The Topical Issues of Public Law

SCIENTIFIC-PRACTICAL INFORMATIONAL EDITION
REGISTERED IN THE ROSKOMNADZOR. REGISTRATION NUMBER - EL. NO. FS 77-48634, 20.02.2012.
IS PUBLISHED MONTHLY. THE MAGAZINE HAS BEEN PUBLISHED SINCE JANUARY, 2012.

No. 7 (19) 2013

Editor in chief of the magazine:
Kizilov V.V., c.j.s., Omsk

Chairman of the editorial board:
Denisenko V.V., d.j.s., Rostov-on-Don

The editorial boar:
Channov S.E., d.j.s., Saratov
Ertel' A.G., c.j.s., c.e.s. Krasnodar
Kositsin I.A., c.j.s., Omsk
Lapina M. A., d.j.s., Moscow
Maile A.D., Doctor of law, Speyer (Germany)
Shhukina T.V., d.j.s., Lipetsk

The editorial staff:
Rubtsov D.V.
Markar'jan A.V., Engels
Layout and translation into English:
Kabulin L.A., Engels
Editorial office's telephone: +7 (8453) 75-04-49

Address for correspondence:
Omsk, PO Box 1526, zip-code 644073

E-mail: topispublaw@mail.ru

Glavnyj redaktor zhurnala:
Kizilov V.V., k.ju.n., Omsk

Predsedatel' redaktsionnogo soveta:
Denisenko V.V., d.ju.n., Rostov-na-Donu

Redaktsionnyj sovet:
Channov S.E., d.ju.n., Saratov
Ertel' A.G., k.ju.n., k.e.n. Krasnodar
Kositsin I.A., k.ju.n., Omsk
Lapina M. A., d.ju.n., Moskva
Maile A.D., Doktor prava, Shpaier (Germaniya)
Shhukina T.V., d.ju.n., Lipetsk

Redaktsija:
Rubtsov D.V.
Markar'jan A.V., Engel's
Verstka i perevod na angl. jazyk:
Kabulin L.A., Engel's
Telefon redaktsii: +7 (8453) 75-04-49

Adres dlja korrespondentsii:
644073, Omsk, a/ya 1526

E-mail: topispublaw@mail.ru

The issue allowed for posting on the web site
on the 20 of September 2013

Vypusk dopushhen k razmeshheniju na sajte
20.09.2013

Total or partial reproduction of materials without written permission of the authors of articles or editorial is prosecuted

© Kizilov V.V.

•CONTENTS•

Universal Decimal
Classification 342.9 : 343.85

Aparina I. V.

ADMINISTRATIVE TRUSTEESHIP AND POST-PENITENTIARY OVERSIGHT: LEGAL REGULATION ISSUES[1]

Aparina Irina Vyacheslavovna,
c.j.s. (PhD in law), Head of the chair "Theory of state and law" at Municipal Budgetary General Education Institution "Volga Institute of Economics, Pedagogy and Law"

Here is noted that the lack of attention to the problems of social rehabilitation of persons released from prisons, especially in matters of employment and arrangement of everyday life, can trigger a relapse of crimes.

A critical analysis of the current situation in terms of post-penitentiary oversight, in the context of combating recidivism, is given in the article.

The author argues that the probation service in Russia along with post-penitentiary oversight should exercise administrative trusteeship in respect of persons released from prison through the implementation of measures of social adaptation and rehabilitation.

Keywords: administrative trusteeship, post-penitentiary assistance, post-penitentiary adaptation, institute of probation, administrative supervision.

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

The concept of development of the criminal executive system of the Russian Federation until 2020 [4] has its main purposes, among which is called the reduction of recurrence of crimes committed by persons who have served their sentence of deprivation of liberty through increasing the efficiency of social and psychological work in prisons and development of post-penitentiary assistance to such persons.

At that, the issues of post-penitentiary adaptation should be resolved through the probation service, the creation of which is provided for by the Concept of Long-Term Social and Economic Development of the Russian Federation for the period up to 2020 [3].

Currently, the Institute of probation has not yet been introduced into the legal system of the Russian Federation, but there are already drafts Federal Laws "On Probation in the Russian Federation and the System of Bodies and Organizations that Implement it" and "On Service in the Bodies and Institutions of the Probation System".

To be fair, it should be noted that some of the subjects of the Russian Federation, in the absence of federal legislation at the regional level resolve the issues of social adaptation of persons released from the penitentiary system institutions [2]. Indeed, the lack of attention to the problems of social rehabilitation of persons released from prisons, especially in matters of employment and arrangement of everyday life, can trigger a relapse of crimes. Very often it happens so. In respect of this category of citizens is needed to apply the whole system of measures of administrative trusteeship and post-penitentiary control.

By the way, as concerns the last form of prevention of relapsed of crime, it is already regulated by the Federal Law "On Administrative Supervision over Persons Released from Places of Imprisonment", which entered into force in July 2011 [1].

It should be noted that in the initial stage of development of the concept of the current law, as the main task was called the organization of assistance to former prisoners in their socialization, rehabilitation, employment, etc. When work upon the concept of the legislation on administrative supervision only began, four years ago, the chairman of the State Duma Security Committee Vladimir Vasilyev said that the main objective of such a law – an organization of assistance to former prisoners in their socialization, rehabilitation, employment, etc. [9].

In reality, however, we have a retouched version of the Decree of the Presidium of the Supreme Council of the USSR No. 5364-VI from July 26, 1966, "On the Administrative Supervision of the Internal Affairs Bodies over Persons Released from Places of Imprisonment".

According to P. V. Teplyashin, modern edition of administrative supervision is not much different from the administrative supervision of the Soviet period, is based on archaic inherently ideas about the nature of the legal impact on a person who committed a crime, do not take into account the basic position of the current reform of the criminal executive system [13]. The only significant difference is the judicial procedure for establishment administrative restrictions.

As a result, instead of the promised socialization, a person who has served its sentence, falling into the category of persons, in respect of which administrative oversight is automatically set or can be set, becomes a subject to administrative restrictions in substantive aspects similar to the restriction of freedom established by the Criminal Code of the Russian Federation. Hardly in the absence of measures of administrative trusteeship, post-penitentiary oversight will become in this form a prevention measure and the panacea against growth of recidivism.

Until then, now, in order to protect the state and public interest, we use the application of administrative restrictions, moreover established by court in civil proceedings.

By its legal nature civil process is intended for equal subjects, based on the principles of the free exercise of material and procedural rights by the parties to legal proceedings, equality of the parties, freedom of contract. And it is these characteristics do not allow, in certain cases, to establish administrative supervision over persons, who have served their sentences in prison.

Here we talk about, for example, persons who have served their sentence and leave prison camp without setting against them an administrative oversight, but who formally get under it. In this case, all the necessary documents and information come to the police for initiation by the last of civil process, during which the alleged supervised person is properly notified, but does not come at court session.

In this case, the institute of a default judgment, familiar to civil-procedural law, does not work, because, in accordance with article 261.7 of the Civil Procedural Code of the RF, a case on administrative oversight is considered with a mandatory participation of a person, in respect of which the application has been filled, and the forcing it to appear, what is possible within the framework of criminal process, is impossible due to the nature of civil proceedings.

Article 314.1 of the Criminal Code of the RF, which provides for criminal responsibility for avoidance of administrative oversight, cannot be applied to such persons since it is applied to persons in respect of whom administrative oversight have already been established upon release from prison.

Application of administrative responsibility under article 19.24 of the Code on Administrative Offences of the RF quite often does not reach the goals of private prevention. This is confirmed by the repeated commission of administrative offenses related to non-compliance with administrative restrictions and failure to perform obligations imposed under administrative oversight, what actually leads to a situation when supervised persons have dozens of unpaid fines, and this fact has no negative impact on them.

Moreover, such an extraordinary measure as administrative detention is perceived by them quite calm, in dialogues with a neighborhood police inspector they state that it is not a big problem for them to serve 15 days next time.

Administrative fine and administrative detention can cause damage to material well-being and social status of an employed, socially adapted person. For those not socially adapted, administrative sanctions will not provide proper effect, and there are no appropriate measures of criminal legal impact for malicious violation of the rules of administrative supervision, as it used to be in the criminal legislation of the RSFSR (as a malicious violation of the rules of administrative oversight in order to evade oversight, entailing responsibility under article 198.2 of the Criminal Code of the RSFSR, was recognized willful violation of the rules of oversight committed without reasonable excuse by a person under supervision, to which twice a year lawfully and reasonably has been applied an administrative sanction provided for by the Decree of the Presidium of the Supreme Council of the RSFSR from August 04, 1966 "On Administrative Responsibility for Violation of the Rules of Administrative Oversight").

We believe the above clearly shows that in the Russian legal system the problem of post-penitentiary oversight in combating recidivism has not found a proper solution.

Moreover, the analysis of draft laws on probation service in the Russian Federation allows drawing a conclusion that in the Russian state a holistic concept of prevention in the fight against crime has not been developed, since post-penitentiary oversight has remained outside of jurisdiction of probation bodies [11] and has not become a full-fledged subject of regulation of criminal legal norms.

In our opinion, the post-penitentiary oversight measures should be considered as measures of criminal-law nature, which in essence are not punishment, are not of punitive, but of educational, protective nature and contribute to the prevention of crime. Other measures of criminal-law nature (often referred to as "security measures") and punishment coexist in the legislations of many countries. The formed system of coercive measures has been called "two-track" [6, 269].

Legislation of foreign states highlights the various measures of criminal-law nature, for example, such as the establishment of oversight, prohibition of certain places, preventive or prolonged custody and others [6, 272-273].

Oleg Ivanovich Beketov absolutely rightly notes that "Institute of oversight over conduct of convicted persons in Russia should be radically reformed, including in terms of increasing the share of criminal-law norms, strengthening the role of the court; here must be implemented the idea of re-socialization. At that, the organization of work for oversight implementation should be transferred out of the system of internal affairs in the criminal executive system of justice agencies, which is greater in line with the principles of formation of the rule of law" [5].

In general, implementation of post-penitentiary oversight over persons, who have fully served a sentence of imprisonment, is not typical for foreign countries. Such control in the form of post-penitentiary oversight is provided for by criminal law only in few countries, such as England, Germany. Post-penitentiary oversight regime is virtually identical to the regime of probation and its implementation is entrusted to the same bodies [7].

In this regard, we believe that the organizational, coordinating and monitoring functions of initiation, conduct and termination of oversight activity, as well as conducting of review proceedings should be entrusted to the federal body of probation, its regional bodies, institutions of the federal probation body for oversight and supervision, and undertaking of oversight activities in the place of residence of citizens should be attributed directly to the competence of the police forces, or, alternatively, entrust post-penitentiary oversight entirely to the jurisdiction of probation officers.

By the way, in most countries the post-penitentiary probation is entrusted to justice agencies, as it allows within one agency ensuring of coherence between the bodies of execution of punishment and bodies of probation [8].

Noteworthy is the fact that in other countries post-penitentiary probation is a part of preventive system, along with other types of probation. Moreover, the practice of implementation of these institutes clearly shows their interrelation. Establishment of post-penitentiary oversight should be the result of the actions of authorized entities at the stages of pre-trial, verdict and penal probation.

In support of that conclusion here are some of the provisions of the German reform of the system of preventive detention (Sicherungsverwahrung) for convicted criminals. Now, this measure can be applied only if it was originally contained in a judgment of conviction. The German Bundestag in December 2010 approved the proposed by the Federal Government at the suggestion of the Minister of

Justice Sabine Leutheusser-Schnarrenberger (Sabine Leutheusser-Schnarrenberger) Law (Gesetz zur Neuordnung des Rechts der Sicherungsverwahrung und zu begleitenden Regelungen), which to date makes it possible the application of such a penalty as conditional preventive detention, which eliminates the need for unconditional detention post factum.

Henceforth unconditional preventive detention should mainly apply to those people who have committed very dangerous to society crimes of violent or sexual nature, and criminals who have served their sentence, including rapists, causing the authorities' fear that once restored to liberty they will commit new crimes, will be dress up a special bracelet on the leg, called "electronic shackles". With its help the former prisoners will be watched [12].

Summing up the above, it should be noted that the operation of the system of crime prevention is possible only with a complex normative-legal regulation. It is necessary to create not only criminal-law, but also administrative institutes, among which we should also include administrative trusteeship. The essence of the administrative trusteeship is that this institute of administrative law, which is one of the elements of social protection of the population of the Russian Federation, exercised in respect of a particular range of subjects (addressable) by specially authorized bodies and settled by the norms of administrative law, takes independent place among the basic democratic manifestations of Russia: the mechanism to ensure the rights and freedoms of man and citizen; civil-law trusteeship; social security, etc. [10].

Probation services in Russia along with post-penitentiary oversight should exercise administrative trusteeship in respect of persons exempted from prison through the implementation of measures of social adaptation and rehabilitation: assistance in registration of the place of stay and (or) residence, drawing-up of the passport of a citizen of the Russian Federation, disability, retirement , benefits, other social payments, medical insurance policy, promoting in restoration of supporting system of social ties, employment assistance, education and other. Measures of social adaptation and rehabilitation are defined in article 8 of the draft Federal Law "On Probation in the Russian Federation and the System of Bodies and Organizations that Implement it" [11].

Thus, probation service bodies are designed to mobilize all existing in their territory organizational and financial resources within the formation of individual programs of control and rehabilitation.

References:

1. Federal Law No. 64-FL from April 06, 2011 "On Administrative Supervision over persons Released from Prisons [Federal'nyi zakon ot 6 aprelya 2011 g. № 64-FZ «Ob administrativnom nadzore za litsami, osvobozhdennymi iz mest lisheniya svobody»]. *System GARANT* [Electronic resource], Moscow: 2012.

2. Law of the Republic of Bashkortostan No. 92-z from February 03, 2009 "On the Social Adaptation of Persons Released from Correctional System Facilities" [Zakon Respubliki Bashkortostan ot 3 fevralya 2009 goda № 92-z. «O sotsial'noi adaptatsii lits, osvobozhdennykh iz uchrezhdenii ugolovno-ispolnitel'noi sistemy»]. *Gazeta «Respublika Bashkortostan» – Newspaper "The Republic of Bashkortostan"*, no. 21-22 from 05.02.09.

3. *The Concept of long-term socio-economic development of the Russian Federation until 2020, approved by the decree of the Government of the RF No. 1662-r from November 17, 2008* [Kontseptsiya dolgosrochnogo sotsial'no-ekonomicheskogo razvitiya Rossiiskoi Federatsii na period do 2020 goda, utverzhdennaya rasporyazheniem Pravitel'stva Rossiiskoi Federatsii ot 17 noyabrya 2008 g. № 1662-r]. Available at: http://www.rosleshoz.gov.ru/docs/other/67/KONTCEPTCIYa.pdf (accessed: 12.09.2012).

4. *The Concept of development of the correctional system of the Russian Federation until 2020. Approved by the decree of the Government of the RF No. 1772-p from October 14, 2010* [Kontseptsiya razvitiya ugolovno-ispolnitel'noi sistemy Rossiiskoi Federatsii do 2020 goda. Utverzhdena rasporyazheniem Pravitel'stva Rossiiskoi Federatsii ot 14 oktyabrya 2010 g. № 1772-r]. Available at: http://www.gufsinrkomi.ru/ob_upravlenii/reformirovanie_uis/kontseptsiya_razvitiya_uis_rf_do_2020_goda/ (accessed: 12.09.2012).

5. Beketov O. I. *Police Supervision: Theoretical and Legal Research*: thesis abstract of a Doctor of law [Politseiskii nadzor: teoretiko-pravovoe issledovanie: Avtoref. dis. …d-ra yurid. nauk]. Chelyabinsk: 2011, Available at: http://law.edu.ru/book/book.asp?bookID=1421314 (accessed: 12.09.2012).

6. Dodonov V. N. *Comparative Criminal Law. General Part* [Sravnitel'noe ugolovnoe pravo. Obshchaya chast']. Under general edition of S. P. Shcherba, Moscow: Yurlitinform, 2009.

7. Il'maliev Zh. B. *Post-penitentiary Oversight in Foreign Countries: Peculiarities of Legal Regulation* [Postkriminal'nyi kontrol' v zarubezhnykh stranakh: osobennosti pravovogo regulirovaniya]. Available at: http://jurlugansk.ucoz.org/publ/9-1-0-120 (accessed: 12.09.2012).

8. Imashev B. *Criminal Punishments: from Repressiveness to Humanization* [Ugolovnoe nakazanie: ot repressivnosti k gumanizatsii]. Available at: http://www.nomad.su/?a=3-201103150028 (accessed: 12.09.2012).

