditions that create the risk to constitutional and legal interests of an individual, society, the state and the nation.

Following his logic, the author assumes that factors that create the risk to constitutional and legal interests of an individual, society, the state and the nation in the legal system of the Russian Federation are different manifestations or action of objects and phenomena of environment that create the possibility of infliction harm to the constitutional and legal interests of an individual, society, the state and the nation (hereinafter referred to as malicious impacts).

Accordingly, the conditions that create the risk to constitutional and legal interests of an individual, society, the state and the nation in the legal system of the Russian Federation are illegal actions (inaction) contributing to the emergence and (or) development of malicious impacts of phenomena and objects of environment [16].

Subsequently, the author develops his position on the understanding of security threats, the essence of which can be reduced to the fact that the threat to security consists of formally determined malicious natural and man-made environmental factors related to the subjected to official state estimation lawful actions (activity) of legal entities and individuals to use objects, processes and phenomena – man-made and natural sources of danger to the constitutional and other interests of an individual, society, state and nation, as well as offenses and legal incidents contributing to the emergence and (or) development of these factors [17, 16].

That is, the author proposes to consider as security threats only natural and man-made factors, which may be caused by a variety of situations: lawful use of objects, phenomena and processes (of licensed activities); offenses that contribute to emergence of the identified factors; legal incidents in the form of an explosion, fire, accident, earthquake, flood, etc.

We agree that the threat to public safety can be natural and man-made situations. But the possibility of infliction damage is possible not only as a result of these phenomena, but also many others.

However, we disagree with assigning the factors and conditions that could be dangerous to security threats. A. I. Stahov, as well as the legislator (in the design of the RF Law "On Security") has taken into account neither the etymological meaning of these words, nor position of other social sciences exploring determinacy of processes and phenomena.

Factor is a wider concept that includes not only conditional, but most importantly causal determination. The concept of "factor" is very broad in scope and is used to refer to various types of determinants: causes, conditions and circumstances, moreover, not only a phenomenon, process and status, but also context and situation are denoted with the help of factor. So, B. F. Kevbrin rightly notes that in the notion of determinism "is fixed the existence of determining factors (the unity of forces, interactions, etc.) that give effect to the process of development" [8, 123].

And consequently the sources of threat to the vital interests of society will be not factors and conditions, but causes and conditions, which determine the development of these or those actions and events, in our situations ones that endanger to public security.

It seems that the developers of the National Security Strategy of the Russian Federation up to 2020 were more true when they formulated the concept of national security threat using instead of the term of "threat" the phrase that represented its dictionary meaning "the possibility of harm", which gave a more clear formulation of the concept of national security threats, and also allowed to change the amount

of alleged threats that some authors [9, 32] propose to limit only to the threats from the use of objects posing a danger to the society, or the occurrence of natural disasters and other extraordinary circumstances.

As a result, in the National Security Strategy of the Russian Federation up to 2020 under a national security threat should be understood a direct or indirect possibility of harm to constitutional rights, freedoms, decent quality and living level of citizens, sovereignty and territorial integrity, sustainable development of the Russian Federation, defense and state security [3].

The analysis and consideration of the proposed by us definition of public security allows to formulate the definition of threat to public security as the possibility of harm to legally protected rights and freedoms of an individual, material and spiritual values of society, constitutional system, sovereignty and territorial integrity.

We consider it essential not only to define the concept of threats to public security, but also their types.

Threats to public security can be classified according to different bases, or criteria.

It is necessary to take into account the essence of security, which, we believe, covers: prevention of security threats, adequate response to the emergence of security threats and elimination the consequences of security threats manifestations as of personal, state as well as public one.

The general definition of threat to public security should be considered through two basic components: subjective intentions and objective possibilities of harm infliction that can be represented as types of threats.

"The possibility of harm infliction" means that an event or wrongful act is assumed, or it certainly can happen in respect of an object of legal security. The definition of "quite assumed" indicates a remote or hypothetical nature of the possibility of committing a wrongful act or the occurrence of an event. In this case, we can talk about a potential threat to public security. The definition of "certainly can happen" focuses the subject of public security on taking urgent measures to protect an object from a real threat.

It appears that, depending on the source of threats, they can be distributed into two large classes: internal and external. This division is largely conditional since in one case can dominate internal characteristics and in another – external. For example, in relation to an individual we can talk about such its internal (intrapersonal) juridical features as the legal infantilism, nihilism, unlawful orientation, directives, social and legal passivity [19, 8-11, 14] and others, the presence of which

can threaten public security. External threats can be defined as ones that emanate from other persons, in particular, due to abuse of law, socio-legal passivity, avoidance to perform legal duties, corruption and other offenses.

We share the view of A. A. Ter-Akopov that when in the apparent significance of domestic threats external threats have dominant position, that is why the system of external threats to public security should be studied specifically, i.e., as a relatively separate object [19, 14].

In view of a comprehensive approach to the understanding of public security as a state of protection of vital interests of an individual, the state and society from socially dangerous deeds, natural disasters, accidents and other emergency situations, the causes and conditions that create a potential or real threat to them, their sustainable development, and guaranteed realization and protection the interests of an individual, the state and society, regulated by the norms of administrative law, we consider it possible to talk about the threats in respect to an individual, society, the state and the threats that arise from socially dangerous deeds, natural disasters, accidents and other emergency situations, the causes and conditions that create a potential or real threat to them.

This is due to the fact that public security is a basic category and includes the security of a person since society is composed of people (individuals) and ensuring the safety of each individual will contribute to public security. In turn, State security cannot be achieved without contributing to ensuring public security.

Threats to public security can be divided depending on legal facts, the impact of which will or may cause real harm to an individual, society or the state

In modern jurisprudence under the legal facts understand the specific life circumstances which are connected with legal norms through certain legal consequences.

We agree that legal facts are only those fragments of our reality that are involved in the sphere of law (according to N. G. Alexandrov, a legal fact – it is not just a fact of life, but the fact that is in a certain way regarded by law norms [4, 243]), and thus act as material-legal phenomena [7, 7], and entail the need for a different kind of measures (including administrative ones) aimed at eliminating or minimizing them.

Depending on the presence or absence of persons' will in a legal fact, legal facts are divided into actions, events and statuses.

Legal action – this is a volitional behavior of people, the external expression of the will and consciousness of citizens, organizations and public formations. The distinguishing feature of this kind of legal facts is that the law norms associate with

them legal consequences precisely because of the volitional nature of legal actions.

Legal actions are very diverse and play different roles in the process of legal regulation.

Legal facts of an action are classified primarily on the basis of how they are consistent with the requirements of legal norms and the requirements of the rule of law. According to this feature legal facts of an action are divided in two main varieties: a) lawful acts; b) unlawful acts (offences). And if the first do not pose a threat to public security, the second type of actions is one of the most serious threats to public security.

Lawful action is a volitional behavior that conforms to prescriptions of law, in line with the content of the rights and duties of subjects.

Lawful actions can be divided into three main groups: a) individual (legal) act; b) legal deed; c) lawful behavior that creates in law an objectified result that has economic or cultural value (efficient action).

The greatest threat to public security is unlawful act, which we consider as a volitional behavior that is inconsistent with legal requirements, violates legal rights, is out of keeping with legal responsibilities assigned to individuals.

Here is emphasized an objectively wrongful act, which refers to the act of volitional behavior that is of purely external nature caused by ignorance of law, some contradictory norms, etc. (author's note. Category "objectively wrongful act" is designed by I. S. Samoshchenko [11, 39]). This includes acts of behavior that express an innocent failure to perform legal duties, "objective" violation of legal rights (unjust enrichment, etc.), that is, everything that from a slightly different angle of view can be called as legal anomaly [5, 37]. This kind of illegal actions entail legal consequences, which are usually limited to the restoration of the violated legal status, implementation of legal obligations, i.e., protection measures.

Among misconducts the main significance has an offense – an action (inaction) that generates legal responsibility.

Offence is a guilty unlawful action (inaction). Signs of an offense are also reflected in corpus delicti, i.e., in the totality of its aspects and elements enshrined in legal norms. By the nature of public danger offences are divided into crimes and misconducts (administrative torts, disciplinary misconducts, civil offenses, etc.).

Considering misconducts as well as crimes as socially dangerous offenses, it should be assumed that the main in their delimitation is the quality of public danger: crimes as opposed to misconducts express the danger of a person to society as a whole.

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SUBJECTS OF ADMINISTRATIVE JURISDICTION: STRUCTURE AND CONTENT

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An analysis of the concepts of subject of law and subject of administrative jurisdiction in Russian legal science is given in the article. Stresses the lack in a common law theory of a single criterion of differentiation subjects of law, what conditioned a variety of their classifications. The author alleges the need for science-based definition of the concept of "status of a subject of administrative jurisdiction", which the author proposes to understand as a legal status of the subject of administrative jurisdiction, characterized by a set of rights and duties to consider and resolve cases on administrative offenses. Disclosure of a competence of a subject of administrative jurisdiction reflects the essence of its status.

Keywords: subjects of law, subjects of legal relations, subjects of administrative jurisdiction, the status of a subject of administrative jurisdiction, the competences of a subject of administrative jurisdiction.

The common term of "administrative jurisdiction" can be formulated as follows: "this is a consideration of cases on administrative offences and timely making decisions on them" [29, 7].

The notion of "subject of administrative jurisdiction" should be derived from the generic notion of "subject of administrative and tort law" and the most general

notion of "subject of law". For all branches of law the notion of "the status of subject of law" is one of the key ones that disclose principal juridical institutes. Thus, we need to turn to the analysis of these terms, respectively disclosed in the theory of administrative law and general theory of law.

In domestic legal literature, generally, there is no fundamental difference between the notions of "subject of law" and "subject of legal relations". So, S. F. Kechek'yan, noted that under "the subject of law should be understood: a) a person participating or b) one that may participate in legal relation" [11, 84].

Similar provisions are contained in works of R. O. Halfina, who concludes that the notion of "subject of a legal relation" is narrower than the notion of "subject of law", because the carrier of rights and duties may also be not a participant of a particular real legal relation [22, 31, 114-115]. In fact, other authors, such as D. M. Chechot, support her vision [24, 16].

The result is that, specific bodies, organizations, and individuals, which act as carriers of subjective rights and duties, are understood as the subjects of law and subjects of a legal relation. Hence, in fact we are talking about the same persons [29, 8].

D. N. Bakhrakh emphasizes that by "the subjects of administrative law should by recognized the members of managerial relations, to which administrative and legal norms have given the rights and duties, ability to enter into administrative and legal relations. Legal relations are the main channel of exercising law norms, so the carrier of rights and duties, as a rule, becomes the subject of legal relations and coincides in the general range of both" [8, 41].

According to A. B. Agapova, participants (subjects) of administrative legal relations are persons possessing administrative legal capacity [1, 47-48].

A similar view is also expressed in recent works on the theory of State and law. So, N. I. Matuzov argues that the concepts of "subjects of law" and "subjects of legal relations" in principle are equivalent [17, 263], and M. N. Marchenko says that in modern legal literature, these concepts are often used as synonyms [15, 138].

Thus, in domestic juridical science prevails a view that the notion of "subject of law" should be interpreted as follows: this is a real (and not abstract) carrier of subjective right (equally as responsibility).

However, to address this issue there is a fundamentally different approach.

In this regard, it is appropriate to cite the judgment of L. S. Yavich that Soviet juridical science is characterized by an approach, under which the subjects of law are quite real participants of public relations – individuals or relevant groups (communities, systems, organizations), while bourgeois jurisprudence generally considers

the concept of a subject of law as a purely legal structure, generated by the very law (K. Savin'i, R. Iering, N. M. Korkunov, E. Dzhenks, G. Kel'zen and others) [28, 214-215].

Modern Russian jurisprudence after the critical period of the 90s, associated with the destruction of the foundations of socialist law theory, is beginning to return to the origins of the Russian legal liberalism and humanism, to the ideas that were formed as part of this course. Based on these ideas, it can be argued that it is not a subject of law is an accessory of legal relations, but on the contrary, legal relations and nexuses are the accessory of a subject of law, its attributes. Subject is an axis, around which legal nexuses and relations are formed [4, 17].

The absence in general theory of law a single criterion for differentiation of subjects of law has led to diversity of their classifications, which, naturally, has not added clarity in this matter. For example, V. M. Syrykh emphasizes "three large groups of subjects of law: individuals, organizations, and social communities. The first group includes citizens, foreigners, and stateless persons. The organizations include public authorities, state institutions and enterprises, local self-governments, as well as public associations and economic organization. The group of social communities consists of such subjects of law as people, nation, nationality, the population of the region and labor collective. Special subject of law is the State itself" [20, 318].

Another classification is proposed by M. N. Marchenko. The author believes that "the subjects of the law can be physical (private) persons and legal entities. Natural persons include all citizens (when the monarchy – subjects), foreigners and stateless persons. State and public organizations and institutions act as legal entities – subjects of law, participants of civil relations" [15, 592]. It is obvious that civil-legal aspect prevails in the author's position, and therefore the State, its bodies as participants of administrative-legal relations in this classification simply do not participate.

A great company of legal scholars, such as A. P. Alekhin, A. A. Karmolitskii, Yu. M. Kozlov, A. P. Korenev, N. Yu. Khamaneva, emphasizes the following subjects of administrative law: bodies (officials) of executive power, bodies (officials) of local self-government, state and municipal employees, commercial and non-profit organizations, including public and religious associations, citizens [2, 58; 13, 67-146; 3, 67].

A. B. Agapov divides subjects of administrative law into individual and corporate ones. Under this classification to corporate entities the author refers "public-legal participants of administrative-legal relations" and "private participants".

By public-legal participants the scholar considers public authorities and municipal bodies, organizations and institutions. This group also includes the so-called non-governmental bodies, organizations, which include public associations (political parties, religious and other public associations operating in the field of public-legal relations) [1, 47-50].

Using the legal tenet of "subject of law – an abstract participant of abstract legal relation" and taking into account the peculiarities of administrative-legal regulation, as the basis for classification of subjects of administrative law would be more correct to consider their legal position in the mechanism of state administration. Therefore, in the science of administrative law it would be more useful to talk about the subjects endowed with state-authoritative powers, and subjects, which are not vested with, i.e., the first group of subjects – this are subjects of power (subjects of administrative jurisdiction), and the second group – are powerless ones.

Thus, it seems possible to formulate the following definition of a subject of administrative jurisdiction: "Subject of administrative jurisdiction it is a person defined by a normative legal act, endowed with powers to hear cases on administrative violations and take decision on them in the prescribed procedure and form" [30, 11].

In order to properly define the criteria for the assignment of a certain body to the subjects of administrative jurisdiction, it is necessary to give a science-based definition of the concept of "status of the subject of administrative jurisdiction".

The Latin word "status" means a state, legal position (the totality of the rights and duties stipulated by law) of a citizen or legal person [27, 285].

In the scientific community has been developed the practice of isolating different types of legal status in relation to an individual. At that, N. V. Vitruk proposes introduction of the notion of "general legal status of an individual" and "special legal statuses of an individual". The latter represent totalities of rights and duties, which specify and complement the general rights and duties in relation to different people, characterized by specific features of employment, family and other status [10, 186-187].

Similar views are also expressed by legal scholars. So, I. I. Veremeenko notes that administrative-legal status of an individual in the field of public order protection is a part of the administrative-legal status as a whole, and the latter is a part of the legal status of an individual [9, 35]. D. N. Bakhrakh, in turn, emphasizes that there is a huge variety of special administrative-legal statuses, for example, the status of subjects of authorization system, subjects of administrative guardianship [7, 19].

Thus, with respect to administrative jurisdiction, the general status of a subject of administrative jurisdiction determines the place of the subject in the mechanism of law enforcement. It is a legal status of a subject of administrative jurisdiction characterized by the totality of rights and duties to review and resolve cases on administrative offence s.

Along with common it also makes sense to select a special status of a subject of administrative jurisdiction, which determines the place of a relevant type in the system of mentioned subjects and specifies its legal status in respect to the participants of proceedings on administrative offences.

General status of a subject of administrative jurisdiction is defined by its cross functional rights and duties to consider administrative cases and make appropriate decisions, and special status, in turn, by the fact that it is authorized to hear and resolve certain categories of administrative cases through exercising actions defined by law.

Obviously, that the concept of general status covers all the subjects of this kind, the concept of special status may be used for certain types of subjects, the concept of legal status is applicable to a particular personally individualized person (body, representative of authority) engaged in administrative and jurisdictional activity and is defined as by potential rights and duties as well as by real ones [29, 103-104].

These elements of legal status are considered in juridical literature, including for determination basic criteria of assignment state bodies and positions, which are the elementary organizational and structural unit of a public authority [14, 72; 6, 10], to the subjects of administrative jurisdiction.