9. Levinson L. *Persons Who have Served Sentences will be Imprisoned for Incorrigibility. About the Draft Federal Law "On Administrative Supervision over Persons Released from Prison"* [Otbyvshikh nakazanie budut sazhat' za neispravimost'. O proekte Federal'nogo zakona «Ob administrativnom nadzore za litsami, osvobozhdennymi iz mest lisheniya svobody»]. Available at: http://www.civitas.ru/pcenter.php?code=1597&release=1 (accessed: 12.09.2012).

10. Pavlova E. V. *Legal and Organizational Issues of Ensuring Administrative Trusteeship*: dissertation of a candidate of legal sciences [Pravovye i organizatsionnye voprosy obespecheniya administrativnoi opeki: Dis. ... kand. yurid. nauk]. Orel: 2003, Available at: http://www.lib.ua-ru.net/diss/cont/100402.html (accessed: 12.09.2012).

11. *The Draft Federal Law "On Probation in the Russian Federation and in the System of Bodies and Organizations Exercising it"* [Proekt federal'nogo zakona «O probatsii v Rossiiskoi Federatsii i sisteme organov i organizatsii, ee osushchestvlyayushchikh»]. Available at: http://sartraccc.ru›Law_ex/testion.pdf (accessed: 12.09.2012).

12. *Socio-economic portal EXRUS.eu*. Available at: http://ru.exrus.eu/object/show/index/sn/object-id4e580ff06ccc198a48000333 (accessed: 12.09.2012).

13. Teplyashin P. V. Administrative Supervision over Persons Released from Prison [Administrativnyi nadzor za litsami, osvobozhdennymi iz mest lisheniya svobody]. *Zakonnost' – Legality*, 2011, Available at: http://emel.krk.sudrf.ru/modules.php?name=press_dep&op=1&did=445 (accessed: 12.09.2012).

Universal Decimal
Classification 342.9

Boskhamdzhieva N. A.

SOME ISSUES OF ROAD SAFETY

Boskhamdzhieva Natal'ya Antonovna,
c.j.s. (PhD of jurisprudence), Professor of All-Russian Further Training Institute of the MIA RF, Associate professor,
Moscow region, Domodedovo city, 3 Pikhtovaya street, zip code 142022.

Road safety is an important socio-economic and demographic challenge of the Russian Federation. The accident rate in road transport causes enormous material and moral losses as to society in general, and to individual citizens.

Keywords: road safety, road accidents, road safety criteria, monitoring of human safety.

Today among the wide range of socio-economic problems, in the reasonable opinion of Professor V. I. Mayorov, the development and implementation of safety measures in the field of road traffic are essential [10, 275]. Statistics shows that the number of car accidents in 2012 continued to grow and reached 203,597 (growth of 2%), the number of deaths in road accidents 27,953 people (growth of 0.2%), injured people 258,618 (growth of 2.7%), social risk – 18.6 deaths per 100,000 population [7]. We believe that, with the adoption of the Concept of the Federal targeted program "Increasing of road safety in the years 2013-2020", today we need to talk, first of all, about improving of the concept of road safety [1].

One can agree with the opinion of many authors who define the concept of road safety as a system of beliefs and ideas about the protection of life, health and property of citizens, protection of their rights and legitimate interests in the field of road traffic, as well as the protection of interests of society and the state through preventing the causes of road accidents, reducing the severity of their consequences [3, 6, 9]. V. I. Mayorov correctly notes that with regard to the current state of the concept of road safety the following can be stated:

1) the lack in the legal science of a common understanding of the categories of "threat", "priorities", "criteria of road safety" and their meanings, despite their widespread use;

2) domestic legal science ignores the study of foreign experience of road safety problems, what greatly limits the analytical apparatus in this area;

3) imperfection of analytical tools, which in the process of scientific research causes the presence of unresolved so far issues:

- about economic-mathematical models, as the basis for determining indicators of human security in road traffic;
- about the results of regional comparative statistical studies;
- about the expert assessments or individual preferences of researchers;
- about the intensity of threats and their dependence on different conditions;
- about criteria that take into account national interests of states [9, 54].

Definition of road safety, which has acquired sectorial nature (food, raw, technological, etc.), has become one of the central issues of the concept of road safety. As a consequence, as in the case of road traffic, there was a formation of "own" industry-specific concepts of safety, but the first of them has taken a leading position.

It should be noted that "safety" has the following meaning. Explanatory dictionary of the Russian language by D. N. Ushakov notes that safety is the "absence of danger", "prevention of danger", "conditions, under which no danger" [14, 113]. Dictionary of Russian language by S. I. Ozhegov gives an unambiguous definition of safety – "a situation, in which no threat to anyone or anything" [11, 38].

At that, simultaneous presence of multiple threats and their potential victims is not excluded. Safety of the latter is ensured in cases where: 1) specific victims fend off all threats or 2) for them threats do not exist at all. Threat, on the contrary, implies the possibility of any damage. In other words, giving a description to safety, it should be borne in mind that it is the ability of some to objectively threaten, and of others – to fend off such threats, evading, defending from them, and sometimes eliminating them in a preventive manner [3].

As rightly noted by some authors, the concept involves the quantitative determination of the probability of risk events and their consequences, assessment of the level of risk and its allowable limit. The use of modern methods greatly increases the possibilities of obtaining quantitative assessments and increases the accuracy of predictions of natural, technological and social disasters. However, the feature of the present development is the increasing of the number of dangers that constantly threat to man [9, 54].

Since the measurement of many aspects of human security is of conditional nature, it is not always possible to determine quantitatively expressed ultimate level, violation of which indicates the presence of threats to human security and the risk of a crisis, although such attempts have been made [4, 135-141]. It should also

be borne in mind that the "limiting value" and its determination by mathematical methods cannot always be socially acceptable. Therefore, in respect of some of the indicators use the method of comparison with an already achieved level, for example: of the last period, of other states. Safety as the quality of road traffic in all countries has quantitative assessment, which is covered by the concept of accident rate. Its status is determined by the absolute and relative indicators. It is important to note that these indicators are of universal and international nature. Their changes through comparison of different periods provide an indication of the level of road safety in different areas and countries.

In the Russian Federation, according to official data, in 2012 were recorded 203,597 traffic accidents, in which killed 27,953 and injured 258,618 people. The level of risk of death in traffic accidents in the country is 21.1 deaths per 100,000 inhabitants, the coefficient of severity (number of deaths per 100 injured) in Russia as a whole amounted to an average of 10 [7], what is significantly higher than similar coefficient for economically developed countries [1]. Given these criteria, we believe it inappropriate to analyze the uneven distribution of rolling stock of vehicles, the density of the road network in the world and separate countries, and to draw conclusions about the benefits of public administration in this or that state. It seems that it is needed to take into account the existing differences in the systems of recording and accounting of traffic accidents, in particular in the definition of "perished" in statistics. According to the UN definition, perished is any person who dies at the scene of accident or dies from the consequences of traffic accident in the course of the next 30 days [13, 55]. However, in various countries this time period is different, for example: in Spain and Japan it is 1 day, in Austria and Greece – 3 days, in Russia, China and Latvia – 7 days. In Portugal, as perished in a traffic accident are considered persons whose deaths has occurred at the scene, during transportation to hospital or immediately after transportation, in other cases a person who dies later are recorded as injured. In the latter case, the traffic accident will not be counted as fatality accident, and only with the presence of wounded. Absolute precision can be gained when taking into account injuries caused by traffic accidents, regardless of the date of death [5]. However, we believe this counting is hardly possible. All this makes difficulties for comparative analysis of recorded data, excludes the possibility of obtaining reliable conclusions about the level of risk in road traffic, about vehicles and movements of population [12]. In this regard, foreign and domestic legal sciences are searching for the optimal model that would explain the cause of accidents and allow formulation of the theory of occurrence the causes of accidents.

Analyzing economic losses around the world V. F. Babkov notes, that the magnitude of losses from traffic accidents varies widely, the amount of losses from road accidents is extremely arbitrary, since it is impossible to evaluate in monetary terms the life and health of the victims, but these losses can be used in the economic calculations to justify the road works and planning of events for ensuring road safety [2, 12-17].

We agree with A. A. Bakhaev, that a set of indicators of the system for warning threats to human safety in road traffic is diverse. The corresponding list of indicators and early warning system are defined in a particular case on the basis of goals and the possibility of obtaining the necessary statistical information. Some of them still remain unclaimed for domestic social statistics [3]. In addition, it is possible to agree with the author, that the causes of the lack of effective monitoring over human safety in the field of traffic, along with the imperfection and limited statistical information, include the ignoring of the essence of the mechanism of real events [3]. It seems that V. V. Lukyanov rightly believed, that it was for this reason more than a century of efforts to identify the true composition of traffic accidents had not yielded the desired result [8, 24]. It is important to note that there is no yet unified view on the definition of "road traffic safety" in foreign studies. V. I. Mayorov highlights several key approaches to its determination, where the definition is seen as:

- condition for the implementation of social and economic policy;
- condition for the sustainability of a road user to the risk of accident rate in road traffic accidents;
- priority of international security;
- condition for the suppression of illicit economic activity.

Approach to road safety as a *condition for the implementation of socio-economic policy* coincides with the definition of road safety through the prism of interests. Although, there is a broader interpretation related to the conditions (principles) of the State policy in the field of road safety management [9, 62].

It seems, that the politicians should define what aims the society should follow to reduce the number of accidents, deaths and injuries in road traffic, what activities should be carried out, where to invest to achieve set goals.

References:

1. Concept of the Federal Targeted Program "Increasing of road safety in 2013-2020" [Kontseptsiya Federal'noi tselevoi programmy «Povyshenie bezopasnosti dorozhnogo dvizheniya v 2013-2020 godakh»]. *SZ RF – Collection of Laws of the Russian Federation*, 2012, no. 45, article 6282.

2. Babkov V. F. *Road Conditions and Traffic Safety. Textbook for Higher Schools* [Dorozhnye usloviya i bezopasnost' dvizheniya. Uchebnik dlya vuzov]. Noscow: Transport, 1993.

3. Bakhaev A. A. *Administrative and Legal Regulation of Road Traffic: Issues of Safety and Responsibility*: thesis of a candidate of legal sciences [Administrativno-pravovoe regulirovanie dorozhnogo dvizheniya: voprosy bezopasnosti i otvetstvennosti: diss. kand.yurid. nauk]. Moscow: 2009.

4. Biktimirova Z. Z. Safety in the Concept of Human Development [Bezopasnost' v kontseptsii razvitiya cheloveka]. *Obshchestvennye nauki i sovremennost' – Social Sciences and Modernity*, 2002, No. 6.

5. Golovko V. V. *Administrative and Jurisdictional Activity of Internal Affairs Bodies in the Field of Road Traffic* [Administrativno-yurisdiktsionnaya deyatel'nost' organov vnutrennikh del v oblasti dorozhnogo dvizheniya]. Omsk: 2009.

6. Golovko V. V., Maiorov V. I. *Fundamentals of Road Safety* [Osnovy bezopasnosti dorozhnogo dvizheniya]. Moscow: 2009.

7. Traffic Police of Russia. News review. Car accidents statistics in the Russian Federation for 2012 [Gosavtoinspektsiya MVD Rossii. Obzor novostei. Statistika avariinosti v Rossiiskoi Federatsii za 2012 god]. Official web-site of the General Administration of Road Safety of the Russian MIA, available at: http://www.gibdd.ru/news (accessed: 23.02.2013).

8. Luk'yanov V. V. *Composition and Qualification of Road Traffic Crimes and Administrative Offenses. Special Issues of Criminal and Administrative Law* [Sostav i kvalifikatsiya dorozhno-transportnykh prestuplenii i administrativnykh pravonarushenii. Spetsial'nye voprosy ugolovnogo i administrativnogo prava]. Moscow: Dashkov Co., 2003.

9. Maiorov V. I. *State and Legal Ensuring of Road Safety in the Russian Federation: Theoretical and Practical Issues* [Gosudarstvenno-pravovoe obespechenie bezopasnosti dorozhnogo dvizheniya v Rossiiskoi Federatsii: teoretiko-prikladnye problem]. Chelyabinsk: SEI HVE ChJyI of the Russian MIA, 2008.

10. Maiorov V. I. Towards the issue on the concept of "road safety" [K voprosu o ponyatii «bezopasnost' dorozhnogo dvizheniya»]. *Aktual'nye voprosy administrativno-pravovogo regulirovaniya v sovremennoi Rossii: Materialy mezhdunarodnoi nauchno-prakticheskoi konferentsii, posvyashchennoi 75-letiyu prof. A. P. Shergina – Topical issues of administrative and legal regulation in modern Russia: Proceedings of the international scientific-practical conference dedicated to the 75th anniversary of Professor A. P. Shergin*, Editors-in-chief are A. S. Dugenets and

V. I. Mayorov, Moscow: All-Russian Research Institute of the Russian MIA, Ju-UrSU, 2008.

11. Ozhegov S. I. *Russian Language Dictionary* [Slovar' russkogo yazyka]. Under edition of N. Yu. Shvedova, 24th edition, Moscow: 2007.

12. *Handbook on Road Safety* [Spravochnik po bezopasnosti dorozhnogo dvizheniya]. Oslo-Moscow-Helsinki: 2001. Available at: http://www.madi.ru (accessed: 25.09.2011).

13. *Statistics of Road Traffic Accidents in Europe* [Statistika dorozhno-transportnykh proisshestvii v Evrope]. New-York: 1972, Vol. VIII.

14. *Explanatory Dictionary of Russian Language in 4 volumes* [Tolkovyi slovar' russkogo yazyka: V 4 t.]. Compilers: V. V. Vinogradov, G. O. Vinokur, B. A. Larin and others, under edition of D. N. Ushakov, Moscow: 2003, Vol. 1.

Universal Decimal
Classification 342.9 : 343.1

Denisenko E. V.

COMPARATIVELY-LEGAL ANALYSIS OF ADMINISTRATIVE AND CRIMINAL-PROCEDURAL DETENTION[1]

Denisenko Evgeniya Viktorovna,
c.j.s. (PhD in law), lecturer in criminal process at State-owned Federal State Educational Institution of Higher Vocational Education "Rostov Institute of Law of the Russian MIA".

Here is noted that the wording of detention of a suspect, which is contained in the Code of Criminal Procedure of the RF, cannot satisfy either theorists or practitioners, because it does not disclose all the signs that characterize this legal category, what leads to different interpretations of this notion and itself the procedure of detention of a suspect.

The author substantiates that some of the elements of the procedure for administrative and criminal-procedural detention are not fully regulated by the current legislation, as well as that the level of scientific-methodological development of the organizational and tactical grounds for detention is low, which in turn serves as a major source of conflicts between an official and a detainee.

Keywords: detention, administrative detention, criminal-procedural detention, restriction of the right to freedom, terms of detention.

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

Article 22 of the Constitution of the Russian Federation [1] states that everyone shall have the right to freedom and personal immunity, but in this article are also provided measures to limit the human and citizen rights to freedom, i.e., there is specially stipulated that arrest, detention and remanding in custody shall be allowed only by court decision. Without a court's decision a person may not be detained for a term more than 48 hours.

The police must carry out its activities in strict accordance with the law, and any restriction of the rights, freedoms and legitimate interests of citizens, as well as the rights and lawful interests of public associations, organizations and officials is permissible only on the grounds and in the manner prescribed by Federal Laws.

Thus, the application by the police of public enforcement measures to fulfill the duties and to exercise the rights of the police is also permissible only in cases provided for by Federal Laws.

Outlined constitutional provisions are reproduced in the relevant procedural norms – in administrative and criminal-procedural legislation. So, on the basis of the constitutional provision on inviolability of person, article 10 of the Criminal Procedural Code of the RF (hereinafter CPC RF) [3] contains the following provisions:

- No one may be arrested on suspicion of committing a crime or detained without legal grounds under CPC RF. Before a court's decision a person may not be detained for longer than 48 hours;
- court, prosecutor, investigator, body of inquiry and interrogator must immediately release any person illegally detained, or imprisoned, or unlawfully placed in a medical or psychiatric hospital, or held in custody for a period exceeding that provided for by CPC RF;
- a person who has been imprisoned, as well as a person who is detained on suspicion of committing a crime, should be held in conditions that do not endanger their lives and health.

Article 27.5 of the Code on Administrative Offences of the Russian Federation (hereinafter CAO RF) [2], in respect of the terms of administrative detention, provides for the following:

- the term of an administrative detention shall not exceed three hours, except for the cases provided for by parts 2 and 3 of article 27.5 CAO RF.
- any person who is on trial in connection with a case concerning an administrative offence, which encroaches upon the established regime of the State Borders of the Russian Federation and the procedure for staying on the territory of the Russian Federation, or concerning an administrative offence committed in the

inland sea waters, in the territorial sea, on the continental shelf and in the exclusive economic zone of the Russian Federation, or concerning violations of customs rules, may be subjected to an administrative detention for a term not longer than 48 hours, when it is necessary for it identification or for clarification of the circumstances of the administrative offence.