D. D. Tsabriya, rightly pointing out that the status of a public authority, being a legal phenomenon, can consist only of legal elements, highlights such elements as the name of a body, the procedure and method of its formation, the area of activity, goals, objectives and functions, the scope and nature of powers of authority, responsibility, etc. [23, 126-127].

At that, D. N. Bakhrakh finds it appropriate to group the elements of a legal status through combining them into blocks. With regard to the administrative-legal status of collective subjects he suggested to highlight the following major blocks of elements:

- targeted;
- structural-organizational;
- competence oriented [5, 25].

Targeted block of elements holds a special place in the legal status of a public authority (and position), because: 1) public authority shall be guided by imposed on it task and not shirk their achievement; 2) this block is a legal basis for determining the scope of authority needed to resolving relevant tasks; 3) the block serves as a legal basis for the establishment responsibility for the failure to perform these tasks [12, 44].

Activity goal of a subject of administrative jurisdiction is the protection of objects (personality, its rights and freedoms, property, environment, etc.) against illegal encroachments in the form of administrative offences.

This goal is achieved by solving such tasks as comprehensive, complete, objective and timely clarification of the circumstances of each case, settlement thereof in compliance with law, ensuring execution of a taken decision, as well as detection of reasons and conditions that lead to the committing of administrative offenses (Code on Administrative Offences of the RF, article 24.1) [19].

Based on the above approach to the legal status of a public authority, it is necessary to analyze the content of the competence of a subject of administrative jurisdiction, which can be defined as a normatively fixed totality of powers to hear cases on certain administrative offenses and to take decisions on them in the prescribed manner and forms. In this connection, it seems possible to group the powers of a subject of administrative jurisdiction, emphasizing four constituent parts (elements) of administrative and jurisdictional competence.

1) "functional competence". Functional competence, which is a part of the special status of a subject of administrative jurisdiction, has significant features that define the place of subjects in their system.

Scientific literature highlights such specific functions of administrative jurisdiction as consideration of cases on an administrative offence (clarification of the circumstances of a case and the identity of a person brought to administrative responsibility, qualification of the offense) and taking decision on the case [26, 12].

Using as a criterion the possibility of application and type of an administrative penalty, N. N. Titov put forward the hypothesis on the existence of an administrative jurisdiction penalty function [21, 6].

In addition to the mentioned functions of a subject of administrative jurisdiction also should be highlighted an additional one – ensuring enforcement of the decision made on a case. The powers of a subject of administrative jurisdiction regarding the organization of execution proceedings include: enforcing execution of a decision with regard to a case concerning an administrative offence, (article 31.3 CAO RF), delay, spreading, suspension and termination of execution of a decision

to impose an administrative penalty (accordingly articles 31.5, 31.6 , 31.7 CAO RF) and settling issues connected with execution of a decision to impose an administrative penalty (article 31.8 CAO RF)

2) "object competence" is powers of a subject of administrative jurisdiction to review the established range of cases on administrative offences [25, 67].

Object competence plays a crucial role in the special status of a subject. Exactly because of it a reasonable allocation of duties for implementation of administrative and jurisdictional activity between different types of subjects happens [29, 37].

Object competence includes the powers to hear cases on specific types of administrative offenses committed by certain categories of persons. So, article 23.5 of the CAO RF enshrines object competence of tax authorities. And in accordance with article 23.2 of the CAO RF commissions for cases of minors and protection of their rights hear almost all cases on administrative offenses of minors.

3) "territorial competence". Territorial competence is conditioned by the presence of powers of an administrative jurisdiction subject, which are related to the territory in which the subject operates. By a general rule, the vast majority of subjects of administrative jurisdiction hear cases on administrative offenses in the place of their commission. However, the administrative commissions and Juvenile Affairs Commissions resolve the cases of this category at the place of residence of offender.

4) "procedural competence". Procedural competence is the content of administrative and jurisdictional activity [16, 73-112]. It includes the powers of a subject of administrative jurisdiction as a party of an administrative process [18, 16]. These powers are conditioned by the procedural peculiarities of administrative jurisdiction implementation. These include the procedure for preparing a case for hearing, the timing of consideration of a case, the form of acts for recording legal proceedings, etc. Procedural competence is the main characteristic of the special status of a subject of administrative jurisdiction.

This is the content of the competence of a subject of administrative jurisdiction, which reflects the essence of its status. Object, territorial and partly functional competences play an important role in the organization the system of subjects of administrative jurisdiction, as well as in establishing the criteria for defining a body as a subject of administrative jurisdiction. As for the procedural competence, it discloses the content of administrative-jurisdictional activity.

Another integral part of the status of a subject of administrative jurisdiction is an organizational block of elements. We mean the provisions determining the formation and composition of a body, the procedure of establishing a post,

the procedure of election (appointment) to a collegial body and the filling of an appropriate post.

Shergin A. P. stresses that responsibility is also an "integral part of the legal status of a subject of administrative jurisdiction, which must bear legal responsibility for violations of the rule of law, the rights of an individual in the performance of its duties" [25, 70].

Thus, the status of a subject of administrative jurisdiction consists of the following components:

- targeted block of elements;
- competence (functional, object, territorial, procedural);
- organizational block of elements;
- responsibility.

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ADMINISTRATIVE AND LEGAL STATUS OF INTERNAL AFFAIRS BODIES IN THE FIELD OF COUNTER RELIGIOUS EXTREMISM: THE ISSUES OF THEORY

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The article analyzes the theoretical approaches to the concept of "administrative and legal status" regarding the activity of the police to combat religious extremism in the Russian Federation. The author highlights the main elements of this notion and reveals their contents.

Keywords: administrative and legal regulation, religious extremism, crime, element, law.

Numerous scientific studies devoted, in recent years, to the issue of combating extremism and radicalism in modern society evidence on the fact that this segment of law enforcement activity is a complex social phenomenon, the consideration of which is possible from various aspects.

From the position of the organization and activity of administrative and jurisdictional authorities it can be defined as a regulated by legal norms law enforcement activity to prevent, detect, suppress extremist offenses, neutralize their consequences, and to bring to responsibility those ones guilty for committing them, in order to ensure the rule of law, public order, public and national security in the State.

Currently the most numerous subject of counteraction against extremist activity, including religious one, is the Ministry of Internal Affairs of Russia, which uses for these purposes its core forces – the police and internal troops. The above is due to the fact that in accordance with the Decree of the President of the Russian Federation No. 1316 from September 06, 2008 "On Certain Issues of the Ministry of Internal Affairs of the Russian Federation" (amended Decrees of the President of

the Russian Federation No. 254 from 01.03.2011, No. 1158 from 05.09.2011) [2] the functions of the major coordinator of all activity to reveal, prevent, suppress and solve crimes of extremist orientation are imposed on internal affairs bodies.

In addition, in accordance with the Federal law No. 3-FL from February 07, 2011 "On the Police" [1] the duty to prevent, detect and suppress extremist activities of public associations, religious and other organizations, and citizens is the responsibility of the police.

Unlike many other administrative and jurisdictional authorities involved in combating extremist activity the police have a developed territorial system and experience of flexible making modifications to it, adjusted everyday communication with population; has an array of information on crime and on the persons who are inclined to commit them; possesses theoretical developments and rich practical experience of combating offenses of various kinds accumulated in the course of activities, and broad resource options for the implementation of permanent and timely combating both crimes and administrative offenses.

In connection with the mentioned information, the issue of administrative and legal status of the internal affairs authorities in the considered area seems relevant.

An analysis of the scientific literature, released in recent years, clearly shows – in legal science has now been formed the idea that "the bodies of internal affairs as a participant of ensuring various kinds of security, as a whole, and their subdivisions, are collective subjects of law, components of executive power, of the state apparatus" [26, 95]. How are exercised their rights and responsibilities in various areas of activity?

Science of the theory of State and law acknowledged that "the rights, freedoms and duties of a subject of legal relations legally established by the State and taken in unity constitute its legal status" [15, 137].

In this case, subjective right is seen as an opportunity to lay claim to a certain line of conduct and appropriate behavior of counterparties (government agencies, officials, legal entities and individuals, as well as any other participants of public relations) by relying on the effect of laws and substatutory normative legal acts [21, 49; 27, 298]. Juridical obligation, in turn, is a type and extent of public-reasonable, intelligent, useful, objectively caused conduct of the subject of law that is designed to bring order to society [20, 306].

M. N. Marchenko absolutely correct points out that exactly legal status is at the heart of the normative expression of the fundamental principles of relations between a subject of law and the State. "At its core, it is a system of standards,

patterns of behavior of subjects, which are encouraged and protected by the state from infringement, and are usually approved by society" [28].

Since any legal norm is of representatively-binding nature, it provides for both possible and proper behavior. In this case, the duty is a way to ensure the realization of rights, the prerequisite of their reality and efficiency, and the right is a sphere of power and freedom of action of a subject of law, limited only by the bounds of law.

With regard to the definition of legal status it is worth noting that as a result of a large number of studies on the subject many of the general theoretical concepts of the phenomenon over time have acquired a generally recognized nature and became axiomatic [31, 126-127; 11; 24; 8; 9; 19; 22]. This frees you from having to once again stop at certain points, which do not require additional confirmation.

Perfectly logical seems the notice of D. P. Zvonenko that "administrative and legal status of a particular participant of legal relations is an integral element of the overall legal status of this entity, combines with the statuses established by the norms of other branches of law, in many cases acting as a priority one" [18].

A significant amount of research was devoted to developing the concept of administrative and legal status. So, various theoretical aspects of fundamental categories of administrative and legal science, including administrative and legal status were investigated in detail by well-known Russian legal scholars: G. V. Atamanchuk, D. N. Bakhrakh, I. I. Veremeyenko, N. E. Tikhomirov and others [7; 10; 29; 14; 3; 4; 6; 17; 16; 23; 30; 5].

Not stopping to compare in detail the various approaches to the problem, let's notice only that in general this issue has undergone significant evolution. Gradually the number of elements of administrative-legal status and their place in general structure was being specified in works. The work of scientists in the said direction made it possible to go from a simple enumeration of elements of the specified phenomenon, which took place at the initial stages, to developing methodology in its learning (for example, Tsabiya D. D. among the structural elements of the legal status of a governing body emphasizes: name, procedure and method of formation, the area of activity, tasks and functions, the scope and nature of powers, forms and methods of activity, the source of funding, responsibility, etc. At that, despite the mention of individual elements, such a fundamental element as "competence" is not mentioned [31]).

Formal approach, which existed in the early stages of research, subsequently made it possible to clarify the list of typical aspects necessary to identify administrative and legal status of any public authority [22, 61; 24, 61].

So, today we can say that, without naming individual elements in its structure, the study of this category should answer the following questions: body of which state does this structure perform; which kind of legal forms on the basic content of its activity does this body refer to; who does establish, create and form this body; to whom the body is responsible and is it an independent unit or an included in a complex organization; what is the competence of the body; what is the legal validity of this body acts and what are their names; what state symbols does that body possess; what are the sources of its funding, whether it has the rights of a legal entity, and some others.

All of this is important components of administrative-legal status, however, and even their complete "selection" does not create an exhaustive presentation about the considered scientific category.

In this case, we consider it expedient to accede to the opinion of Doctor of Law Yu. V. Stepanenko about that "legal status is a complex legal structure. During studying its components do not fall within the simplest lists" [33, 99]. Thus, to form a complete understanding of the administrative and legal status of any public authority in this or that area we need a special methodological approach.

The study showed that in comparing the opinions of various scholars, most optimal in relation to this issue was the position of D. N. Bakhrakh.

In his works [12, 13, 57; 89] was proposed the following scheme of administrative and legal status of a state collective subject. Namely, he distinguished three main blocks: a) targeted; b) structural-organizational; c) competence oriented.

At that, with regard to countering religious extremism, the targeted block of elements consists of legally enshrined goals, objectives and functions of the organs of internal affairs in the sphere of combating religious extremism. Structural-organization block of legal status includes: normative regulation of the procedure for the establishment, legalization, reorganization, liquidation of individual structural units that carry out such countering within the framework of the internal affairs, their subordination, establishing and changing of organizational structures, as well as the right to introduce advanced organizational practices contributing to increased activity in the mentioned direction. Competence oriented block of elements consists of a combination of powers of both enforcement bodies in the sphere of combating religious extremism as a whole and separate departments and services. However, in theory it should be noted that the competence oriented block includes two elements: first – a totality of rights and obligations in this sphere, associated with participation in public and authoritative relations (including the right to take

certain acts), second – jurisdiction, legal consolidation of the range of objects, items, cases to which are applied the powers of authority.

In general, basing on the approach proposed by D. N. Bakhrakh, it should be noted that the issue about the fact that outside of administrative and legal status remains such an element as the responsibility of a subject of administrative and legal relations for unlawful actions or for unfair execution of its duties seems controversial enough.

Noting the particular urgency and the need for strict development and introduction of anti-extremist measures in the practice of law-enforcement bodies, and the severity of possible consequences of connivance and formalism in this activity, we believe that accountability and responsibility for taking managerial decision in this direction is a part of the competence oriented element of administrative and legal status of Interior Bodies. In this sense, one has to agree with the view of some scholars [25, 169; 32, 34] considering responsibility of a collective subject exactly in such a way.

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DISQUALIFICATION OF COURT-APPOINTED TRUSTEES AS A KIND OF ADMINISTRATIVE RESPONSIBILITY

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In the article is given a critical analysis of the norms of the Code on Administrative Offences of the RF and law-enforcement practice of arbitration courts of the Russian Federation regarding the application kinds of administrative responsibility to a court-appointed trustee. Takes place the comparison of disqualification of court-appointed trustees with the norms of legislation on bankruptcy about court-appointed trustee's suspension from the duties of a winding up, external, administrative manager of a debtor. Considered problematic issues of applying disqualification to a court-appointed trustee.

Keywords: court-appointed trustee, responsibility of a court-appointed trustee, disqualification, administrative responsibility, bankruptcy.

According to paragraph 8 part 1 article 3.2 of the Code on Administrative Offences of the RF [1] (hereinafter – CAO RF) disqualification is a type of administrative penalties imposed for administrative offenses.

The law stipulates that "disqualification shall consist of depriving a natural person of the right to hold leading positions in an executive administrative body, or to participate in a board of directors (supervisory council), or to be engaged in business as the head of a legal entity, as well as to be engaged in management of a legal entity in other cases provided by the legislation of the Russian Federation" (part 1 article 3.11 CAO RF)

Thus, disqualification is a restriction of the right to work and the right to freely use their abilities and property for entrepreneurial activity.

"Court decision on disqualification prohibits exercising:

- organizational-and-managerial or administrative-and-economic functions in a body of a legal entity;

- powers of a Board of Directors member;

- entrepreneurial activity in managing of a legal entity" (part 3 article 3.11 CAO RF)

According to paragraph 1 article 32.11 CAO RF a decision on disqualification after the entry into force must be executed immediately by the person, held administratively responsible, through terminating management of a legal entity

Article 14.13 CAO RF establishes administrative responsibility for unlawful actions in bankruptcy. Sanction of this article provides penalty to a court appointed trustee in the form of an administrative fine in the amount of from 2,500 RUR to 5,000 RUR or disqualification for a period of six months to three years.

In view of the above, the opinion of Yu. V. Kravchenko, [7] that in respect of a court appointed trustee disqualification can be applied by court for a fictitious or intentional bankruptcy, seems to be erroneous (see article 14.12 CAO RF).

In our opinion, court appointed trustee is not a subject of administrative offence under article 14.12 CAO RF, on the basis of the following.

By virtue of paragraph 4 article 20.3 of the Federal Law No. 127-FL from 26.10.2002 "On Insolvency (Bankruptcy)" [2] (hereinafter – the Law on Bankruptcy) in conducting bankruptcy procedures a court-appointed trustee, approved by arbitral court, is obliged to act in good faith and reasonably in the interests of a debtor, creditors and society.

By implication of the Law on Bankruptcy one of the important objectives of a court appointed trustee is to ensure balance between the interests of creditors and debtor, as well as the realization of their legitimate rights [8].