- any person, who is on trial in connection with an administrative offence entailing an administrative arrest as one of the measures of administrative penalty, may be subjected to an administrative detention for a term not longer than 48 hours.

Thus, we are considering one of the main measures of state coercion – detention. At that, it should be borne in mind that the notion of "detention" covers not only the detention of a suspect, which is a measure of criminal procedural coercion, but also administrative detention, which is a measure to ensure the proceedings on a case of administrative offense.

As defined in paragraph 11 of article 5 CPC RF, detention of a suspect is a measure of procedural coercion applied by the body of inquiry, interrogator, investigator for a period not exceeding 48 hours from the moment of actual detention of a person suspected of committing a crime. Part 1 article 27.3 CAO RF stipulates that administrative detention is a short-term restraint on the freedom of a natural person, which may be enforced in exceptional instances where it is necessary for securing correct and timely consideration of a case concerning an administrative offence and for exercising a decision on a case concerning an administrative offence.

However, at the level of scientific research, the issue of legal, procedural and organizationally-tactical support of administrative detention in comparison with the institute of criminally-procedural detention, as well as in the context of a comparative legal analysis of the relevant rights' restricting institutes provided for by the norms of international law, has been studied not enough. Moreover, the contained in CPC RF wording of the detention of a suspect cannot satisfy either theorists or practitioners because it does not disclose all of the signs, which characterize this legal category, what leads to different interpretations of the notion and the very procedure of the detention of a suspect.

Common signs of detention as a measure of state coercion are provided for by a number of branches of the legislation and have constitutional and legal base, pointing to its generally-legal nature.

In other words, every kind of detention as a measure of state coercion is characterized by certain generally-legal signs. So, detention is a procedural coercion measure, temporarily restricting human and civil right to freedom. Besides, the direct legal grounds for detention are provided for by the norm of a relevant branch

of law (mainly by the norms of administrative and criminal procedure law). Detention includes the enshrined in a relevant legislation procedural order of its implementation and registration (i.e., drawing up a protocol).

If we dwell on the similarities, we must note the norm prescribing that the detainee's relatives should be informed of the detention. If article 96 CPC RF envisages the obligation of officials, who have conducted detention, to inform someone of the close relatives of a suspect, moreover, limiting the obligation by 12 hour period that shall be counted from the moment of actual detention, then notification of the relatives of a person detained in administrative procedure is performed only at the request of the detained person. In this case, about the place of its location in the shortest possible time can be notified not only relatives, but also the administration of its place of work or study, as well as its defender.

About administrative detention of a minor in a mandatory manner notify its parents or other legal representatives. The same rule is provided for criminal procedural detention. Administrative and criminal procedural legislations provide for unified rules regarding notification about the detention of a soldier or a citizen called up to undergo a periodical military training, when in a mandatory manner notify military commandant's office or the military unit, in which the detainee does its military service (military training), of a member of a public monitoring commission, when notify the Secretary of the Public Chamber of the Russian Federation and the appropriate public monitoring commission. At that, if in the case of detention on suspicion of committing a crime, the legislation envisages a specific time frame for notification – 12 hours, in the case of administrative detention the law has formulated a provision stating, that the notice must be made immediately.

CPC RF also enshrines the norm that if a suspect is a citizen or national of another State, then within 12 hours period the Embassy or Consulate of that State shall be notified about its detention. CAO RF does not provide for such a norm.

As for the procedure of registration of detention, in the case of an administrative detention authorized body draws up a protocol of administrative detention, in which indicates the date and place of its drawing up, position, name and initials of the person, who draws up the protocol, details of the arrested person, time, place and motives of the detention.

Protocol on administrative detention shall be signed by the officer, who has drawn up the protocol, and by the detainee. If the detained person refuses to sign the protocol, an appropriate entry must be done in the protocol on administrative detention. A copy of the protocol of administrative detention is given to the person at its request.

In the case of criminal procedural detention, also must be drawn up a detention protocol, in which a note is made about the fact that the suspect has been explained the rights provided for by article 46 CPC RF.

Protocol must indicate the date and time of drawing up the protocol, date, time, place, reason and grounds for detention of a suspect, results of its personal search and other circumstances of its detention. Protocol on detention shall be signed by the officer, who has drawn up the protocol, and by the suspect.

Unfortunately, some elements of the procedure of administrative and criminal procedural detention are not fully settled by the applicable law, the scientific and methodological level of development of the organizational and tactical foundations of detention is not high, what is the main source of conflicts arising between an officer authorized to carry out criminal procedural detention and detained person in the application of this coercive measure to ensure proceedings on criminal cases and cases of administrative offences.

For example, if we talk about criminal procedural detention and proceed from the literal interpretation of the norm regulating this legal institute, then detention is a totality of its characteristic elements that set three consistently implemented phases, namely, actual detention, delivering and juridical detention, which consists in the drawing up of the protocol. Turning to the original source – paragraph 15 article 5 CPC RF, which provides characteristic of the actual detention, you may find that the actual detention procedure is not regulated by the legislator. This, in turn, extremely negatively affects the compliance with the procedural time limits for detaining suspects and the exercising of rights and freedoms set out not only under the Constitution of the Russian Federation, but also under the norms of international law. Within the meaning of paragraph 11 article 5 and part 3 article 128 CPC RF, the maximum period of detention of a suspect shall not exceed 48 hours, which is calculated from the moment of actual detention. Thus, in the period of criminal procedural detention include the time of actual detention, and itself the actual detention of a person is an initial stage of application of criminal procedural detention.

In the application of this norm of the CPC RF it is very difficult, and often impossible to determine the moment, from which begins to run the period established by the legislation – "no more than 48 hours from the moment of actual detention". There is no reference to the document that defines the moment of actual detention, i.e., the deprivation of freedom of movement, in the CPC RF, what greatly complicates the practical application of the norms on detention. Besides, article 92 CPC RF, which regulates the content of the protocol on criminal procedural detention,

does not contain a direct instruction to reflect the actual detention time, although part 2 article 92 CPC RF regulates the ability to specify other circumstances of detention of a person.

Thus, the protocol of detention of a suspect does not contain the term of actual detention, what in practice leads to confusion in the issue of calculating the period of detention. Returning to the literal interpretation of the norm, the period of no more than 48 hours shall be calculated from the moment of actual detention, and exactly this time should be indicated in the protocol of detention in the box "date and time of detention".

Unfortunately, in the practice of investigators and interrogators the cases of indication in protocols of detention the date and time of detention of a person coinciding with the date and time of drawing up the protocol of detention are not uncommon, what, of course, should not be. In this case, there is not taken into account the fact that the person has been actually arrested before its delivering, and then has been moved to the premises of the body of inquiry.

In part 1 article 92 CPC the legislator mentions the term of "delivering", pointing out that protocol on detention should be drawn up for a period of not more than three hours "after a suspect is delivered into the body of inquiry or to an investigator". Criminal procedural law attaches considerable importance to the time of drawing up a protocol on detention, because this document sets the time of occurrence of the procedural status of a suspect (under article 46 CPC RF).

And once again we are faced with the fact that the procedure of delivering suspect is not resolved legislatively. If many authors define the term of "delivering" as non-procedural activity of the bodies of inquiry regarding the forced displacement of a detainee from the place of its capture to the place of preliminary investigation, then the interpretation of the phrase "after delivering into the body of inquiry or to an investigator" is controversial.

From what moment shall be calculated the period of "no more than three hours" established by the CPC RF for drawing up a protocol? Some believe that the period shall run from the date when a detained person actually stepped over the threshold of the body of inquiry, while others believe that the period should be calculated from the moment when the detained person actually enters the office of an investigator or interrogator.

The actual detention, which always precedes criminal procedural detention, and which consists in the suppression of a crime and delivering of a person who has committed a crime to the police, which is carried out by an official vested with the right of criminal procedural detention, must be recognized as an initial stage

of the criminal procedural detention and not independent kind of detention of a person suspected of committing a crime. After all, to draw up a protocol on the detention of a person suspected of committing a crime, you must first make actions, in respect of which, in fact, draw up a protocol on criminal procedural detention.

Thus, the protected by criminal law interests of justice are infringed in carrying out of a deliberately unlawful either criminal procedural or administrative detention. Constitutional rights of an individual during deliberately unlawful administrative detention are violated to the same extent as during deliberately unlawful detention on suspicion of a crime.

It also seems that exactly the fragmentary and not always meeting current needs of strengthening public order lighting of the institute of criminal procedural and administrative detention in the scientific literature gives rise to many issues that arise in law enforcement practice, which are related to the determination of legal grounds, procedural order, general provisions and organizationally-tactical requirements to the tactics of implementation of this administrative coercion measure.

Established in CAO RF and CPC RF grounds for detention contain not only common, but also distinctive features that make up the content of a specific legal nature, the order and range of subjects of its application, and their sectorial differentiation is due to the designated use of a particular type of procedural detention.

Distinctive features of the legal grounds of administrative-legal detention is the fact that the grounds of administrative detention are provided for by codified administrative legislation at the federal level – CAO RF, represent a measure of administrative procedural coercion and are of exceptional nature, and administrative-legal detention itself can be carried out only in connection with the commission of an administrative offense, while the order and procedure for the application of detention as a measure of criminal procedural coercion are governed by chapter 12 CPC RF.

The purpose of criminal procedural detention – to suppress the criminal activity of a suspect, to prevent suspect's hiding from investigation and trial, to prevent the falsification of evidence, to suppress its influencing on witnesses and its others attempts to prevent reliable clarification of a criminal case, and administrative detention is implemented only to ensure the proper and timely review of an administrative case, enforcement of the judgment on a case concerning an administrative offense;

Within the meaning of article 91 CPC RF, detention takes place only after the institution of a criminal case on the basis of decision of an inquiry body, investigator

and interrogator. Detention at the crime scene, in the absence of an issued by an investigator, interrogator decision to institute criminal proceedings, is not provided for by the current criminal procedural law. Detention as a measure of procedural coercion may be applied only to persons suspected of a crime, for which the Criminal Law Code of the RF provides for a penalty of imprisonment. Detention, as well as any procedural action may be carried out only if there are reasons and grounds specified by law. Exercising of detention is permissible only if there is one of the following reasons: a) when a person is caught committing a crime or immediately after its commission; b) when victims or witnesses point to a person as one who has committed a crime; c) when at this person or its clothing, with it or in its home police officers find clear evidence of a crime; d) if there are other data giving reason to suspect a person of a crime if: it has tried to escape, or has no permanent place of residence, or the person is not identified, or to the court has been directed a petition regarding imposing against such a person a preventive measure in the form of taking into custody.

Supervision over the validity and legality of the implementation of detention is exercised by an appropriate prosecutor. Article 92 CPC RF obliges the officials, who had detained a person suspected of a crime, to report this to the prosecutor in writing in a period not exceeding 12 hours from the moment of detention.

Comparative legal analysis of the legal grounds for detention in various branches of the Russian legislation allows us to come to the conclusion that the generally-legal understanding of detention means establishing in the law of the possibility of jurisdictional actions of coercive nature to ensure, as a rule, administrative or criminal procedural proceedings.

References:

1. Constitution of the Russian Federation (adopted on National Voting, December 12, 1993) [Konstitutsiya Rossiiskoi Federatsii (prinyata na vsenarodnom golosovanii 12 dekabrya 1993 g.)]. *System GARANT* [Electronic resource], Moscow: 2012.
2. Code on Administrative Offenses of the Russian Federation from December 30, 2001, No. 195-FL [Kodeks Rossiiskoi Federatsii ob administrativnykh pravonarusheniyakh ot 30 dekabrya 2001 № 195-FZ]. *System GARANT* [Electronic resource], Moscow: 2012.
3. Criminal Procedural Code of the Russian Federation from December 18, 2001, Federal law No. 174-FL [Ugolovno-protsessual'nyi kodeks Rossiiskoi Federatsii ot 18 dekabrya 2001 g. № 174-FZ]. *System GARANT* [Electronic resource], Moscow: 2012.

Universal Decimal
Classification 342.9

Filippov O. Yu., Yuritsin A. E.

THE TOPICAL ISSUES OF IMPROVING THE INSTITUTE ADMINISTRATIVE RESPONSIBILITY FOR PRODUCTION, DISSEMINATION OR POSTING CAMPAIGN MATERIALS IN VIOLATION OF REQUIREMENTS OF THE LEGISLATION ON ELECTIONS AND REFERENDUMS IN THE RUSSIAN FEDERATION

Filippov Oleg Yur'evich,
c.j.s. (PhD in law), Associate professor of chair administrative law and administrative activities of internal affairs bodies at Omsk Academy of the Russian Ministry of Internal Affairs;
Yuritsin Andrei Evgen'evich,
c.j.s. (PhD in law), Senior teacher of chair administrative law and administrative activities of internal affairs bodies at Omsk Academy of the Russian Ministry of Internal Affairs.

The authors consider the issues of improving the institute of administrative responsibility for production, dissemination or posting campaign materials in violation of the legislation on elections and referendums in the Russian Federation, make proposals to improve the legislation in this area of public relations.

Keywords: campaign materials, administrative responsibility, electoral rights of the citizens, illegal pre-election campaigning, elections, referendums, election commissions.

Currently, the number of cases of violation the rules of production, dissemination and posting of campaign materials in violation of the legislation on elections and referendums has increased in the Russian Federation, which in turn leads to the limitation of voting rights of Russian citizens. According to the open internet sources [5], there were 123 illegal campaigning facts, 101 violations of campaigning in the media, 120 violations of street and outdoor campaigning in the election of the President of the Russian Federation March 04, 2012. In this regard the improvement of the institute of administrative responsibility for production, dissemination and posting of campaign materials in violation of the legislation on elections and referendums is one of the priority tasks of the state.

Terms and procedure for the production and dissemination of printed and audiovisual campaign materials are provided for in article 54 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of the Citizens of the Russian Federation to Participate in a Referendum", article 61 of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation", article 55 of the Federal Law "On the Election of the President of the Russian Federation" and similar norms of regional laws on elections and referendums.

Printed campaign materials include flyers, posters, calendars and other printed materials containing signs of pre-election campaigning. Audiovisual campaign materials include campaign materials on audio and video. To other campaign materials can be attributed badges, billboards, banners and other. Pre-submission to the Election Commission of copies or images of campaign materials (depending on their shape) – is a prerequisite of the lawfulness of their dissemination. At that must be provided information under part 4 article 61 of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation", paragraph 3 article 55 of the Federal Law "On the Election of the President of the Russian Federation". The absence of such information, as well as failure to provide copies of campaign materials to the Election Commission is punishable under article 5.12 of the Code on Administrative Offences of the Russian Federation (hereinafter CAO RF).

There are few offenses that are administratively punishable: the production or dissemination during the preparation and conduct of elections or referendum of printed and audio-visual campaign materials without a written confirmation of the consent of a registered candidate, political party, public association, referendum initiative group, as well as production and dissemination in the period of preparation and conduct of elections or a referendum of printed and audio-visual campaign materials that do not contain the statutory information about the number of copies printed and the date of issue, the name and address of the organization or the last name, the name, middle name, place of residence of the person, who has made printed and audio-visual campaign materials, about the name of the organization or the last name, the name, middle name of the person, who has ordered the production of printed and audio-visual campaign materials, as well as the production of printed and audio-visual campaign materials, in which the listed data are incorrect or incomplete.

In accordance with paragraph 2 article 43 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of the Citizens of the Russian Federation to

Participate in a Referendum", printed campaign materials must contain the output data: the names and addresses of the organizations (surname, first name, middle name and place of residence of persons) that have produced printed materials, the organization name (surname, first name, middle name of a person), which has ordered the production of these printed materials, as well as information about the number of copies printed and the date of their issue. The law also provides that copies of printed campaign materials before their dissemination must be submitted to the Election Commission that has registered a relevant candidate, to the referendum commission that has registered a referendum initiative group. Along with the materials to the Commission should be also submitted information about the location (address of the place of residence) of organizations (persons) that have manufactured and ordered these materials. Note also that the production and dissemination of printed campaign materials without the written consent of respective registered candidates, electoral associations, electoral blocs, and referendum initiative groups is not allowed. Dissemination of printed campaign material in violation of these requirements is prohibited. An offence could be committed both in the form of action and inaction. Its subjects can be both citizens and officials.

Material is considered to be campaign material, if it aims to encourage (encourages) to vote for a candidate, candidates list, referendum participants – to support the initiative to hold a referendum, or to refuse to provide such support, to vote, or not vote at the referendum, to support or reject a question submitted to the referendum. For a more accurate determination of the features of pre-election campaigning in the material we should refer to paragraph 2 article 48 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of the Citizens of the Russian Federation to Participate in a Referendum".

For violation of a number of rules for production and dissemination of campaign materials articles 5.5, 5.8-5.12 and 5.18-5.20 CAO RF establish administrative responsibility. Article 5.14 CAO RF provides for responsibility for the willful destruction of or damage to legally manufactured and disseminated campaign materials.

Activity can be qualified as a campaign activity, if there are calls to put signatures in support of referendum, to vote for or against the issues submitted to the referendum, and so on, or in the case of the fact of payment for making campaign material from the referendum fund or its posting within specially provided free air time and free print space.

The administrative science distinguishes three main grounds of administrative responsibility [1]: normative, factual and procedural. Other authors distinguish two

kinds of grounds of applying administrative responsibility: normative and factual (M. N. Biryukov, I. N. Zubov, A. K. Mustafin, A. P. Shergin, A. Yu. Yakimov).

It should be emphasized that the legal (i.e. formally-normative) ground for administrative responsibility is now constituted by the law, and not by other normative-legal act (decree, executive order, etc.). Participation of local representative bodies and executive authorities of all levels (including federal ministries and agencies, the Government of the Russian Federation), as well as the President of the Russian Federation in establishing of administrative responsibility is excluded by CAO RF [3, 46].

In the Code on Administrative Offences of the Russian Federation there is considerable uncertainty in one of the most important issues – on the delimitation of legislative powers in determining of the elements of administrative offenses. Paragraph 3 part 1 of article 1.3 CAO RF provides that the jurisdiction of the Russian Federation includes establishing administrative responsibility regarding matters of federal importance, including administrative responsibility for violating the rules and norms provided for by federal laws and other normative legal acts of the Russian Federation. However, it is not clear what is meant by "federal importance" of the issues, in respect of which responsibility may be established by CAO RF.

Condition of unclear delimitation of the powers of federal and regional legislators regarding the adoption of norms of the special part of the legislation on administrative offenses creates another problem also having constitutional and legal origins. In particular, the question about the right of the subjects of the Russian Federation to adopt laws on administrative responsibility on the matters of joint competence, if such responsibility is not established by a federal law, remains unanswered.

Electoral Commission for cooperation with law enforcement agencies, courts, executive authorities, which are responsible for the control and supervision in the sphere of mass communications, must take measures to eliminate violations in the field of manufacturing and dissemination of campaign materials during election campaigns, and other violations in the sphere of information security of elections in order to ensure the rule of law in electoral process, the conduct of free and fair elections that meet international electoral standards and the requirements of federal laws [4].

Proceeding from the analysis of the concept of pre-election campaign, which has been given by the legislator in paragraph 4 article 2 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of the Citizens of the Russian Federation to Participate in a Referendum", under "other actions" we should

understand those actions, which must simultaneously have the following qualitative features:

1) activity is carried out in the period of an election campaign;

2) activity aims to induce or encourages the voters to a vote for a candidate, candidates, list of candidates or against it (them) or against all candidates (against all lists of candidates).

In any case, the basic meaning of the wording "other actions" is that the law leaves the list of forms of pre-election campaigning open: any action consistent with the above features should be recognized pre-election campaigning.

Placing of printed campaign materials in violation of the law from the objective aspect can be expressed in two actions.

First. Placing printed campaign materials in places where this is prohibited by Federal Law.

Paragraph 10 article 54 of the Federal Law "On Basic Guarantees of Electoral Rights", similar provisions of other election laws include a ban on the hanging (sticking, placing) of printed campaign materials on monuments, obelisks, buildings, structures and premises of historical, cultural or architectural value, as well as in the in buildings occupied by the Electoral Commissions, premises for voting, and at a distance of less than 50 meters away from them.

Second. Placement of printed campaign materials in premises, buildings, on structures or other objects without the permission of the owners of these objects.

An administrative offence is constituted by any violation of the established order.

Production or dissemination of campaign material is considered an administrative offence, if at least one of the following violations has been committed:

1) campaign material does not contain the following details:

- information on the number of copies and the date of issue;

- about the payment for the making copies from a particular election fund, a referendum fund;

- information on the name, legal address and taxpayer identification number of the organization, which has made these printed or audio-visual campaign materials, or information on the family name, name, middle name, place of residence of the person, who has made these printed or audio-visual campaign materials;

- about the name of the organization or on the family name, name, middle name of the person, who has ordered the production of these campaign materials.

2) production of printed or audio-visual campaign materials, in which the above-mentioned data are incorrect;

3) production or dissemination of campaign materials containing commercial advertising;

4) campaign material are produced or disseminated without payment from a corresponding electoral fund;

5) printed or audio-visual and other campaign materials are disseminated without submission of their samples (copies) or photos to an appropriate Election Commission along with information about the location (address of the place of residence) of the organization (person), which has produced and ordered these materials;

6) printed or audio-visual and other campaign materials are disseminated in violation of the law about the use in them an image of an physical person, positive statements of the physical person about a candidate, electoral association, electoral bloc.

Procedural grounds of administrative responsibility in this offense are acts of a competent authority on the fact of imposing specific administrative penalty for specific administrative misconduct on a specific offender, which are drawn up by one of officials of the Internal Affairs Bodies (Police), as well as members of an election commission, referendum commission with a decisive vote authorized by election commissions, referendum commissions [2]. For example, under general rule, a case on administrative offense is considered at the place of its Commission (article 29.5 CAO RF). Therefore, the failure to specify the exact location of an administrative offense (up to the house number) when administrative proceedings would be considered, for example, by a justice of peace may cause difficulties in bringing a person to responsibility. This is due to the fact that, according to article 47 of the Russian Constitution, no one may be deprived of the right to the consideration of his or her case in that court and by that judge in whose cognizance the given case is according to law.

On the basis of article 54 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of the Citizens of the Russian Federation to Participate in a Referendum", which regulates the terms of production and dissemination of printed campaign materials, violations during the election campaign through the called method can be of two types: committed in the manufacture of printed campaign materials and in their dissemination

Violations in the sphere of production of printed campaign materials include:

- production of printed campaign material without prepayment at the expense of a corresponding election fund (paragraph 5 article 54 of the Federal Law);

- production of printed campaign materials without specifying the necessary details (paragraph 2 article 54);

- production of printed campaign materials by organizations or individual entrepreneurs, which have not fulfilled the requirements to publish information on the amount (in the currency of the Russian Federation) and other terms of payment for work or services for production of printed campaign materials in period of time stipulated by federal law, and (or) which have not submitted such information in the same period to a corresponding election commission (paragraph 2 article 54).

Summing up, it can be noted that the system for identifying persons committing unlawful acts, namely the production, dissemination or posting of campaign materials in violation of the legislation on elections and referendums is not perfect. Often, the police officers, who have the functions to detect these offences, are not directly involved in this activity, not because of their reluctance, but on the circumstances that they are overwhelmed with various other functions and orders. To improve the detection of offenders is needed to establish offices in the Directorate of the Ministry of Internal Affairs in the subjects of the Russian Federation, which would be competent to deal only with offenses in the area of electoral rights of citizens.

References:

1. Bakhrakh D. N. *Administrative Law of Russia: Textbook* [Administrativnoe pravo Rossii: Uchebnik]. Second revised and enlarged edition, Moscow: Eksmo, 2006.
2. *Library of the Center of Journalism in Extreme Situations. Media and Elections* [Biblioteka Tsentra ekstremal'noi zhurnalistiki. SMI i vybory]. Moscow: 2011.
3. Manokhin V. M., Adushkin Yu. S. *Russian Administrative Law: Textbook* [Rossiiskoe administrativnoe pravo: Uchebnik]. Second revised and enlarged edition, Saratov: publishing house of State Educational Institution of Higher Vocational Education "Saratov State Law Academy", 2003.
4. *Recommendations for the election commissions of the subjects of the Russian Federation to prevent and suppress violations in the field of production and dissemination of campaign materials during election campaigns, and other violations in the sphere of information support for elections. The Central Election Commission of the Russian Federation* [Rekomendatsii dlya izbiratel'nykh komissii sub"ektov Rossii-skoi Federatsii po preduprezhdeniyu i presecheniyu narushenii v sfere izgotovleniya i rasprostraneniya agitatsionnykh materialov v period izbiratel'nykh kampanii, inykh narushenii v sfere informatsionnogo obespecheniyu vyborov. Tsentral'naya izbiratel'naya komissiya RF]. Moscow: 2007.
5. Available at: *http://www.kartanarusheniy.org/stat* (accessed: 14.06.2013).

Universal Decimal
Classification 342.9

Kizilov V. V., Markar'yan A. V.

DELICTUAL EXERCISING OF DISCRETIONARY POWERS OF A JUSTICE OF PEACE IN CONSIDERATION OF A CASE ON ADMINISTRATIVE OFFENCE

Kizilov Viacheslav Vladimirovich,
c.j.s. (PhD in law), Editor in chief of the magazine "The topical Issues of Public Law", Omsk,
attorney1961@mail.ru

Markar'yan Artem Vladimirovich,
leading legal adviser of CJSS "SANAR", Saratov.

The importance of the content of a protocol on administrative offence in part of description of tort committed by an offender and correspondence of this description to the composition of an administrative offense contained in the norms of administrative-tort legislation are noted in the article.

Authors focus their attention on the imperative nature of norms of the Code on Administrative Offences of the Russian Federation concerning the powers of a judge hearing a case of administrative offense, and on inadmissibility of discretionary interpretation by judges of the circumstances of an administrative offence that has been recorded in a protocol on administrative offence by the body of administrative jurisdiction or its official. A case of delictual exercising of discretionary judge powers in considering a case concerning administrative offense is analyzed in the article.

Keywords: administrative offence, consideration of case, the powers of a justice of peace, protocol on administrative offence, composition of administrative offence.

Despite the fact that the main stage of proceedings of an administrative offense is consideration of the case on the administrative offense (here is imposed an official act of bringing to administrative responsibility of the offender), as we see it, the procedural actions of an administrative jurisdiction body (or official), which implements the proceedings on the case, at this stage are largely dependent on the results (outcomes) of the previous stages of the proceedings on the case of the administrative offense. Correspondence of the description of an administrative offense in protocol to the composition of an administrative offense for which provide for administrative responsibility, determines whether the offender will be brought to responsibility or not. The conclusion about the presence or absence of the composition of an administrative offense is made exactly on the basis of the written description in the protocol of the incriminated administrative offense.

There are other errors of administrative jurisdiction body in the drawing up a protocol on administrative offence. For example, the absence in a protocol of a law norm, for the violation of which the guilty person has been brought to administrative responsibility [7].

In accordance with paragraph 1 of article 1.6 of the Code on Administrative Offences of the RF (hereinafter CAO RF) [1], a person brought to administrative responsibility may not be subjected to an administrative penalty and to measures for ensuring proceedings in respect of a case concerning an administrative offence otherwise than for the reasons and in the procedure established by law. By the mentioned norm, in our opinion, the legislator limits the discretion of court in part of proceedings on cases of administrative offences and does not allow the court to go outside the provisions of chapter 29 CAO RF, including part 1 of article 29.4 CAO RF. However, in practice there are cases when the court following the words of a movie character that a thief should be in prison, goes beyond what is permitted in order to ensure the punishment of administrative and legal delinquent. Example of such judicial discretion is a case on administrative offence in respect of LLC "Signal-Nedvizhimost'".

According to the protocol on administrative offence, LLC "Signal-Nedvizhimost'" was imputed the failure to submit an electronic copy of the declaration provided for by sub-paragraph 3 paragraph 4 article 14 of the Federal Law No. 171-FL from 22.11.1995 "On State Regulation of Production and Turnover of Ethyl Alcohol and Alcohol-containing Products and on Restriction of Consumption (Drinking) Alcohol Products" [2], paragraph 18 and 19 of the rules for submitting declarations about the volume of production, turnover and (or) use of ethyl alcohol and alcohol-containing products, about the use of production capacity

(approved by the Decree of the Government of the Russian Federation No. 815 from August 09, 2012 [4]), at that, bringing to administrative responsibility was carried out under article 19.7 CAO RF, and not under a special norm of article 14.19 CAO RF. The Court did not pay much attention to this circumstance, although if there are special norms governing certain legal relations, exactly special norms should be applied.

At the hearing the court at its discretion set another composition of the administrative offense (other objective aspect), which has not been imputed to LLC "Signal-Nedvizhimost'" by the person who has prepared the protocol on the administrative offense – untimely submission of declaration. The Court, as we believe, wrongly and unlawfully equated in the case two different deeds – failure to submit electronic copy of declaration and untimely submission of declaration, as well as failure to submit declaration and failure to submit information (the distinctive features of the deeds see in table 1 and table 2).

Table 1

CAO RF	
Article 14.19. Violating the Established Procedure for Registration of Ethyl Alcohol, Alcohol Products and Alcohol-Containing Products	Article 19.7. Failure to Submit Data (Information)
Violating the established procedure for registration of ethyl alcohol, alcohol products and alcohol-containing products during their production and trade – shall entail the imposition of an administrative fine on officials in the amount of from three thousand to four thousand rubles, and on legal entities in the amount of from seventy thousand to eighty thousand rubles.	Failure to submit or untimely submission of data (information) to a state body (an official), the submission of which is provided for by law and is necessary for the exercise by this body (official) of its lawful activities, as well as submission to a state body (official) of such data (information) in an incomplete or distorted form, except cases provided in article 6.16, part 4 article 14.28, articles 19.7.1, 19.7.2, 19.7.3, 19.7.4, 19.7.5, 19.7.5-1, 19.7.5-2, 19.7.7 and 19.8 of this Code – shall entail warning or imposition of an administrative fine on citizens in the amount of from one hundred to three hundred rubles, on officials in the amount of from three hundred to five hundred rubles, and on legal entities in the amount of from three thousand to five thousand rubles.

Comments by lawyers [8]	
Article 14.19 CAO RF	Article 19.7 CAO RF
Objective aspect of the analyzed offense is that a perpetrator violates the established procedure for accounting of alcohol products and ethyl alcohol in their manufacture or turnover (i.e., delivery, retail, storage, etc.). Thus, in particular, are violated: 1) rules of article 14 of the Law on alcoholic products about that organizations engaged in the production, procurement and supply of ethyl alcohol, alcohol products and alcohol-containing products are required to submit declarations on the volume of production and turnover; 2) norms of the Provision on submission declaration on the volume of production, turnover and use of ethyl alcohol, alcohol products and alcohol-containing products (approved by the decree of the Government of the Russian Federation No. 858 from 31.12.05), the Provision on the accounting of production and turnover (except for retail sale) of ethyl alcohol, alcohol products and alcohol-containing products (approved by the decree of the Government of the Russian Federation No. 380 from 19.06.06, as amended 08.01.09); 3) norms of the legal acts adopted by the Ministry of Finance of the RF, Ministry of Taxation (FTS) of the RF on the issue of declaration of production and turnover of these products. A deed is considered consummated since the commission. It occurs both in the form of action and inaction (for example, when there is no any accounting)	Objective aspect of the analyzed offence is that a perpetrator: 1) does not submit at all (i.e. completely ignores the performance of its duties) or out of time submit to the state body (official) relevant information (such as number of employees, staff reduction, the types of offences committed in the locality). It should be borne in mind that this is about information: a) range (list) of which is defined by law; b) needed for the state body (official) to implement functions assigned to it by law (in the exercise of its activities). If the information is beyond of the specified range, the failure to submit them does not form composition of this offence; 2) submits to state body (official) the above information: a) not in full volume (for example, only part of the information required); b) in distorted form (that is, in essence, about the presentation of false information). We should not confuse the objective aspect of this administrative offence with the objective aspect of: - administrative offense provided for in article 19.7.1 (about violation of the order of submission information to the body authorized in the field of regulation of state tariffs, see the comments to it); - administrative offense provided for in article 19.7.2 (about non-submission of information to the state agency responsible for supervising over the placement of orders for the supply of goods (works, services) for public or municipal needs, see the comments to it);

End of Table 2

Article 14.19 CAO RF	Article 19.7 CAO RF
	- administrative offenses provided for in article 19.7.3 and 19.7.4 (about failure to provide information to the Federal Commission for Securities Market and about the conclusion of a state contract, see the comments to it); - administrative offense provided for in article 19.8 (it establishes responsibility for failure to provide information to the antimonopoly body, the body regulating natural monopolies, see comments to article 19.8); - administrative offense provided for in article 19.19 (it establishes responsibility for submission of false information on the results of certification tests, etc., see comments to article 19.19); - crime provided for in article 327 of the Criminal Code (it establishes criminal responsibility, inter alia, for the manufacture, forgery and use of an identity card, another official document). This deed is considered consummated since the commission. It is committed both in the form of action (for example, submission of incomplete information) and inaction (for example, failure to submit any information)

The mere existence of illegal deeds of a subject (as the objective aspect of an administrative offense under article 19.7 CAO RF) does not mean the permissibility of bringing to administrative responsibility under an article of the CAO RF, regardless of the actually committed offense determined (recorded) by the protocol on administrative responsibility. Otherwise, it would be enough in the protocol to indicate the law norm, under which the subject is being brought to responsibility, and on the base of discretionary powers the court itself would substantiate (determine) all the elements of an administrative offense.