"The main range of the rights and duties of an insolvency practitioner is defined in article 129 of the Law on Bankruptcy. Paragraph 2 of article 20.3 of the Law on Bankruptcy provides that a court-appointed trustee in a bankruptcy case must identify the signs of intentional and fictitious bankruptcy in accordance with the federal standards, and report about them to the persons participating in the bankruptcy case, to the self-regulatory organization whose member is the court-appointed trustee, to creditors' meeting and authorities responsible for the initiation of cases on administrative offenses and consideration of information about crimes. The given rule of law is general for all court-appointed

trustees. Resolution of the Government of the Russian Federation No. 855 from 27.12.2004 [3] approves the Temporary rules of check by court-appointed trustees the presence of signs of fictitious and intentional bankruptcy (hereinafter - the Rules). Paragraph 14 of the Rules establishes that by the results of the check a court-appointed trustee shall prepare a report on the presence (absence) the signs of a fictitious and intentional bankruptcy, which is represented to the meeting of creditors, arbitration court, and not later than 10 working days after the signing to the body, whose officials, according to CAO RF, are authorized to draw up reports on administrative offenses provided for by article 14.12 CAO RF for taking the decision to initiate proceedings on the case of an administrative offense (paragraph 15 of the Rules). In accordance with paragraph 11 of the Rules detection of the signs of a fictitious bankruptcy is carried out in the event of the commencement of bankruptcy proceedings upon application by debtor" [6].

Thus, as the subject of an offence provided for in article 14.12 CAO RF may act the head of a debtor or the founder (participant) of a legal entity or an individual entrepreneur".

The current version of the Law on Bankruptcy provides that "a court-appointed trustee is a subject of professional activity and exercises the regulated by this law professional activity by engaging in private practice" (see paragraph 1 article 20 of the Law on Bankruptcy).

The provisions of part 3 of article 14.13 CAO RF establishing responsibility for offenses in the field of entrepreneurial activity are focused on providing the established procedure of bankruptcy, which is an essential condition for economic recovery, as well as for the protection of rights and legitimate interests of owners of organizations, debtors and creditors.

According to part 1 article 3.1 CAO RF "administrative penalty is an established by the state punitive measure for committing an administrative offence, and it shall be applied for the purpose of preventing the commitment of new offences either by the offender himself, or by other persons".

Meanwhile, application of disqualification to court-appointed trustees is not always justified. This is due to the presence in the bankruptcy legislation the institute of removal court-appointed trustees from execution the duties of bankruptcy, external, administrative manager of a debtor.

Grounds for removal a court-appointed trustee from the duties of implementation bankruptcy proceedings are stipulated by article 145 of the Law on Bankruptcy.

According to paragraph 1 article 145 of the Law on Bankruptcy a court-appointed trustee "may be dismissed by the court of arbitration from the duties of a bankruptcy trustee:

1) at the request of the creditors' meeting (creditors' committee) in the case of non-performance or improper performance of duties of a bankruptcy trustee;

2) due to satisfaction by the arbitration court of a complaint of a person involved in the bankruptcy case against non-performance or improper performance of bankruptcy trustee duties, provided that such non-performance or improper performance of duties has violated the rights or interests of the complainant, as well as has involved or could result in the losses of a debtor or its creditors;

3) in the case of revealing the circumstances that prevent the approval of a person as bankruptcy trustee, and if such circumstances arise after the approval of a person as bankruptcy trustee".

Removal of a bankruptcy trustee from its duties is carried out by the arbitration court.

According to the explanations given in paragraph 56 of the Resolution of the Plenum of the Higher Arbitration Court of the Russian Federation No. 35 from 22.06.2012 "On Some Procedural Matters Related to the Bankruptcy Proceedings Consideration" [4], "the removal of a court-appointed trustee at the request of creditors' meeting or a party participating in a bankruptcy case is due to the fact that the court-appointed trustee is approved for the implementation of bankruptcy procedures and obliged in their conduct to act in good faith and reasonably in the interests of debtor, creditors and society (article 2 and paragraph 4 article 20.3 of the Law on Bankruptcy), but non-performance or improper performance of court-appointed trustee's duties, expressed in violation of the law when exercising its powers, leads to a reasonable doubt about the ability of this trustee to the proper conduct of bankruptcy proceedings. Taking into account exclusivity of the above measure, the inadmissibility of the actual imposition of ban on the profession and the need to limit in time the risk of responsibility for violations, the court should also take into account that trustee's violations committed by negligence, minor violations, violations that have not caused significant damage, as well as violations that took place a considerable time (several years or more) ago cannot serve as the reason for suspension".

Bankruptcy trustee cannot be dismissed due to violations that are not significant. Dismissal of a bankruptcy trustee should be used to the extent when it allows restoring violated rights or eliminating the threat of their infringement [5].

Under the losses, inflicted to a debtor and its creditors, is meant any reduction or loss of the possibility of increasing bankruptcy estate, which occur as a result of unlawful actions (inaction) of a bankruptcy trustee, at that, the rights of the debtor and the bankruptcy creditors shall be considered violated whenever the damage is inflicted [5].

Thus, in case if a court determines the fact of possible infliction of creditor losses as a result of recognized by the court actions (inaction) of a bankruptcy trustee that do not meet the requirements of the Law on Bankruptcy and violate the rights and legitimate interests of a creditor, the bankruptcy trustee pursuant to paragraph 1 article 145 of the Law on Bankruptcy shall be subject to suspension from the performance of its duties during conducting the procedure of bankruptcy proceedings regarding the debtor.

"In accordance with the third subparagraph of paragraph 3 article 65, subparagraph eight of paragraph 5 article 83, subparagraph four of paragraph 1 article 98 and subparagraph four of paragraph 1 article 145 of the Law on Bankruptcy court may remove a court-appointed trustee from performing its duties in case of revealing circumstances that prevent approval of a person to the position of court-appointed trustee (paragraph 2 article 20.2 of the Law), and if such circumstances arose after the approval of the person to the position of court-appointed trustee. In those exceptional cases where the commission by a court-appointed trustee of repeated willful gross violations in this or in other bankruptcy cases, confirmed by entered into legal force judicial acts (for example, on its dismissal, on the recognition of its actions illegal or recognition expenses incurred by him unreasonable), leads to a substantial and reasonable doubts on the presence of proper court-appointed trustee's competence, honesty or independence, court may on its own initiative or at the request of the parties to a case to refuse approval such trustee or remove it. This issue is considered by the court in hearings about which is notified the debtor, applicant (in approval or dismissal of a temporary administrator), court-appointed trustee or a person whose candidature is proposed for the approval to such position, as well as its self-regulatory organization of court-appointed trustees, representative of creditors' meeting (committee), representative of the owner of debtor property – an unitary enterprise or a representative of the founders (participants) of debtor, control (supervision) authority. In the ruling on the appointment of court hearing the persons involved in a case (arbitration process on a case) are invited to share their views on the issue that are to be accounted for at taking court decision, and to make available their information on cases of violations of legislation by a court-appointed trustee" [4].

As indicated above, the person to who is applied such a penalty as disqualification is not entitled to perform the duties of court-appointed trustee in all bankruptcy proceedings.

Accordingly, there may be a situation where the disqualification of a court-appointed trustee in connection with bringing to administrative responsibility for irregularities in the implementation of a certain bankruptcy procedure leads to the fact that the person cannot perform its duties for all the procedures, in which it is approved as a court-appointed trustee.

However, this may impair the interests of debtors and creditors. In particular, if a court-appointed trustee is acting properly in all other procedures or procedure is nearing completion, and in connection with the disqualification of the trustee it is necessary to appoint a new bankruptcy trustee, what ultimately leads to delays in the bankruptcy proceedings, and as a consequence, violation of creditors interests (including property interests).

As indicated above, the bankruptcy legislation provides for an effective mechanism for the removal of a court-appointed trustee, which allows to take into account the views of all stakeholders, particularly the creditors of a debtor.

As practice shows, disqualification is applied as a punishment not so often. For example, the Arbitration Court of the Omsk region in 2009 imposed penalty in the form of disqualification in five cases, in 2010 – in two [9].

Disqualification is generally applied to persons previously brought to administrative responsibility, and, seems to be conditioned by an insignificant fine.

For example, if a person has repeatedly been brought to administrative responsibility in the form of a fine of 5,000 RUR, respectively, it is reasonable to impose a more severe punishment at the next violation of the Law on Bankruptcy, since the sanction of part 3 article 14.13 CAO RF provides punishment for a court-appointed trustee in the form of an administrative fine in the amount of from 2,500 RUR to 5,000 RUR or disqualification for a period of six months to three years.

Accordingly, a penalty in the form of disqualification takes place.

It is necessary to take into account that each of the disqualified is appointed as a court-appointed trustee simultaneously, as a rule, in 10-15 bankruptcy procedures of different debtors.

Accordingly, the question arises, if a court-appointed trustee commits violations in one of several procedures, in which it is approved as a bankruptcy trustee, whether is it in the interest of creditors to remove it from its duties in other procedures?

Of course, unscrupulous persons or persons with doubtful professionalism should not be allowed to undertake such an important function as implementation of bankruptcy. Obviously, if a court-appointed trustee makes serious violations during one of the procedures, it is possible to question the proper performance of duties during other procedures.