According to article 29.1 CAO RF, a judge, body or official in preparation to consider a case on an administrative offence ascertain whether correct have been drawn up the protocol on the administrative offence and other protocols provided

for by the Code, as well as whether correct have been drawn up other materials of the case.

In accordance with article 29.4 CAO RF, in preparation for consideration of a case on administrative offence, there is provided for an opportunity to make a ruling about the return of the protocol on administrative offence and other case materials to the body, official who has drawn up the protocol, if it is established that:

- the protocol and other materials of the case have been drawn up by unauthorized persons,
- the protocol and other materials of the case have been drawn up wrong,
- there is incompleteness of submitted materials, which cannot be compensated during proceedings.

Observing this norm of the CAO RF, the court, having ascertained that the protocol on the administrative offence of LLC "Signal-Nedvizhimost'" was incorrectly compiled, would had to make a ruling about the return the protocol on administrative offence to the official. However, the judge went beyond its powers in the present case, and in violation of the CAO RF brought LLC "Signal-Nedvizhimost'" to administrative responsibility for an administrative offense, the composition of which was not described in the protocol, in addition made a counting error in calculating the timing of execution of obligation by the subject of administrative responsibility.

In the motivation part of the judgment the court pointed to the violation of the deadline for submission declaration specified in paragraph 15 of the rules of submission declarations (approved by the decision of the Government of the Russian Federation No. 815 from August 09, 2012) – deadline for submission of declaration for the 4th quarter not later than the 20th day of the month following the reporting period. According to the list of enclosures of the Russian Post, which was represented among case materials by LLC "Signal-Nedvizhimost'", the declaration and the floppy disk with the electronic file were sent 21.01.2013 to the address of the Interregional Territorial Administration of the Federal Service for Alcohol Market Regulation in the Volga district, what, in the opinion of the court, constituted violation of the terms of submission the declaration. However, the very administrative jurisdiction body did not consider that the term had been violated, so in the protocol on the administrative offence the violation of paragraph 15 of the rules of submission declarations (approved by the decision of the Government of the Russian Federation No. 815 from August 09, 2012) was not noted. Moreover, in the notice on the need to appear for drawing up the protocol on the administrative violation from February 20, 2013, as the reason of initiation of administrative proceedings

was specified failure to provide an electronic copy of the declaration for the 4th quarter of 2012 to the Federal Service for Alcohol Market Regulation.

Thus, considering the case on administrative offence, the court found that LLC "Signal-Nedvizhimost'" had filed a declaration with the delay for one day, that is, instead of the due date not later than the 20th day of the month following the reporting period, the obligation had been performed by the 21 day of the month, what, in opinion of the justice of peace, did not correspond to paragraph 6 article. 6.1 of the Tax Code of the RF and constituted an administrative offense of LLC "Signal-Nedvizhimost'" under article 19.7 CAO RF in part of late submission of information to supervisory authority. However, the twentieth day of the reporting month was a day off – Sunday, January 20, 2013.

In calculating the deadline for submission declaration to supervisory authority, in accordance with paragraph 15 of the rules of submission declarations (approved by the decision of the Government of the Russian Federation No. 815 from August 09, 2012), the legislator established the term, defined by the calendar day that has an ordinal number in a calendar month.

In accordance with the federal tax calendar for 2013, deadline for submission declaration to supervisory authority was deferred, in accordance with article 6.1 of the Tax Code of the RF, article 4 of the Federal Law No. 212-FL from July 24, 2009 [3], paragraph 88 of the provision on maintenance of accounting records and accounting reporting in the Russian Federation (approved by the order of the Ministry of Finance of the Russian Federation No. 34n from July 29, 1998 [5]), the letter of the Federal Service for Alcohol Market Regulation No. 02-02-17/237-VD from May 26, 2010 [6], to the next working day if the last day of the reporting period fell on a day-off.

By virtue of paragraph 88 of the provision on maintenance of accounting records and accounting reporting in the Russian Federation (approved by the order of the Ministry of Finance of the Russian Federation No. 34n from July 29, 1998) the day of submission of accounting reporting is determined by the date of mail item or the date of the actual transfer by belonging.

Thus, in connection with the moving of the reporting date from January 20, 2013 to January 21, 2013, declarations for the 4th quarter 2012 must be submitted no later than January 21, 2013, therefore, LLC "Signal-Nedvizhimost'" did not violate the due date for submitting declarations to supervisory authority (just therefore administrative jurisdiction body did not imputed this kind of offense). The court, we believe, applying discretionary powers determined the composition of the administrative offence in its sole discretion where it was not.

In addition we would like to mention that the essence of the very dispute between the administrative jurisdiction body and the controlled subject of public law was what should be considered an electronic form of declaration on the volume of retail sales of beer and beer drinks. LLC "Signal-Nedvizhimost'" (has on the balance sheet a hotel complex, which has a license for the retail sale of beer) sent to the supervisory authority the declaration on a magnetic media, but the administrative jurisdiction body requested electronic version of the declaration through telecommunication channels with enhanced qualified electronic signature (despite the fact that the turnover of alcohol products carried out by LLC "Signal-Nedvizhimost'", requires submission of declaration only in paper form).

We believe that the justice of peace examining the case on the administrative offence under protocol drawn up by the Interregional Territorial Administration of the Federal Service for Alcohol Market Regulation in the Volga district, deviated from (if you take into account the re-qualification by the judge of the composition of the administrative offense, otherwise, in the absence of administrative-legal tort, bringing to administrative responsibility should had been denied) the essence of the imputed administrative offence and also went beyond the limits of authority defined by part 1 article 29.4 CAO RF in preparation for consideration of the case.

References:

1. Code on Administrative Offences of the Russian Federation from December 30, 2001, No. 195-FL [Kodeks Rossijskoj Federatsii ob administrativnyh pravonarushenijah ot 30 dekabrja 2001 g. № 195-FZ]. *System GARANT* [Electronic resource], Moscow: 2013.
2. Federal Law No. 171-FL from 22.11.1995 "On State Regulation of Production and Turnover of Ethyl Alcohol and Alcohol Products and on Limitation of Alcohol Consumption (Drinking)" [Federal'nyi zakon ot 22.11.1995 goda № 171-FZ «O gosudarstvennom regulirovanii proizvodstva i oborota etilovogo spirta, alkogol'noi i spirtosoderzhashchei produktsii i ob ogranichenii potrebleniya (raspitiya) alkogol'noi produktsii»]. *System GARANT* [Electronic resource], Moscow: 2013.
3. Federal Law No. 212-FL from July 24, 2009 "On Insurance Contributions to the Pension Fund of the Russian Federation, the Social Insurance Fund of the Russian Federation, the Federal Fund of Compulsory Medical Insurance" [Federal'nyi zakon ot 24 iyulya 2009 g. № 212-FZ «O strakhovykh vznosakh v Pensionnyi fond Rossiiskoi Federatsii, Fond sotsial'nogo strakhovaniya

Rossiiskoi Federatsii, Federal'nyi fond obyazatel'nogo meditsinskogo strakhovaniya»]. *System GARANT* [Electronic resource], Moscow: 2013.

4. RF Government Decree No. 815 from August 09, 2012 "On Submission of Declaration on the Volume of Production, Turnover and (or) Use of Ethyl Alcohol and Alcohol-containing Products, on the Use of Production Capacity" [Postanovlenie Pravitel'stva RF ot 9 avgusta 2012 g. № 815 «O predstavlenii deklaratsii ob ob"eme proizvodstva, oborota i (ili) ispol'zovaniya etilovogo spirta, alkogol'noi i spirtosoderzhashchei produktsii, ob ispol'zovanii proizvodstvennykh moshchnostei»]. *System GARANT* [Electronic resource], Moscow: 2013.

5. Order of the Ministry of Finance of the Russian Federation No. 34n from July 29, 1998 "On Approval of the Provision on Accounting and Accounting Reports in the Russian Federation" [Prikaz Minfina RF ot 29 iyulya 1998 g. № 34n «Ob utverzhdenii Polozheniya po vedeniyu bukhgalterskogo ucheta i bukhgalterskoi otchetnosti v Rossiiskoi Federatsii»]. *System GARANT* [Electronic resource], Moscow: 2013.

6. Letter of the Federal Service for Alcohol Market Regulation No. 02-02-17/237-VD from May 26, 2010 "On Giving Explanations" [Pis'mo Federal'noi sluzhby po regulirovaniyu alkogol'nogo rynka ot 26 maya 2010 g. № 02-02-17/237-VD «O predostavlenii raz"yasnenii»]. *System GARANT* [Electronic resource], Moscow: 2013.

7. Resolution of the Federal Arbitration Court of the Moscow District No. KA-A40/424-08 from February 21, 2008 [Postanovlenie Federal'nogo arbitrazhnogo suda Moskovskogo okruga ot 21 fevralya 2008 g. № KA-A40/424-08]. *System GARANT* [Electronic resource], Moscow: 2013.

8. Guev A. N. Comments to the Code on Administrative Offences of the Russian Federation [Kommentarii k Kodeksu Rossiiskoi Federatsii ob administrativnykh pravonarusheniyakh]. *System GARANT* [Electronic resource], Moscow: 2013.

Universal Decimal
Classification 342.5 : 342.9

Komakhin B. N.

DEVELOPMENT OF PROFESSIONAL ACTIVITY OF PUBLIC SERVANTS IN THE CONTEXT OF SERVICE-LEGAL ANALITICS AND INNOVATICS

Komakhin Boris Nikolaevich,
c.j.s. (PhD in law), Doctoral student of Moscow University of the Russian MIA.

The article describes legal and organizational problems of improving the performance of public servants in the context of innovation development of the country in conditions of the modernization of Russian economy and the need for development of legislation on official activities.

Keywords: state, service, innovation, modernization, servant.

Administrative-legal science is elaborating a system of priorities, which are focused on modernization and innovative development of service activity and concretized in relation to the sector of research and developments related to the model of innovative development of professional service activity. Formation of priority directions for the development of this science in the Russian Federation provides for transparency and publicity with taking into account the priorities of innovative development of public service and long-term projections of this development.

It is expedient to strengthen imperative regulation at public service; first of all, it is necessary to distinguish between analytical methods for regulating of managerial activity of public servants, analytical methods for regulating of, actually, work relationships and innovative methods that are conditioned by modernization. Methods are associated with the implementation by public servants of their powers of externally authoritative nature, with their interaction with the physical and legal persons. This group of powers is beyond the scope of service law. Therefore,

strengthening of executive discipline, accountability and effectiveness of employees, which, of course, is an important task, bears exactly primary, direct relation to service-legal analytics.

Service and legal analytics shows that the widespread introduction of analytical methods (methods of analysis), which have the mandatory nature of administrative procedures, in the practice of service activity should become an integral part of the service-legal analytics. For example, such matters as the appointment of an employee to the position, bringing it to responsibility, referral to certification, etc. in all cases must be in detail elaborated in normative acts, and strictly comply with the rules of analytics. On the other hand, employees must strictly fulfill the orders of superiors, which are given within the competence of the latter.

Of course, no procedures can take into account all life situations. Therefore, certain discretionary powers in officials still remain. Definitely, executive and administrative activity, like any other public-imperative activity, is impossible without a specific legal space of free discretion of officials, servants, in which the scope of innovation is too big.

However, balance is important in this situation, because the presence of excessive discretionary powers, as we know, increases the level of corruption in public administration. Therefore, if discretion in this case is really necessary, then in the process of taking managerial decision in the field of service activity, a particular official must choose among several alternatives. Of course, with clearly defined criteria for the selection of one of them.

The authors of the Federal Law "On Municipal Service in the Russian Federation" [4] consciously changed the approaches to the regulation of labor of municipal employees in comparison with the Federal Law "On Public Civil Service of the Russian Federation" [3], having defined that the passage of the service is carried out on the basis of labor legislation norms, subject to certain peculiarities. This seems to be a manifestation of service-legal innovation.

Therefore, at municipal service more often use innovative methods of labor legal regulation. Municipal employees are working under a labor contract, rather than under a service contract. The contest for a post of service is optional. Bringing of municipal employees to disciplinary responsibility is carried out according to the rules of labor legislation. At that, a head, who imposes a sanction, does not depend on service check results. However, authoritative methods of labor management are more significant at municipal service than in private organizations. The terms of a labor contract with a municipal employee are usually determined by the legal acts of local self-government bodies. For municipal employees is also limited the possibility

of protection of labor rights. Their working conditions are also mainly determined not by a contract but by the normative acts of regional and local level.

Consequently, methods of service-legal analytics and service-legal innovatics are of great importance in pre-emptive use of peremptory methods of power, subordination and restrictions in the institutes of service law.

We should emphasize the following. First, to define legal implementation of the principles of professionalism and competence as a continuous process of legal management of achievement new goals and objectives, use of the newest forms and methods in the activities of public civil servants.

Second, in order to create an effective system legal implementation of the principles of innovativeness, professionalism and competence, in the legislation must be clearly mentioned what a civil servant of new type is needed to achieve innovative goals of the state. We will have to accelerate the development of methods to stimulate civil servants to gain new knowledge needed for the behavior of a civil servant of new type.

Third, to design a conceptual model of an employee of not only a new type, but also legislatively determine professional features and characteristics of a competent and demanded by the realities of life employee, who is constantly ready to support professional innovative conversions.

In this connection, will be further development of the legal theory of innovative development of professionalism and competence of servants, of all human resource capacity of the Russian state.

One of the key strategic tasks that need to be resolved during the implementation of the strategy of innovative development of service is a legal provision of reproduction human resources and, above all, science (this process includes mechanisms to identify talented young people at all stages of education, as well as continuity in the work of scientific schools without loss of accumulated potential).

Implementation of national priorities in science and technology involves the implementation of the following measures:

- creation for talented youth prone to research of an enabling environment and incentives for joining to science;

- fastening of talented young researchers in science, including the creation of conditions that reduce incentives to emigration of such students for permanent residence abroad without introducing any administrative barriers to the mobility of scientific staff;

- support for existing and new scientific schools, which incorporate researchers of different generations.

But at the same time, the legislature has clearly defined the range of legal sources, which have the legal nature of the acts of service-legal properties and least of all disclose analytical and innovative nature. Indeed, service legislation is a complex branch, since in the regulation of public and municipal service the legislator does not renounces the use of provisions of the Labor Code of the Russian Federation [2].

However, the issue of complex nature of service-legal analytics and innovatics is not so easy. Indeed, if we consider the legal regulation of public service as a single analytical set with innovations and sources of information, the range of normative sources will be very large. All this proves that there is insufficient justification for codification of service legislation, but not the development of the service-legal analytics and service-legal innovatics. Just as administrative law of the Russian Federation does not have a single codified source, what does not separate it from, for example, managerial law, branches and sub-sectors of law themselves are not clearly emphasized in the legislation, and exist as theoretical constructions.

Simultaneously service-legal analysis and service-legal innovatics, norms, in their essence derived from the constitutional, administrative, municipal, financial, civil and criminal law, regulate aspects or even separate fragments of service activity. As for the constitutional law, its role in regulating sub-branches of service law is also very significant (part 4 article 32, paragraph "t" article 71 and paragraph "j" article 72 of the Constitution [1]). Constitutional law by virtue of its fundamental, constitutive nature in general is the base for any branch (sub-branch) of the Russian law. Constitutional norms (by the way, in many cases in significantly increased amount) can be found in all the analytical and innovative processes, in branches and sub-branches of service law.

Any opinion seems to be justified, by virtue of which in the subject matter of service law, in its sub-sectors – service-legal analysis and innovatics large place is occupied by the complex social relations regulated by constitutional, labor, civil and other law. This is due to the fact that public servants carry out a very broad range of authority, relating not only to the managerial but also to jurisdictional (law enforcement) sphere.

Thus, in its correlation with the service law, service-legal analysis and service-legal innovatics can be correlated as parts of the complex branch of law, which is such its sub-sectors as service-analytical and service-innovative law. The volume of legislation so far is small for the establishment of service-legal analysis and service-legal innovation as branches of law. Again it should be stressed that currently service-legal analysis and innovatics can be considered as emerging sub-branches

of Russian service law. While referring to the prospects of development of both service-legal analysis and service-legal innovations, we should note the expansion of the scope of their interaction within the framework of administrative law.

References:

1. Constitution of the Russian Federation (adopted on National Voting, December 12, 1993) [Konstitutsiya Rossiiskoi Federatsii (prinyata na vsenarodnom golosovanii 12 dekabrya 1993 g.)]. *System GARANT* [Electronic resource], Moscow: 2013.
2. Labor Code of the Russian Federation from December 30, 2001, No. 197-FL [Trudovoi kodeks Rossijskoj Federacii ot 30 dekabrja 2001 g. № 197-FZ]. *System GARANT* [Electronic resource], Moscow: 2013.
3. Federal Law No. 79-FL from July 27, 2004 "On the Public Civil Service of the Russian Federation" [Federal'nyi zakon ot 27 iyulya 2004 g. № 79-FZ «O gosudarstvennoi grazhdanskoi sluzhbe Rossiiskoi Federatsii»]. *System GARANT* [Electronic resource], Moscow: 2013.
4. Federal Law No. 25-FL from March 02, 2007 "On the Municipal Service in the Russian Federation" [Federal'nyi zakon ot 2 marta 2007 g. № 25-FZ «O munitsipal'noi sluzhbe v Rossiiskoi Federatsii»]. *System GARANT* [Electronic resource], Moscow: 2013.

Universal Decimal
Classification 342.9

Shilyuk T. O.

TOWARDS THE ISSUE OF ADMINISTRATIVE OFFENCES IN HEALTH[1]

Shilyuk Tat'yana Olegovna,
c.j.s. (PhD in law), lecturer in administrative law at Moscow State Legal Academy named after O. E. Kutafin,
aspirantmgya@gmail.com

It is pointed out that articles containing administrative offences in health are scattered in various chapters of the Code on Administrative offences of the RF. The author emphasizes the existence of the problem of distinguishing frivolity from bona fide ignorance in the performance by medical employees their duties.

Here is criticized the list of penalties for administrative violations in the field of health protection and offered its expansion through deprivation of a special right.

Keywords: administrative offences, administrative offence in health, social relations in the field of health protection, subjects of offences in the field of health, administrative penalties.

An administrative offense in health within the meaning of article 2.1. of the Code on Administrative Offences of the RF (hereinafter CAO RF) can be regarded as a unlawful, guilty action or inaction of a physical person or legal entity, for which the law provides for administrative responsibility, infringing on public relations related to the implementation of activities in the field of health. An offence in health has juridical signs, which include wrongfulness, danger to society, guiltiness, punishability.

Chapter 6 CAO RF "Administrative Offences Endangering the Health and Sanitary-and Epidemiological Well-Being of the Population and Endangering Public Morals" enshrined the following compositions of administrative offenses

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

encroaching on the health, sanitary and epidemiological welfare of the population and public morals:

- concealment of a source of HIV infection or a venereal disease and of contacts entailing on infection hazard;
- engagement in unlawful private medical practice, or in private pharmaceutical activities, or in folk-medicine (healing);
- violation of the law in the area of securing the sanitary-and-epidemiological well-being of the population
- failure to meet the sanitary-and-epidemiological requirements concerning the use of living quarters and public premises, of buildings and structures, as well as the operation of transport;
- failure to meet the sanitary-and-epidemiological requirements concerning drinking water;
- failure to meet the sanitary-and-epidemiological requirements concerning the organization of public catering;
- failure to meet the sanitary-and-epidemiological requirements concerning leisure and health activities for children, their upbringing and training.

These offences also include offences relating to illegal trafficking and consumption of narcotic drugs, psychotropic substances or their analogues; drawing minors into the consumption of alcoholic drinks, beer or stupefying substances; engagement in prostitution and deriving income from engagement in prostitution, where this income is connected with another person's engagement in prostitution; unlawful advertising of drugs, psychotropic substances, or precursors thereof; violation the rules of turnover of tools or equipment used in the manufacture of narcotic drugs or psychotropic substances; violation of the legislation of the Russian Federation on the protection of children from information harmful to their health and (or) development; violation of the requirements of the legislation on physical culture and sports on the prevention of doping in sport and combating against it.

The objects of the discussed offences are social relations in the field of health care and provision of sanitary-epidemiological welfare of the population, as well as public morals.

Objective aspect is characterized both by an action and inaction. Practice shows that it is an unlawful omission of health workers is the reason of a great part of adverse consequences. In this regard, the Criminal Code of the Russian Federation provides for such offense as failure to provide care to a patient if this has led by negligence to the infliction of moderate bodily injury or death of a patient or to

the infliction of serious harm to health. However, CAO RF does not contain this norm, what is an omission by the legislator.

The subjects of offenses in the field of health, sanitary and epidemiological welfare of the population and public morals are citizens, officials, legal entities as well as individuals engaged in entrepreneurial activities without forming a legal entity. However, in the case of certain offences, for example, violations of sanitary-epidemiological requirements for leisure conditions and health activities of children, their upbringing and training (article 6.7. CAO RF), it can be assumed that the subject will be also the Director of a fostering or educational institution, and part 2 article 6.10. CAO RF identified a special subject – parents or other legal representatives of minors, as well as persons responsible for training and upbringing of minors.

The subjective aspect of administrative offenses encroaching on the health, sanitary and epidemiological welfare of the population and public morals is characterized by guilt both in the form of intent and negligence. For example, concealment by a person, infected by HIV or a venereal disease, of the source of the infection, as well as of those, who have had contacts with the said person and create the risk of infecting these diseases (article 6.1. CAO RF), can only be made intentionally; and, at violation of sanitary-epidemiological requirements for leisure conditions and health activities of children, their upbringing and training (article 6.7. CAO RF) both intent and negligence are possible. The issue of guilt in bringing medical personnel to responsibility is of great importance because of the possibility of "medical error". The very term of "medical error" is not provided for by the current Russian legislation, and it is not recognized as a circumstance precluding legal responsibility. However, in practice, it is not so easy to distinguish the flippancy from bona fide ignorance of medical personnel in the discharge of their duties, that is why health workers themselves must be aware of those legal criteria for qualifying of a particular action or inaction as guilty.

Analysis of the legislation on administrative offenses has also identified the following problem: articles containing compositions of administrative violations in the field of health are scattered in various chapters of CAO RF. So, despite the fact that a special chapter is chapter 6 CAO RF "Administrative Offences Endangering the Health and Sanitary-and Epidemiological Well-Being of the Population and Endangering Public Morals", the mentioned offences also can be found in other chapters. A striking example is article 13.14. "Disclosing Information of Limited Accessibility", where the legislator has equated the responsibility for the disclosure of medical secrets to responsibility for the disclosure of limited access information.

The complexity of combining these offences in one chapter is due to the complexity of their object, however, the creation at the federal level of an independent chapter with administrative offenses, which encroach upon the relations in health, seems to be possible.

That is why it is needed to raise one more problem – correlation of rule-making competence in the field of legislation on administrative offences of the Russian Federation and the subjects of the Russian Federation in the field of health care. Review of the legislation on administrative offences of the subjects of the Russian Federation has led to the conclusion that the regions are actively involved in the process of establishing of administrative responsibility, including in the area of health care. Almost all the regions have already adopted either their own codes (for example, the Code of the City of Moscow on Administrative Offences No. 45 from November 21, 2007) or separate laws (such as the Law of the Ryazan region No. 182-RL from December 04, 2008 "On Administrative Offences").

However, the practice of regulation of administrative responsibility formed in the regions of the Russian Federation cannot help but causes a critical assessment, since the trends of regional rule-making activity indicate the establishment of administrative responsibility in the regions of the Russian Federation in most cases for violations of federal norms and regulations, and as a consequence, their non-compliance with the requirements of article 1.3. CAO RF on the delineation of competence [4, 34]. This trend has also appeared in the field of health. An example is article 11.9 of the Law of the Oryol region No. 304-RL from February 04, 2003 "On Responsibility for Administrative Offences" [3] – "Toleration to the Consumption of Narcotic Drugs or Psychotropic Substances", the literal interpretation of which means "allowing of non-medical consumption of narcotic drugs or psychotropic substances by citizens in premises of cafes, bars, restaurants, discos and other entertainment establishments from the side of their proprietors or owners". Given that the legislation on narcotic drugs, psychotropic substances and their precursors consists only from federal laws and any matters arising in the course of their turnover may be regulated solely at the federal level, it can be said that the subjects of the Russian Federation have not the right to impose administrative responsibility for offenses in the field of turnover of narcotic drugs and psychotropic substances, and the only legally established administrative responsibility for such violations should recognize the responsibility envisaged by CAO RF [2].

Separately, it is also should be noted that the subjects of the Russian Federation also do not have the right to establish administrative responsibility for violation of the rules and restrictions enshrined by the federal laws in cases where CAO

RF does not envisage responsibility for their non-compliance, that fact has drawn the attention of the Constitutional Court of the Russian Federation [1]. As noted by M. S. Studenikina, it "would open a limitless ability to discrete powers of constituent entities of the Russian Federation to "correct" the federal legislation at their discretion" [6, 542].

We have to agree with the statement of B. V. Rossinskii that the subjects of the Russian Federation do not need to have their own laws on administrative responsibility, because it is difficult to find a "regional specificity" in this field of public relations [5, 25].

It seems that federal legislation can solve this problem of mismatch in regional laws on administrative offenses through the establishment of administrative responsibility in the field of health only at the federal level, what would guarantee the fulfillment of the main objective of the legislation on administrative offenses – protection of the rights and legitimate interests of citizens, including in the considered sphere.

Finally, attention should be also paid to the penalties for committing administrative offences in the field of health, sanitary and epidemiological welfare of the population and public morals. In accordance with the general objectives of administrative punishment (article 3.1.), the aim of an administrative penalty in the considered area is to prevent the commission of further offenses by both the offender and other persons. Warning, administrative fine, administrative detention, administrative suspension of activities are provided for as the sanctions for these offences.

However, such a list of punishments for committing administrative offences in the area of health is not optimal. It seems appropriate as an additional punishment to establish deprivation of a special right, what will suit the content of an appropriate offense and become an effective measure of responsibility. According to CAO RF, its essence is that for a certain period a person is forbidden to use a right that has been previously given to it. This type of punishment may be imposed only by a judge for a term of one month to three years. Deprivation of a special right may be established for such an offense as illegal engagement in private medical practice, private pharmaceutical activity or folk medicine (healing), for the commission of which currently provide for an administrative fine.

We emphasize that the Criminal Code provides for the imposing of such punishment as deprivation of the right to occupy certain positions or engage in certain activities for the following offenses: compulsion to remove human organs or tissues for transplantation; infection with HIV because of improper performance of professional duties; illegal performance of abortions if it has entailed, by negligence,

the death of victim or the infliction of grave injury to her health; failure to render aid to a sick person if this has entailed, by negligence, the death of the person or the infliction of grave injury to its health. When these crimes occur, deprivation of the right to occupy certain positions or engage in certain activities is imposed as an additional penalty upon the occurrence of an appropriate nature of the consequences. Negative factor is that criminal responsibility as the most austere kind of legal responsibility is the most effective, in fact, the only truly frightening factor. To change this situation we should strengthen administrative responsibility established for deeds containing a lesser degree of danger to society than crime. This will allow, already on the stage of committing an administrative offence, prevention of the development of a situation that may lead to more grave consequences.

In summary, we can state the following:

Despite the presence in the Special Part of CAO RF of a special chapter that establish responsibility for offenses in the field of health, sanitary and epidemiological welfare of the population and public morals, it does not include a complete list of such offenses that have been reflected in the other chapters of the Code on Administrative Offences of the Russian Federation. At that, such responsibility should be established only at the federal level, since administrative responsibility is always associated with the intrusion into the sphere of private life of citizens and assumes restriction of their rights and freedoms. And, taking into account article 55 of the Constitution of the Russian Federation, which establishes that the rights and freedoms of man and citizen may be limited by the federal law only to such an extent, to which it is necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defense of the country and security of the State, the statement on the need for solely federal legislative regulation of the institute of administrative responsibility cannot be called an exaggeration.

References:

1. Ruling of the Constitutional Court of the Russian Federation No. 429-R from 01.12.2005 "On the refusal to accept for consideration the request of the State Duma of the Tomsk region on the constitutionality check of paragraph 3 part 1 article 1.3. of the Code on Administrative Offences of the RF" [Opredelenie Konstitutsionnogo Suda Rossiiskoi Federatsii ot 01.12.2005 g. № 429-O «Ob otkaze v prinyatii k rassmotreniyu zaprosa Gosudarstvennoi Dumy Tomskoi oblasti o proverke konstitutsionnosti punkta 3 chasti 1 stat'i 1.3. Kodeksa

Rossiiskoi Federatsii ob administrativnykh pravonarusheniyakh»]. *System GARANT* [Electronic resource], Moscow: 2012.

2. Bolotin V. S., Starostin B. A. Problems of Legal Regulation by the Subjects of Russia of Administrative Responsibility Issues Concerning Narcotic Drugs and Psychotropic Substances [Problemy pravovogo regulirovaniya sub"ektami Rossii voprosov administrativnoi otvetstvennosti v sfere oborota narkoticheskikh sredstv i psikhotropnykh veshchestv]. *Administrativnoe pravo i protsess – Administrative Law and Process*, 2010, No. 4.

3. *Orlovskaya Pravda*, 07 February, 2003.

4. Plekhanova T. S. Separation of Jurisdictions of the Russian Federation and its Subjects in the Field of Legislation on Administrative Offences in Housing and Utility Sector [Razgranichenie kompetentsii Rossiiskoi Federatsii i ee sub"ektov v oblasti zakonodatel'stva ob administrativnykh pravonarusheniyakh v zhilishchno-kommunal'noi sfere]. *Administrativnoe pravo i protsess – Administrative Law and Process*, 2009, No. 2.

5. Rossinskii B. V. On Some Issues of the Separation of Jurisdictions of the Russian Federation and its Subjects in the Field of Establishing Administrative Responsibility [O nekotorykh voprosakh razgranicheniya kompetentsii Rossiiskoi Federatsii i sub"ektov RF v oblasti ustanovleniya administrativnoi otvetstvennosti]. *Aktual'nye voprosy administrativno-deliktnogo prava. Materialy mezhd. nauch.-prakt. konf., posvjawennoj 70-letiju Zasluzhennogo dejatelja nauki RF, dokt. jurid. nauk, prof. A. P. Shergina – The topical issues of administrative and tort law. Proceedings of the international scientifically-practical conference dedicated to 70th anniversary of the Honored Scientist of RF, doctor of law, Professor Shergin A. P.*, Moscow: All-Russian Research institute of the MIA of Russia, 2005.

6. *The Ratio of the Legislation of the Russian Federation and Legislation of the Subjects of the Russian Federation* [Sootnoshenie zakonodatel'stva Rossiiskoi Federatsii i zakonodatel'stva sub"ektov Rossiiskoi Federatsii]. Moscow: 2003.

Universal Decimal
Classification 35.07 : 342

Umanskaya V. P.

IMPROVEMENT OF LAW-MAKING POWERS OF EXECUTIVE AUTHORITIES IN THE CONDITIONS OF ADMINISTRATIVE REFORM

Umanskaya Viktoriya Petrovna,
c.j.s. (PhD in law), Associate professor of chair administrative and financial law at Russian Law Academy of the Ministry of Justice of the Russian Federation, Associate professor.

The article deals with the consideration of federal executive authorities' powers to issue legal acts, methods of their consolidation and directions of development. Analysis of enforcement practice demonstrates the need for improvement of law-making activity.

Keywords: legal acts, powers of authority, law-making activity, federal executive authorities.

By their legal nature legal acts of federal executive bodies are the most complex and diverse part of legislation. Because of their sectorial and functional orientation these legal acts are the most numerous. A large number of legal acts of federal executive bodies determines the relevance of a number of theoretical and practical researches on the issue.

Basic powers to issue legal acts by federal executive bodies are provided for by a Presidential Decree No. 314 from March 09, 2004 "On the System and Structure of Federal Executive Bodies" [2] (hereinafter the Presidential Decree No. 314).

Presidential Decree No. 314 determines that the federal ministry is a federal body of executive authority responsible for shaping public policy and normative-legal regulation in a field of activity established by the acts of the President of the Russian Federation and the Government of the Russian Federation. Federal services and federal agencies within their authority issue individual legal acts, and are not entitled to exercise normative-legal regulation in the established area, except in cases established by the decrees of the President of the Russian Federation or the decisions of the Government of the Russian Federation. Thus, federal ministries act as the main bodies of executive power, which are entitled to issue normative acts.

Legal acts of the federal ministries take a special place in the system of legislation. First of all, it is predetermined by the position of this body in the State machinery, as well as by the nature of its functions and tasks. Acts of ministries are numerous, as they are designed to implement more detailed regulation on operational issues. Especial position of the legal acts of the federal ministries is determined by the status and the extensive powers of this federal body for the formulation of state policy.

The decrees of the President of the Russian Federation empower federal services and federal agencies to issue normative legal acts, if the management of these bodies is implemented by the head of the state.