It is proposed to increase the amount of administrative penalty for misconducts in bankruptcy proceedings, to differentiate punishment depending on consequences (the presence of infliction property damage to creditors). Currently an administrative offense, the responsibility for which is provided by part 3 article 14.13 CAO RF, is formal, that is, for bringing a person to administrative responsibility for the offense any negative consequences of the failure to perform bankruptcy trustee duties established by the Law on Bankruptcy have no significance and it is not required to prove the damage inflicted by the offense.

Disqualification of a court-appointed trustee shall be the ground for denial of approval as a court-appointed trustee for the future, the issue of the removal from other procedures must be decided by creditors meeting.

In addition, in view of the possibility of dismissal and release of a court-appointed trustee from its duties based on the results of a review of relevant statements within the framework of insolvency (bankruptcy) cases, it seems appropriate to set different penalties for administrative offences in the field of implementation of bankruptcy.

Moreover, the very approval procedure of a court-appointed trustee provides for the considering the views of creditors, so if the court-appointed trustee fails to perform its duties, it is clear that part of the responsibility for this lies with the lenders.

In this case, to protect the rights of creditors and other parties involved in a bankruptcy case, it is necessary to make information about the availability of satisfied complaints and applications on bringing a court-appointed trustee to administrative responsibility more open, so that lenders could more reasonably offer this or that candidacy of a court-appointed trustee for approval in a case on bankruptcy.

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Yuritsin A. E., Lavrov Yu. B.

PROCEDURAL ASPECTS OF BRINGING LEGAL PERSONS TO ADMINISTRATIVE RESPONSIBILITY FOR INCLUSION TO A TREATY CONDITIONS INFRINGING ON THE RIGHTS OF CONSUMERS

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Here are considered the issues of state regulation of contractual relations of private subjects of law to protect the rights of consumers in the absence of the possibility of consumers in most cases to affect the terms of contracts for the sale of goods, rendering services, granting loans, and so on. The authors identify the problem of bringing legal persons to administrative responsibility for the inclusion in a contract conditions infringing on the rights of consumers. Examined the issues of determining the guilt of legal persons.

Keywords: administrative responsibility of legal persons, bringing legal persons to administrative responsibility, guilt of a legal person, consumer's rights, infringement on the rights of consumers, responsibility for the infringement on the rights of consumers, terms of treaties with consumers.

The principle of the legal equality of participants in civil-law relations enshrined in article 1 of the Civil Code of the Russian Federation [1] (hereinafter - CC) does not necessarily mean that the parties to obligations are economically equal. Despite the fact that currently has been installed freedom of parties in the selection and harmonization of contract terms, in some cases, guided by the need to safeguard the rights of consumers, such freedom is objectively needed to be restricted. So, civil legislation separately establishes legal structures for the protection of the interests of the economically "weak" party of legal relations, to which belongs a public contract, as well as contracts where one of the parties is a consumer (the contract of retail sales, domestic contract).

One of the most significant normatively-legal acts in the sphere of protection the interests of legal relations participants – individuals is the RF Law "On Protection of Consumer Rights" [2] (hereinafter – the Law on Protection of Consumer Rights), whose preamble states that a consumer is a citizen having intention to order or purchase, or ordering, buying or using goods (works, services) solely for personal, family, household and other purposes not related to business activities. In accordance with paragraph 1 article 16 of the Law on Protection of Consumer Rights contract's terms, which violate the rights of a consumer, compared with the rules established by the laws or normative acts of the Russian Federation in the field of consumer protection, are recognized void.

It should be noted that the contracts with participation of a citizen-consumer in most cases, are adhesion contracts, concluding which the consumer cannot affect the inclusion of certain terms in the contract. In this regard, in addition to civil-law measures of consumers protection, the Code on Administrative Offences of the Russian Federation [3] (hereinafter – CAO RF) in accordance with part 2 article 14.8 provides for administrative responsibility for the inclusion in a contract the terms that infringe statutory rights of a consumer.

The facts of such violations of consumer rights are observed in various areas of the sale of goods, performance of work, rendering of services. This could include cases of inclusion of seller services, delivery and assembly in the cost of goods; inclusion in a contract provisions on non-repayment of the amounts paid for educational services; inclusion by the banks in a loan agreement conditions that infringe the rights of consumers: the right of bank to the unilateral termination of contract and the interest rate change for a loan, payment of unreasonable fees for the provision of credit, the choice of jurisdiction in the location of a bank.

When bringing legal entities to administrative responsibility for the inclusion in a contract the conditions that infringe the rights of consumers, it is

important to determine the existence of guilt in the commission of the offense.

The issue of determining the guilt of legal persons is highly relevant, because in a free market exists a tremendous number of organizations that enter into various types of legal relations, including those associated with the violation of law norms. The problem lies in the fact that guilt is a mental attitude of a subject to the acts committed by it. At the same time legal entity is a derivative personality that objectively does not have consciousness and, therefore, any attitude to the acts committed. In this context, the notion of guilt in relation to legal persons is interpreted differently than in respect of natural persons.

The most detailed legal entities guilt was described by Professor V. D. Sorokin, who formulated the following concepts:

- subjective (mental) direction;
- behavioral concept;
- behavioral-psychological theory of guilt;
- concept of social guilt (responsibility of a legal person for the guilt of its employee).

The authors of the first concept consider guilt of legal persons as guilt of its officials and staff. Guilt is represented as a psychological category and is manifested as the attitude of representatives on behalf of an organization to a wrongful act committed by this organization. The said direction was reflected in the Tax Code of the Russian Federation [4], where in article 110 the guilt of a legal entity shall be determined according to the guilt of its officials or its representatives, actions (inaction) of which led to the commission of an offense.

Behavioral concept is based on the fact that guilt is considered as a subjective ground of responsibility. Guilt of a legal entity is defined as a set of negative elements conditioned by the disorganization of legal person activity, failure to take the necessary measures for the proper performance of its duties, as well as failure to make efforts to prevent offences and eliminate their causes.

Proponents of behavioral-psychological approach believe that to confirm an organization guilt is sufficient to determine that an offense was the result of a defect of the organization itself, its disorganization; that the cause of non-fulfillment of duties of the organization was a lack of efforts by the team of the organization, because objective expression of guilt can cover only the reckless form of its manifestation. Thus, the subjective understanding of guilt can be applied in the case of bringing organizations to responsibility for offenses of material nature; objective understanding of guilt should cover only reckless form of manifestation and applies to the formal constructions of collective deeds.

The concept of social guilt (or the theory of social responsibility) is reflected in the legislation of the United States, Holland, etc. According to it the guilt of a natural person has a psychological content, and the guilt of legal persons – socio-ethical.

Summing up the above mentioned concepts can be detected objective and subjective approaches in the understanding of guilt in administrative law. Objective guilt is a guilt of an organization, depending on the nature of a particular wrongful act of a legal entity, who has committed and (or) has not prevented this deed. Subjective guilt lies in the relation of an organization in the person of its representatives to a wrongful act committed by this organization. Here we should agree with D. I. Cherkanov that today the choice of approach to guilt (subjective or objective one) largely depends on the specifics of legal relations [9].

According to M. V. Puchkova, actions provided for by the norm of part 2 article 14.8 CAO RF from the subjective side can only be intentional [6, 460]. In accordance with article 2.2 CAO RF, an administrative offence shall be deemed willful, when the person who has committed it realized the wrongful nature of it action (omission), could foresee the harmful consequences thereof and wished these consequences, or deliberately allowed them, or treated them indifferently. Thus, in the case where the subject of the mentioned offense is a legal entity, it is very difficult to prove deliberate form of guilt under such regulation of intent on the part of the legislator.

Elucidation of legal persons' guilt of the committing an administrative offence is a prerequisite for taking decision on bringing to administrative responsibility. It is exercised on the grounds of:

- data contained in the protocol on an administrative offence;
- explanations of a person who is on trial in connection with a case concerning an administrative offence (including about the lack of opportunities to comply with the relevant rules and norms, taking all possible steps to comply with them);
- other evidences provided for by part 2 article 26.2 CAO RF.

This implies the conclusion that legal persons are not deprived of the right and opportunity to prove the absence of guilt of an administrative offense [5].

B. P. Noskov and A. V. Timoshin correctly note that subjective approach to guilt and arising from it forming of guilt of a legal entity through its representatives can be justified by the fact that the legal capacity of a legal entity is realized through its bodies [7]. In other words, if a legal entity – is a legal fiction, then why not to construct legal entity's guilt through step structure of guilt of legal entity's representatives, which is based on guilt – a mental attitude of individuals [9].

In our view, it is necessary at the legislative level to resolve both the issue of guilt of legal entities on inclusion in a contract conditions that infringe the rights of consumers, and the issue of determining legal persons' guilt of administrative offenses in general. At that we should take objective criterion as a basis, and determine the guilt of a legal entity in connection with the fact of its offense and the existence of a causal link between the actions (or inaction) of the legal entity and occurred socially-harmful consequences. Professor V. D. Sorokin absolutely correct noted that it is necessary "to say directly that we are in favor of objective imputation regarding bringing legal persons to responsibility" [8, 47].

Such an approach to legal regulation is extremely important in respect of the administrative offence under part 2 article 14.8 CAO RF. Adoption of objective criterion in determining guilt of a legal entity for inclusion in a contract conditions that infringe the rights of consumers will properly line up legal practice and bring public and private interests in legal relations with the participation of citizens-consumers in proper balance.

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ANNOUNCEMENT OF VI ALL-RUSSIAN SCIENTIFIC AND PRACTICAL CONFERENCE “ACTUAL ISSUES OF ADMINISTRATIVE RESPONSIBILITY” TO BE HELD MAY 24, 2013 IN OMSK LAW ACADEMY WITH THE SUPPORT OF OMSK REGIONAL BRANCH OF THE ALL-RUSSIA PUBLIC ORGANIZATION «RUSSIAN LAWYERS ASSOCIATION»

Dear colleagues!

We invite higher-education teaching personnel of law schools, employees of legal research institutions, law enforcement bodies, representatives of judicial authorities to take part in VI all-Russian scientific and practical conference “Actual Issues of Administrative Responsibility” to be held May 24, 2013 on the base of Omsk Law Academy with the support of Omsk regional branch of the all-Russia public organization “Russian Lawyers Association”.

Reports and speeches of the participants of the conference will be published in a separate collection.

Speaking notes and articles in electronic format *Win Word*, font *Times New Roman* (size 14), interval – one and a half, are accepted until May 06, 2013 to E-mail: kositsin.ia@omua.ru (with the theme of mail “Conference”)

Start of the conference at 10 a.m., registration of participants from 9.30 a.m.

Conference venue: #644010, Omsk, 12 Korolenko street.

To get information on the organization and conduct of the conference, please call: (3812) 31-92-45 Department of Administrative and Financial Law, 8-962-034-06-84 – Kositsin Igor Alekseevich – Associate Professor of Department of Administrative and Financial Law.

organising committee

ANNOUNCEMENT

Department of Administrative and Informational Law of law faculty at Federal State Educational Budgetary Institutions of Higher Vocational Education "Financial University under the Government of the Russian Federation" invites you to participate in the International scientific-practical conference of higher-education teaching personnel, researchers and practitioners "Topical Issues of Administrative and Information Law", to be held April 12, 2013.

The Conference will be held in the Financial University under the Government of the Russian Federation: #109456, Moscow, 4th Veshnyakovskii passage, building 4; phones for inquiries: 8 (499) 7965320, 8 (909) 6991752.

Registration starts at 10 a.m.

The time of the Conference – from 11a.m. to 4 p.m.

Objective: to develop actual directions of improving administrative and information law.

Tasks:

- scientifically discuss major issues of administrative and legal regulation of public administration system;
- analyze the issues of customs regulation in EAEC Customs Union;
- discuss ways of improving informational law and legal regulation of information security;
- analyze administrative and informational legal relations in the field of environmental protection and ecological security.

Expected result – development of scientifically based proposals on improving administrative, informational, customs and environmental legislation.

Those wishing to participate in the work of the Conference please fill in the application form indicating the theme of report and send the application form electronically before March 23, 2013 for the formation of the Conference program to: kafapvgna@inbox.ru

The results of the conference are planned to be published in a collection.

REQUIREMENTS FOR ABSTRACTS:

Reports are accepted up to 12 pages (font – Times New Roman, size 14, spacing 1.5, fields – 2 sm., paginal footnotes).

Reports are sent to the Department "Administrative and Informational Law" by e-mail: kafapvgna@inbox.ru before March 10, 2013.

STRUCTURE OF THE ABSTRACTS:

1. Surname, name, patronymic of participant (fully).
2. Country, city.
3. Place of work, position.
4. Scientific degree, scientific rank.
5. Contact phone number, fax (if available).
6. E-mail.
7. Postal address, zip-code.
8. Name of abstract.
9. Text of abstract.
10. List of references.

Organising committee of the conference

The organizers of this conference have already carried out similar a scientific event on May 16, 2012, when in All-Russian State Tax Academy of the Ministry of Finance of the Russian Federation was held All-Russian scientific-practical conference "Administrative Jurisdiction". Proceedings of the Conference from May 16, 2012 year were published in the journal "Juridical World", 2012, no. 8. However, the broad scientific community was not given an opportunity to get acknowledged with the recommendations of this Conference. Therefore the editorial board considers it its duty to represent to all the readers of the journal the text of recommendations learned from the All-Russian scientific-practical conference "Administrative Jurisdiction".

RECOMMENDATIONS OF THE ALL-RUSSIAN SCIENTIFIC-PRACTICAL CONFERENCE "ADMINISTRATIVE JURISDICTION"

The Conference was organized by the Department of administrative law, Faculty of law of the All-Russian State Tax Academy, Ministry of Finance of the Russian Federation

May 16, 2012

Recommendations of the conference can be used for the efficient and effective functioning of the system of executive power bodies, for developing a unified administrative-jurisdictional legislation and procedural-legal mechanism of its

implementation, for the establishment and application of legal mechanisms of tax administration, as well as for other tasks.

Science of administrative law and process is the most popular area of legal knowledge.

However, the development of the branch of administrative law and process is contradictory; the tasks in administrative-legal and administrative-procedural areas require new scientific approaches and solutions.

The practice of administrative and jurisdictional activities of executive authorities is far from perfect.

So, according to a research note to a statistical report on the work of arbitration courts of the Russian Federation in 2011, the proportion of cases arising from administrative and other public legal relations, where applicants' requirements were met, amounted to an average of 52%. More often were canceled decisions of the bodies exercising control over the use of land (64%), control bodies in the field of environmental protection (63%), and tax authorities (62%).

Analysis of the provided statistical data leads to the conclusion about the necessity of participation of legal science in the rulemaking process, especially concerning the improvement of legislation that regulates the implementation of administrative jurisdiction in Russia, as well as the need for revision on the subject of expediency of administrative coercive measures in the various cases of tort manifestations by the subjects of entrepreneurial activity.

Conference participants noted the weak or insufficient development of the most significant issues that act as research objects of the science of administrative law and procedure. In addition, they recognized the need to rethink previously obtained scientific results in connection with the new economic, social, political and legal (including international-law) realities.

Against the background of modernization of management processes taking place in the system of public administration, administrative process is at the leading position.

That is, administrative process is designed to systematical regulation of public administration – activity of primarily executive power, which exercise managerial process through administrative-procedural norms.

Recommendations made by the participants of the conference are both theoretical and practical.

Participants of the conference note:

1. Available in Russia concepts of administrative process do not allow implementation of comprehensive and holistic covering of the modern system of

administrative process, what, in turn, reduces the efficiency of public authority bodies and government as a whole.

For the unification of the basic concepts and institutes of the system of administrative process is proposed to take as a base the **Unified concept of the system of administrative process**.

According to the Concept, the system of **administrative process** includes three components of its institute – administrative procedures, administrative jurisdiction and administrative justice.

Administrative procedures regulate lawmaking or positive law enforcement (non-jurisdictional) activity of a wide range of executive public authorities regarding the exercising of the rights and duties of individual and collective subjects in management, which is carried out in administrative and procedural form.

In the process of implementing the functions of public administration by bodies of executive power some contradictions may arise – disputes, conflicts of interest, including service disputes in the system of state service, conflictual phenomena in the interaction with citizens, legal persons, etc. Such conflicts are most likely to be resolved by administrative-legal means through administrative proceedings, applied in out-of-court or pre-trial order, i.e., through the institute of ***"Administrative jurisdiction"***.

Administrative justice – is an implementation of justice, mainly on the cases on administrative offences and implementation of judicial control over the legality of normative and non-normative legal acts adopted by public authorities and their officials.