The problem of legal acts of the federal bodies of executive power is particularly relevant in connection with the changes that have taken place in the federal structure. Decree of the President of the Russian Federation No. 636 from May 21, 2012 [4] approved the current structure of federal bodies of executive power, which includes 79 federal bodies, 20 of which are Federal ministries, 37 Federal services and 25 Federal agencies.

An analysis of the provisions of the federal services and federal agencies shows that many of them are endowed with rule-making powers.

In particular, the following federal services have the powers of normative-legal regulation: Federal Service for Technical and Export Control; State Courier Service of the Russian Federation; Federal Security Service of the Russian Federation; Federal Service of the Russian Federation for the Control of Drug Trafficking; Federal Guard Service of the Russian Federation; Federal Service for Financial Monitoring; Federal Antimonopoly Service; Federal Intellectual Property Service; Federal Migration Service; Federal Service for Defense Contracts; Federal Service for Alcohol Market Regulation; Federal Customs Service; Federal Tariff Service; Federal Service for Financial Markets; Federal Service for Ecological, Technological and Nuclear Supervision.

Thus, of the 37 Federal services 15 (i.e. 40%) have the powers to issue normative legal acts. Some federal services in accordance with the provisions on them do not have the right to exercise the legal regulation.

Some federal services, in accordance with the provisions on them, do not have the right to exercise normative-legal regulation. However, separate decrees of the President of the RF or decisions of the Government of the RF stipulate such powers regarding them. For example, in accordance with paragraph 7 of the Provision [6], Federal Agency for Veterinary and Phytosanitary Supervision has no right to be engaged in normative-legal regulation in the established area, except

in cases established by decree of the President of the Russian Federation and the decisions of the Government of the Russian Federation, as well as in management of public property and provision of paid services. However, the Decision of the Government of the RF No. 1009 from December 14, 2009 "On the procedure for joint implementation by the Ministry of Health and Social Development of the Russian Federation and the Ministry of Agriculture of the Russian Federation of the functions of normative-legal regulation in the sphere of monitoring over the quality and safety of food products, and the functions of organization of such control" [8] stipulated that normative-legal regulation in the sphere of monitoring over the quality and safety of food products was implemented by the Federal Service for Veterinary and Phytosanitary Supervision in accordance with its powers. The same Decision provides rule-making powers to the Federal Service for Supervision in the Sphere of Consumer Rights Protection and Human Welfare.

Certain provisions on federal services, in addition to the mere granting of bodies with powers to issue normative-legal acts, provide them functions of state policy formulation. For example, such broad powers are provided to: Federal Service of the Russian Federation for the Control of Drug Trafficking; Federal Service for Financial Monitoring; Federal Service for Alcohol Market Regulation; Federal Customs Service; Federal Service for Financial Markets; Federal Service for Ecological, Technological and Nuclear Supervision.

Separate federal agencies also carry out the functions of the formulation and implementation of state policy and normative-legal regulation: Federal Agency for Forestry Affairs; Federal Agency for Fishery; Federal Space Agency; Federal Agency for the Development of the State Border of the Russian Federation.

In accordance with the Presidential Decree No. 314, such powers are provided for in respect of the federal ministries, since the development of state policy is the most important function of public administration. Although, there is no a direct ban for federal services and federal agencies regarding implementation the function of formulation state policy in the Presidential Decree No. 314, it appears that it is the prerogative of federal ministries.

Endowing federal services and federal agencies with the functions of state policy formulation in a particular area can lead to various kinds of collisions. Many legal acts do not use the name of a particular body of executive power and use the juridical structure of "federal executive body responsible for developing and implementing of state policy and normative-legal regulation in the field of...". This reference to a federal body usually implies a Federal Ministry. In practice, however,

this body may be a federal service or federal agency. Often, it is not easy to sort out in these situations.

Compared to federal services, the number of federal agencies empowered with rule-making functions is significantly less. Out of 25 federal agencies, only 4 (16%) issue normative-legal acts.

Other provisions on federal services and federal agencies contain a direct reference to the fact that these bodies have not the right to engage normative-legal regulation in the established area of activity [5].

Thus, the analysis of existing provisions shows that about one-third of federal services and federal agencies initially on the basis of their provisions are endowed with rule-making functions, which, in accordance with the Presidential Decree No. 314, have not been intended for them. The practice of granting law-making powers to the federal bodies of executive power shows no efficiency of the mechanical delimitation of managerial functions.

The presence of law-making powers of executive authorities requires clarification, as it is often interpreted as discretion in the use of a granted right. Meanwhile, bodies of executive power that have public powers of authority at the same time are endowed with the duties of their implementation. The public sphere of their activity involves the connectedness of rights and duties as a legal duty, which must be implemented in public interest.

Thus, based on the fact that the right to issue legal acts is both a duty, and taking into account the great importance of the system of legal acts, its impact not only on the legislation, but also on a huge range of public relations, it is necessary to develop a range of measures aimed at the increase in responsibility of executive authorities and their officials.

The first step in this direction could be the formation and legal enshrining of the grounds for the adoption of legal acts. In separate cases, the need to adopt legal acts is provided for by the law.

First, the duty of adopting legal acts is traced in the establishment of law-making powers of executive authorities. For example, in accordance with the provisions, federal bodies of executive power may issue normative-legal act: in a particular sphere or field (i.e., federal body is actually limited by nothing other than its competence); on matters relating to any field of activity; according to a particular list of several general issues (e.g., the Federal service for Technical and Export Control exercises independent normative-legal regulation of the issues of: ensuring security of information; countering technical intelligence; technical protection of information; implementation of export control); based on the direct

list of specific acts that can be either of open nature (for example, the provision on the Ministry of Health of the Russian Federation contains a list of more than 200 legal acts, and the provision on the Ministry of Labor and Social Protection of the Russian Federation – a list of 168 legal acts) or closed nature (for example, the Decree of the Government of the Russian Federation No. 459 from July 26, 2006 "On the Federal customs Service" [7] contains an exhaustive enumeration of the normative-legal acts, which can be taken by the service).

Second, many federal laws contain a direct reference to the need to develop and adopt normative-legal acts in the development of their provisions. For example, the Federal Law No. 79-FL from July 27, 2004 "On Public Civil Service of the Russian Federation" provides for the issuance of a large number of legal acts of the President of the Russian Federation and the Government of the Russian Federation [1]. Separate subordinate legal acts have still not been adopted. In most cases, exactly the adoption of subordinate legal acts influence on not only the effectiveness of federal laws, but in general on their ability to operate and affect social relationships. The lack of legal acts of executive authorities often paralyzes activity of the higher statutory regulations.

Third, the reason for the issuing of legal acts may serve orders of higher public authorities, for example, of the President of the Russian Federation or the Government of the Russian Federation.

Thus, it is possible to find in the legislation the grounds that ensure obligation of issuing legal acts by the federal bodies of executive power.

Another way of improving law-making activity is the clarification of the types of issued normative-legal acts.

In the context of the carried out administrative reform, the improvement of law-making activity and classification of legal acts of federal executive authorities is of particular relevance.

The issue of unification of the types of legal acts in the Soviet times was not resolved. Filling the gap that preserved from the Soviet period, in the issue of legal regulation of the types of legal acts modern federal executive authorities developed and issued their own rules for the preparation of normative legal acts. Many of them repeat the provisions established in the Decree of the Government of the Russian Federation No. 1009 [8]. However, some federal executive bodies either selectively enshrined types of legal acts, which they were authorized to issue, or added the list of legal acts adopted by the RF Government Decree No. 1009. For example, the Ministry of Natural Resources and Ecology of the Russian Federation has the right to issue orders, decrees, rules, regulations, provisions, as well as acts

of advisory nature (directions, etc.) and technical acts. Normative legal acts of the Russian Ministry of Emergency Situations are issued in the form of orders, rules, regulations and provisions. The Ministry of Internal Affairs issues normative legal acts in the form of orders, directives, provisions, statutes, regulations, rules, directions and other normative legal acts [9]. A similar situation is observed in the Decree of the President of RF No. 1082 from August 16, 2004 "Issues of the Ministry of Defense of the Russian Federation" [3]. Russian Defense Minister issues orders, directives, provisions, directions, instructions, statutes and other normative (legal, normative-legal) acts.

Types of re normative-legal acts issued by the federal executive authorities, approved by the RF Government Decree № 1009, in practice do not reflect reality. Federal ministries, services and agencies deal with problems of law-making in their own way. Due to certain circumstances, they refuse from certain legal acts, or introduce their own types, which, in their opinion, better reflect the content of their activities.

Thus, our study shows that the powers of the federal executive authorities in the sphere of law-making need to be improved. The legislation should include specific types of legal acts, clearly define the executive authorities' powers to issue acts, enshrine deadlines and responsibility for the quality of performance of this state functions.

References:

1. Federal Law No. 79-FL of July 27, 2004 "On the Public Civil Service of the Russian Federation" [Federal'nyi zakon ot 27 iyulya 2004 g. № 79-FZ «O gosudarstvennoi grazhdanskoi sluzhbe Rossiiskoi Federatsii»]. *System GARANT* [Electronic resource], Moscow: 2013.
2. Decree of the RF President No. 314 from 09.03.2004 "On the System and Structure of Federal Executive Bodies" [Ukaz Prezidenta RF ot 09.03.2004 N 314 «O sisteme i strukture federal'nykh organov ispolnitel'noi vlasti»]. *System GARANT* [Electronic resource], Moscow: 2013.
3. Decree of the RF President No. 1082 from August 16, 2004 "Issues of the Ministry of Defense of the Russian Federation" [Ukaz Prezidenta RF ot 16 avgusta 2004 g. № 1082 «Voprosy Ministerstva oborony Rossiiskoi Federatsii»]. *System GARANT* [Electronic resource], Moscow: 2013.
4. Decree of the RF President No. 636 from May 21, 2012 "On the structure of the federal bodies of executive power" [Ukaz Prezidenta RF ot 21 maya 2012 g.

№ 636 «O strukture federal'nykh organov ispolnitel'noi vlasti»]. *SZ RF – Collection of laws of the Russian Federation*, from May 28, 2012, no. 22, article 2754.

5. RF Government Decree No. 300 from June 17, 2004 "On approval of the Provision on the Federal Service for Supervision in Education and Science" [Postanovlenie Pravitel'stva RF ot 17 iyunya 2004 g. № 300 «Ob utverzhdenii Polozheniya o Federal'noi sluzhbe po nadzoru v sfere obrazovaniya i nauki»]. *System GARANT* [Electronic resource], Moscow: 2013.

6. RF Government Decree No. 327 from June 30, 2004 "On approval of the Provision on the Federal Service for Veterinary and Phytosanitary Surveillance" [Postanovlenie Pravitel'stva RF ot 30 iyunya 2004 g. № 327 «Ob utverzhdenii Polozheniya o Federal'noi sluzhbe po veterinarnomu i fitosanitarnomu nadzoru»]. *System GARANT* [Electronic resource], Moscow: 2013.

7. RF Government Decree No. 459 from 26.07.2006 "On the Federal Customs Service" [Postanovlenie Pravitel'stva RF ot 26.07.2006 № 459 «O Federal'noi tamozhennoi sluzhbe]. *System GARANT* [Electronic resource], Moscow: 2013.

8. RF Government Decree No. 1009 from December 14, 2009 "On the procedure for joint implementation by the Ministry of Health and Social Development of the Russian Federation and the Ministry of Agriculture of the Russian Federation of the functions of normative legal regulation in the sphere of control over the quality and safety of food products and functions of the organization of this control ["Postanovlenie Pravitel'stva RF ot 14 dekabrya 2009 g. № 1009 «O poryadke sovmestnogo osushchestvleniya Ministerstvom zdravookhraneniya i sotsial'nogo razvitiya Rossiiskoi Federatsii i Ministerstvom sel'skogo khozyaistva Rossiiskoi Federatsii funktsii po normativno-pravovomu regulirovaniyu v sfere kontrolya za kachestvom i bezopasnost'yu pishchevykh produktov i po organizatsii takogo kontrolya»]. *System GARANT* [Electronic resource], Moscow: 2013.

9. Order of the Ministry of Internal Affairs of the Russian Federation № 484 from June 27, 2003 "On approval the rules of preparation of normative legal acts in the central office of the the Ministry of Internal Affairs of Russia" [Prikaz MVD RF ot 27 iyunya 2003 g. № 484 «Ob utverzhdenii Pravil podgotovki normativnykh pravovykh aktov v tsentral'nom apparate MVD Rossii»]. *System GARANT* [Electronic resource], Moscow: 2013.

Universal Decimal
Classification 342.9 : 336.225

Voronov A. M.

PUBLIC ADMINISTRATION IN TAX FIELD[1]

Voronov Aleksei Mikhailovich,
Doctor of law, Professor, Director of the Center of the legal basis for the development of public administration and civil society at Federal State Budgetary Educational Institution of Higher Vocational Education "Financial University under the Government of the Russian Federation",
alex_voronoff@mail.ru

Tax administration is considered both in a narrow and a broad sense. The author defines the aim and objectives of tax administration. Here is noted insufficient attention to the issues of preventive activity of tax authorities and prevention of threats to financial stability of the state. In the article argue the fact that administrative and tax jurisdiction cannot be part of tax control.

Keywords: tax administration, administration in tax field, administrative jurisdiction in the area of taxes and fees, administrative and tax jurisdiction.

In the modern conditions of development of the Russian statehood, in our opinion, the study of issues of public administration, in particular in the tax field (tax administration), determining its essence and content, as well as the correlation with administrative jurisdiction in the area of taxes and fees, is very important both for the theory and the practice that forms it.

Studying the issues of public administration in tax area (tax administration) is in the initial stage in the science of law, moreover, in the contemporary official documents there is no legal definition of such concept.

Public administration in tax area as an organizational and managerial system of realization tax legal relations includes a set of forms and methods, the use of which is intended to provide tax revenues to the budget of Russia.

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

It is appropriate to note that the main motivation of paying taxes has always been not the consciousness of taxpayers, but coercion measures that can be applied to them in detecting evasion of taxes and fees or payment them not in full. In the course of time these measures were transformed in the relevant legal provisions governing the substantive and procedural matters of applying such coercive measures. Their list in the current Russian tax legislation is vast: it is the right of tax authorities to make direct debit amounts of taxes and penalties, charge overdue interests, suspend operations of accounts, etc.

However, judicial practice related to tax violations is ambiguous and sometimes contradictory. On the one hand, this is due to periodic changes in tax legislation, introduction of new tax payments, but on the other – this requires a careful analysis of both these changes and itself the institute of law that provides lawful conduct of all participants of tax legal relations.

The fact, that in recent years the issue of the existence of such a legal category as "tax process", as an independent type of activity, different from administrative process, has arisen in the financial and legal science, counts in favor of the relevance of this problem. Of course, this point of view is highly controversial, requiring serious theoretical study, and, therefore, further scientific debates. It is possible that it owes its existence the enshrining procedural legal norms in the Russian Tax Code.

This situation leads to duplication of norms, emergence of legal uncertainties and other negative consequences, hindering the implementation of the principles of bringing to legal responsibility developed by the long evolution of law development.

Duplicating a number of substantive and procedural norms of the Code on Administrative Offences and the Tax Code of the RF makes confusion in law enforcement, disorients citizens and legal persons who are taxpayers, and carries a lot of negative consequences.

In addition, the feature of taking decision and sentencing in a case of an offense in the area of taxes and fees is that several subjects of legal relations bear responsibility for a same administrative offence in the tax field: a legal entity (usually in accordance with the norms of the Tax Code of the RF), an official or just a natural person (in accordance with the provisions of the Code on Administrative Offences of the RF). And in the presence of signs of a crime in the offence – also physical person (in accordance with the Criminal Code of the RF).

The above said leads to the need for theoretical understanding of the formation of a new legal paradigm, search of methodological grounds, determining of cause-effect relations of occurring changes to streamline legal relations arising in

the areas of finance, taxes and fees, insurance, securities market, as well as of the unification of bringing to responsibility for these offenses. Taking into account that administrative law encompasses a vast range of public relations, this work requires effort on the part of scientists of many disciplines.

Meanwhile, in the theory of administrative law, there are issues, in respect of which the debates have being conducted for several decades. Among them is the issue of the so-called broad and narrow definitions of the category of "administrative process" and content of the concepts of "administrative procedures and proceedings". In support of the various concepts many works were published, a large number of arguments was given, and so on. However, if earlier these disputes were theoretical in nature and did not affect law enforcement activities, then in current conditions scientific discussion has become practical. The need to understand the causes of the dispute and to build on the basis of their analysis new logic structures, which meet the general trends of development of domestic jurisprudence, is one of the urgent tasks for the science of administrative law at the present stage.

To date, we can talk about two concepts in the approach to resolving this scientific problem: "jurisdictional" and "managerial".