Within the framework of the institute of administrative justice ***judicial administrative-jurisdictional process*** resolves administrative cases and disputes. It is exercised in the form of justice through administrative proceedings.

2. Included in the system of administrative process the institute of "Administrative jurisdiction" requires a unified conceptual approach to its understanding.

First, further development of the theory of administrative jurisdiction in all its components is needed. It is important to determine its basic concepts and, above all, the key one – "administrative jurisdiction".

In general we can say that the majority of scientists in defining the concept of "administrative jurisdiction" show solidarity in defining of its subject, basing on the subject matter of administrative law. However, the legislative determination of the studied concept would develop a common approach of law enforcers to its implementation, which will be ultimately promoting to complying with the rights and freedoms of an individual, and increasing the quality of life of the population.

Second, scientific developments of problems of administrative jurisdiction should help to improve its normative framework.

Administrative-jurisdictional activity consists of the administrative proceedings of jurisdictional nature regarding consideration and resolution of administrative cases, disputes, exercising of sanctions and protection of protective legal relation with the use of measures of state coercion (administrative, disciplinary and other), implemented in administrative-procedural form.

Each variety of administrative proceedings shall be based solely on the rules of law contained in the laws of the Russian Federation or its subjects.

Third, proceedings on administrative offences require further legislative codification

Substantive rules on administrative responsibility should form the content of the RF Code on Administrative Responsibility. It should define the grounds and measures of this type of legal responsibility.

Codification of procedural norms defining the mechanism for implementing substantive rules on administrative responsibility must be addressed through the preparation and adoption of the Administrative and Jurisdictional Code of the Russian Federation.

3. Legal nature of tax offences is administrative, and a number of their compositions defined by the legislator coincides with similar compositions of administrative offences up to the degree of mixing.

Presence of two parallel to the existing, normatively separate, but constantly intersecting systems of legal responsibility complicates both the very legislative regulation and law enforcement practice.

Today, two almost indistinguishable systems of sanctions for deeds that have the same legal nature, which are used simultaneously by the same federal body of executive power, are formed in the legislation.

This situation creates a duality not only in the practical law enforcement, but also "blurs" doctrine, forcing to artificial search for grounds for separation tax responsibility from administrative one, even though they do not really exist. It would be more appropriate to send these research efforts to a more positive and rational direction, that is, to improve the system of administrative responsibility in the area of taxes and fees.

The use of unified approaches to the formulation of substantive and procedural-legal rules will streamline these relations, as well as will let to a greater extent implement in this area of public relations major general legal principle – the principle of the rule of law, one of the facets of which is the concentration of a totality of sanctions of one legal nature in a large codified act, application of common

approaches to the differentiation of sanctions depending on the severity of an offense, formation of the general theory of such relations, general categorical apparatus, etc.

4. Institute of administrative jurisdiction of tax authorities is interconnected with the so-called tax administration. After the transition to a market economy the theory and practice of taxation acquired the term of "tax administration". A more correct and having the right to live in the present conditions of development of our statehood is the definition of "Public administration in the area of taxes and fees", which is understood as an integrated system of statutory measures and activities conducted by public authorities of executive power within their competence to obtain full and reliable information about the current and potential volume of revenue from taxation, planning and forecasting of tax revenue, tax regulation, tax control, as well as prevention of tax delinquency and overrun of costs implemented for the improvement of the mechanism of tax revenues to the budget system while optimizing.

5. The importance of the institute of administrative jurisdiction in the protection of existing social relations, the complexity and scale of the norms of administrative-tort legislation, the difficulties in their application by judges and other authorized bodies (officials) dictate the need for substantial corrections in the programs of higher legal education.

Text of the recommendations is submitted for publication by the head of the Department of "Administrative and Informational Law" at Federal State Budgetary Educational Institution of Higher Professional Education "Financial University under the Government of the Russian Federation", Doctor of Law, Professor M. A. Lapina.

ANNOUNCEMENT FROM THE EDITORIAL BOARD

Editor-in-chief received a letter from Harris Manchester College in the University of Oxford, Russian translation of which has been decided to publish in the journal due to the fact that the ongoing round-table conferences may be of interest to authors and our readers working in the field of education.

We would like to remind you that registration will close on February 15, 2013 for the **15th Annual International Conference on Higher Education, March 17 – March 21, 2013** at Harris Manchester College in the University of Oxford, Oxford, England. Harris Manchester College is one of the thirty-eight colleges that form the University of Oxford and was founded in 1786. We are pleased to **invite** you to become a member of this Round Table. Membership is limited to approximately thirty-five (35) interdisciplinary scholars who have a particular interest in this subject. We have been hosting programs in Oxford since 1989.

Alternatively, we are also hosting a few other sessions in 2013 that may be of interest to you instead:

March 10 – 14, 2013 – Childhood Education and Literature

March 17 – 21, 2013 – Women and Education

July 28 – Aug 1, 2013 – Critical Public Issues

July 28 – Aug 1, 2013 – Religion

Aug 4 – 8, 2013 – Health, Aging and Nutrition

Aug 4 – 8, 2013 – General Education

You are invited and encouraged to make a presentation and to provide a paper on a relevant aspect of the topic, however your participation as a member of the Round Table is not contingent thereon and you can serve on a panel or as a discussion leader. Papers presented at the Round Table may be subsequently submitted for publication in the *Forum,* a journal of the Oxford Round Table. Papers considered for publication in the *Forum* are evaluated by peer reviewers as to technical and substantive quality and for potential to make a significant contribution to new knowledge in the field.

Should you accept this invitation you will be joined on the programme by **Dr Richard Margrave** is a senior policy and communications professional with direct experience of journalism, the legislative and political environment and the formulation of national and international policy. He has worked directly for a number of politicians in the UK and European Parliament, including the Rt Hon Jack Straw

MP, former Home Secretary, Foreign Secretary and Justice Secretary under Prime Ministers Rt Hon Tony Blair and Rt Hon Gordon Brown. Dr Margrave received his BSc(Econ) from University College, London and his PhD in Economics from the London School of Economics and Political Science. He is a Member of the National Union of Journalists, the Chartered Institute of Public Relations in the UK and the Royal Commonwealth Society.

Topics of Interest will include:

University Leadership and Administration

- Reform Initiatives in Education
- Performance Standards
- Accountability
- Outreach and New Technologies
- Social Networking
- Globalization of Academic Talent
- Continuing Education
- Rising Costs and Declining Quality
- Ensuring Access and Equity
- Balancing the Costs
- College and University Rankings
- For-Profit Universities

Development

- Responses to the Great Recession
- Coordinating Programs
- Assuring Progress in Annual Giving
- Stimulating Corporate Connections
- Sustaining Alumni Interest
- Programs for Major Initiatives
- Tactics for a Capital Campaign

Student Affairs

- Student Debt Advisement
- Career Planning
- Residential Life: The Oxford Model
- Graduation Rates in Measuring Quality
- Strategies to Enhance Freshman Success
- Redesign of Extracurricular Activities
- Reducing the Stress of Financial Aid
- Collaboration of Academic Affairs and Student Affairs

Human Resources

- Employee Retention
- Recruitment and Hiring
- Employee Relations
- Personnel Policies
- Collective Bargaining
- Employment Discrimination
- Diversity in the Workplace
- Health Care and Employment

Members of the Oxford Round Table have access to an array of academic, cultural and social resources, including the Oxford Union Debating Society, colleges and halls of Oxford dating back to 1204, museums, theatres, bookstores, college chapels, river boating, literary pubs, political clubs and may, on recommendation, become official readers of the venerable Bodleian Library of the University, founded by Duke Humphrey circa 1440 and refounded by Sir Thomas Bodley 1602. A free afternoon and evening will be available on Tuesday for independent travel to **London** (one hour south of Oxford), Stratford-upon-Avon, Bath, Stonehenge, Salisbury, Cambridge or many of the other cultural sights in England.

The conference will run from Sunday night through Thursday morning. We will have reception and dinners in the Olde Dining Hall on Sunday, Monday and Wednesday nights where the Oxford professors and students dine when university is in session. Lunches are provided on Monday, Tuesday and Wednesday along with tea/coffee/biscuit breaks during the meeting. You can also reserve a room in the Oxford University dormitory at Harris Manchester College where students stay during term time. More detailed information concerning the schedule of events and the registration fee can be found on our web site.

In order to ensure that you are registered in a timely and accurate manner, we recommend that you register on our website at www.oxfordroundtable.co.uk. Should you be unable to attend, we would welcome your nomination of a colleague to attend in your place. We look forward to hearing from you.

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