The essence of "jurisdictional" concept (N. G. Salishcheva) of understanding the category of "administrative process" is that it is perceived as activities of executive bodies to resolve disputes arising from administrative-legal relations. In other words, the basis of an understanding of such activity is a conflict, which is to be resolved in a certain order. Including, with subsequent application of legal sanctions.

Referring to the arguments used to substantiate the "broad" understanding of administrative process, it should be noted that in 1949 S. S. Studenikin noted that "executive and administrative activity is carried out on the basis of certain procedural rules, the totality of which is an administrative process" [15, 44].

G. I. Petrov believed the following: "Administrative process in its broad sense – is a process of executive and administrative activities of public administration bodies. Administrative process in its narrow sense – is a process of public administration to consider individual cases within their field of competence" [12, 30].

A little later D. N. Bakhrakh expressed the following opinion: "The peculiarity of administrative process is that it regulates not only jurisdictional activity, i.e., activity to consider disputes and apply coercive measures, but also the activity of implementation the regulatory provisions, so to speak, the activity of positive nature" [5, 276]. A. P. Korenev did not distinguish between "narrow" and "broad" understanding of the considered category, believing the following: "The Soviet

administrative process is an activity consisting in the exercise of powers for the implementation of public administration functions and application the norms of substantive and administrative law, which flows in the manner and forms established by law" [10, 67-68].

In our view, the reasoning of the masters of administrative science was quite convincing. Because the essence of the administrative activities of state bodies of executive power and their officials lies exactly in the executive and administrative nature of their deeds within the competence prescribed by law. In some cases – in implementation of executive functions in all areas of public administration, in others – to resolve disputes arising from administrative-legal relations. In other words, the understanding of such activity is based on a legal conflict that must be resolved in a specific order.

Thus, seemed quite convincing the position that administrative process was a sub-legislative executive and administrative activities of public authorities and their officials, which were undertaken within their competence to implement the objectives and functions of executive power in all spheres of public administration, as well as in resolving legal disputes of conflicting nature, under the current administrative-procedural legislation.

It is integration into this concept of managerial, as well as, of course, jurisdictional element let talk about administrative process as about a comprehensive, inter-branch formation.

It seems we should agree with the A. V. Kirin that back in 1988, reconciling antagonists of various "procedural" camps, B. M. Lazarev said that "In fact, there is no a single process in the field of public administration, and there is a multiplicity of types of processes, each of which has its own role and relative independence. Moreover, executive and administrative activity, in contrast to justice, has a more complex structure and consists of various independent forms of rule-making, enforcement, jurisdictional and other activity, when justice consists only in the resolution of particular cases. Hence the diversity of managerial procedures in comparison with judicial ones.

In addition, the procedure of consideration of criminal and civil cases in courts is always strictly regulated by law. The procedure of activities of public administration bodies has no such detail and rigor. Administrative law also establishes a large number of procedures that are adapted to different types of managerial activity and even to solving some particular specific and concrete issues. Finally, managerial process is strongly influenced not only by the diversity of managerial activity, but also by the structure of the apparatus set up for its implementation, and this

apparatus, in turn, is characterized by a multiplicity of bodies' types and differences in their competence. The structure of the judiciary is significantly simpler. In addition, every court is "self-contained", because in addressing specific cases is independent and subordinates only to the law" [11, 11-12].

Unfortunately, in all the relevance of arguments of B. M. Lazarev, his very reasonable and relevant, even today, suggestion to colleagues-processualists not to "become obsessed" with the methodologically dead-end in their desire to unite all the extreme diversity of in most cases not similar to each other specific procedures and proceedings in the field of public administration into a single codified legislation branch and general branch of administrative and procedural law has turned out hardly heard by most of them [8, 35].

At the same time, indirect solidarity with the concept of multiplicity of independent administrative processes is expressed today by such prominent theorists of modern administrative law as B. V. Rossinskii and Yu. N. Starilov who in 2009 stated that a narrow or broad approach to the understanding of administrative process demonstrates the absence of its real legal content, indicates its "virtuality". In this regard, administrative proceedings, which are various in content and tasks, are impossible to be regulated in a single codified normative legal act [14, 662-667].

Also, one has to agree with A. V. Kirin that a more definite position that shows direct solidarity with the concept of multiple administrative processes of B. M. Lazarev (but also without any reference to it) is taken in the works of recent years by one of the classics of domestic administrative law D. N. Bakhrakh, rightly arguing that extremely diverse activities in the field of public administration cannot be within one process. So, to put an end of vain discussion of procedural antagonists the scientist proposes to combine all of the numerous administrative processes under a single neutral title "administrative and procedural activity" and specific procedural norms "attach" to certain basic for them institutes and sub-branches of substantive administrative law [8, 36].

On this issue, taking into account the realities of modern Russia, the author has his own fundamentally new and, in our opinion, the most optimal and correct position.

It should be noted that in the modern legal doctrine is firmly embedded in the turnover the term of "public administration", in our opinion, its content covers the managerial concept of administrative process. It seems that this methodological message contains the correct way to resolve a long-standing scientific debate about the essence and content of administrative process, as well as the ratio of its "jurisdictional" and "managerial" concepts.

It seems reasonable to abstract from minor aspects of this phenomenon, this, as we believe, will highlight its most characteristic features, trends, patterns, and will let to give reason for our position on the example of executive and administrative activity of tax administrations, namely public administration in tax area.

The reforms carried out in the Russian society in recent years led to the need to improve tax legislation, ensure its effective implementation, as well as the need to improve the mechanism is of public administration in tax area, the forms of implementation the state tax policy being based on the fact that the tax policy as a part of the financial policy of the state is a totality of managerial, regulatory, economic and political activities of the state in the tax area. In connection with this, legal content of the public administration in the investigated field takes on new meaning, is being filled with special content.

With the transition to the market economy, theory and practice of taxation has acquired the term of "tax administration". Interpretation of the term is many-sided while enough clear definition of the tasks of tax administration. If we turn to modern economic dictionary, administration is interpreted as "dominance in the management of formal, purely administrative, mandative forms and methods" [13, 16].

In our opinion, a more correct and having the right to live in the present conditions of development of our statehood is a definition given by the founder of the theory of administration A. Fayolle that was formulated back in 1916: "Administration means to foresee, organize, dispose, manage and control" [17].

Tax administration is a new concept in the methodology of taxation, which found widespread in legislative acts, scientific works and practice. To date there is no a clear legal definition of the term, scientists' points of view on this issue are different. However, this term quite thoroughly enters in the scientific circulation. For the first time introduced by the Federal Law No. 137-FL from July 27, 2006, adopted, as follows from its title, due to implementation measures to improve tax administration, it has made significant amendments to part one of the Tax Code of the Russian Federation. In its development has also been adopted the Federal Law No. 229-FL from 27.07.2010 [2] aimed at the settlement of arrears of taxes, fees, penalties and fines, and some other issues of tax administration. These laws are aimed at improving of tax control, streamlining of tax projects and flow of documents in the tax area, improvement of conditions for the performance by taxpayers their duties to pay taxes and fees.

So, M. N. Kobzar'-Frolova interprets tax administration as activities of tax authorities, aimed at the detection, suppression and prevention of violations of

legislation on taxes and fees. The author qualifies tax administration as activities of tax authorities and their officials, aimed at the timely and full payment by tax payers of taxes, fees and other mandatory payments to the State budget. Accordingly, prevention of violations of the legislation on taxes and fees happens within the framework of tax administration [6, 9].

We should agree with the opinion of A. S. Titov, who rightly points out that in the solution of the tasks assigned to tax administration, it is necessary to allocate its interdependent triad: the tax administration itself, the mechanism of its implementation, and tax policy. The correlation of these concepts is of important methodological significance for understanding the essence of implementation of tax administration.

In our opinion, tax administration assumes management of taxation on the base of the fact that management in the broadest sense means a targeted influence on a particular object or directing the activities of this object. At that, it should be borne in mind that managing entity can be both a person acting on behalf of the State (in the case of state management) and a person expressing private interests (in the case of non-state management).

In this connection, the author offers a definition of tax administration as a totality of norms (rules), methods, techniques and means, with help of which specially authorized state organs carry out managerial activities in the tax area, aimed at monitoring over compliance with the legislation on taxes and fees, accuracy of calculations, complete and timely payment of taxes and fees to the appropriate budget, and in the cases provided for by the legislation of the Russian Federation, over the correct calculation, complete and timely payment of other charges to the appropriate budget [16, 14].

Thus, we can assume that tax administration, in its narrow sense, is a totality of actions, and rather the activities of officials of state executive authorities in the field of tax legal relations. In its turn, the mechanism of tax administration is a totality of legal measures and organizational arrangements of tax control undertaken by state executive authorities aimed at achievement the goals and solution of tasks in the same field.

In its broad sense, tax administration assumes management of tax relations with help of conducting a particular state financial and economic policy, including responsibility for the assigned work, with the direct participation of special state agencies. The very mechanism of tax administration consists of a set of legislative, substatutory and instructive rules of conduct in the designated area of public administration assigned to each participant in these relations.

The purpose of tax administration is to achieve the greatest possible effect for the budget system in respect of tax revenue at the lowest possible cost, in the conditions of optimal combination of methods of tax regulation and tax control.

In this approach, the tax administration's tasks are:

- collection and processing of information;
- tax planning and predicting;
- tax regulation;
- tax control [4];
- prevention of tax offences.

The same tasks are included in the tax mechanism, by means of which exercise the impact of the subject of tax relations (public authorities and agencies of state administration) on the object (the tax system). In our view, it is appropriate to consider each of the tasks.

The collection and processing of information is a basic task of tax administration, without which is impossible to implement other tasks. Information required for tax administration includes various forms of accounting, tax and statistical reporting. According to the collected data, authorities analyze tax revenue in the context of taxes, budgets and taxpayers. Also, the analysis is conducted in terms of the efficiency of tax control, that is, the number and quality of cameral and field audits, the quality of implementation of other forms of tax control. Collection and analysis of information are necessary to assess the current situation and elaboration on its base the ways to improve the process of tax administration.

As subjects of tax administration may be taken public authorities and agencies of state administration, which can be classified as follows:

- tax authorities;
- bodies vested with powers of tax authorities (management bodies of state non-budgetary funds, financial authorities, customs bodies);
- law enforcement agencies (from the perspective of ensuring economic security).

In practice, the subjects of tax administration are called as tax administrators (administrations). The tax administrations are tax and other authorized bodies of executive authority entrusted with the functions of organization of tax administration in respect of taxpayers located within their territory in the context of tax revenues under their control.

However, the main task of tax administration is tax control. It should be noted that some experts in this field even equate these concepts. Tax control and evaluation of its performance (efficiency) has received considerable attention, both in

theory and in practice, since the implementation of tax control provides the source materials for the administrative and jurisdictional activities of tax authorities. In the course of tax control identify offences, collect and record evidence.

It should also be noted that under the action of the Concept of planning of field tax audits approved by the order of the Federal Tax Service No. MM-3-06/333@ from May 30, 2007, in terms of its availability to taxpayers who are able to self-assess their tax risks, there was a significant enhancement of pre-tax control, or so-called – preventive one. From the standpoint of the efficiency of implementation the tax administration aim, preventive measures are less costly, while maintaining a sufficient level of tax revenue in the budget system.

The analysis of statistics on the results of control activities carried out by the tax authorities in 2011, allows us to draw a conclusion on the overall increase in the rates of effectiveness of the tax administration in the Russian Federation. The developed concept with the criteria of self-assessment of the risks of taxpayers used by the tax authorities in the process of selecting sites for field tax audits has yielded positive results, which resulted in lower costs for the organization of control measures through strengthening of preliminary control that enhances consciousness of taxpayers.

However, the issues of preventive activity of tax authorities, prevention threats to financial stability of the state are not given due attention. This direction in the modern tax policy of Russia is not yet a priority, and the preventive activity of the tax authorities is not well developed, despite the fact that in paragraph 6.6. of the provision No. 506 from September 30, 2004 "On the Federal Tax Service of the Russian Federation" [3] this function is articulated among the main ones. The issues of suppression and prevention of the violations of the legislation on taxes and fees as the most important legal institute has not received any normative consolidation either in the Tax Code of the Russian Federation or in the Code on Administrative Offences of the Russian Federation.

As rightly noted by M. N Kobzar'-Frolova, the presence of a large number of committed tax torts, which are based in part on the norms of tax law and in part on the norms of administrative and criminal law, requires the development of measures of legal influence based on scientific research and legislative regulation. The lack of evidence-based methods for studying tax delinquency does not allow successful solving of such applied aspects as: improving the level and quality of work of tax authorities, prevention and neutralization of delinquency, increasing the volume of tax revenues to the state budget. The lack of knowledge of the causes, conditions and prerequisites of tax delinquency, lack of methodological

recommendations for the organization of the work of tax authorities aimed at improving tax administration and increasing the volume of collection of taxes and fees is obvious [9, 7].

The main burden of the implementation of tax administration is the duty of tax authorities. Besides, the functions of tax administration entrusted to state non-budgetary funds, financial authorities, customs bodies and law enforcement agencies.

Tax administration needs constant improvement in order to create an optimal balance between the rights and obligations of taxpayers and the state in the face of tax authorities, on the one hand, to save taxpayers from unnecessary administrative pressure, and on the other hand, to reserve for the tax authorities sufficient powers to monitor over the compliance with legislation.

Summarizing the above, we believe it is appropriate to note that tax administration has virtually all the specific features that define the organization of management of state administrations in the field of taxes and fees. Tax administration in the field of taxes and fees is an organizational and managerial system of exercising tax relations, and includes a totality of forms and methods, the use of which is intended to provide tax revenues to the budget of Russia, as well as prevention of tax delinquency.

Study of existing authors' positions, the current legislation on the issues of tax administration and practical experience of its implementation allows the author to formulate this concept.

Public administration in the field of taxes and fees is an integrated system of statutory measures and activities conducted by state executive authorities within their competence aimed at obtaining complete and accurate information about the current and potential volume of tax revenue, planning and predicting of tax revenue, tax regulation, tax control, as well as prevention of tax delinquency, and implemented for the improvement the mechanism of tax revenues to the budget system while optimizing costs.

Thus, the managerial concept of the administrative process for the implementation of executive and administrative activities of state administrations in the various fields of public administration, particularly in the area of taxes and fees, finds its expression in the context of the legal category of "public administration". Within the meaning – it is exactly the activities of state administrations, and the presentation of these activities as a kind of process is rather appropriate within administrative and jurisdictional activity to consider cases on administrative offenses that is regulated by administrative and procedural norms of legislation.

Also, in our opinion, clarification of the correlation of tax administration and administrative-tax jurisdiction (administrative jurisdiction in the tax area) of authorized state bodies is of great theoretical and practical importance. This concept was formed in the theory of administrative and jurisdictional process and entered into scientific circulation as a synonym for administrative jurisdiction in tax field [6]. Taking into account that administrative-tax jurisdiction is an integral (endowed with its own content) part of a single administrative process, it should be noted that these legal categories are absolutely not identical to each other concepts, as they are two different functions of public administration.

As we noted above, the essence of tax administration is a totality of norms (rules), methods, techniques and means, with help of which specially authorized state organs carry out managerial activities in the tax area, aimed at monitoring over compliance with the legislation on taxes and fees, accuracy of calculations, complete and timely payment of taxes and fees to the appropriate budget.

Thus, administrative-tax jurisdiction cannot be a part of tax control. Tax control is a part of the state control exercised by monitoring and oversight bodies of executive power, they certainly include tax authorities. Monitoring and oversight activity by itself cannot perform functions of imposing responsibility.

As rightly points out in his study A. P. Shergin, administrative jurisdiction goes beyond the scope of oversight activity and represents an independent form of administrative activity, which is carried out by monitoring and oversight bodies of executive power [18, 33].

Undoubtedly, the endowing of tax bodies with monitoring and jurisdictional powers in tax field contributes to the effective solution of the operational tasks of public administration. The author supports the position of A. V. Ivanov that the legislator should follow not the path of narrowing the scope of administrative jurisdiction and reducing the entities that exercise it, but the path of strengthening the guarantees of the rights of citizens and organizations involved in the field of administrative jurisdiction [7, 28].

This approach is reflected in the Tax Code of the Russian Federation (TC RF), which defines the relations regulated by legislation on taxes and fees. Article 2 of the TC RF splits the relations arising in the process of exercising of tax control and the relations on the appeal against tax authorities' acts, actions or omissions of their officials, and on bringing to responsibility for committing of tax offenses.

Article 82 of the TC RF establishes that tax control shall be exercised by officials of tax authorities within the limits of their authority by means of carrying out tax audits, obtaining explanations from taxpayers, tax agents and levy payers,

checking of accounting and reporting data, inspecting premises and areas used to derive income (profit) and by other means provided for by this Code.

Articles 87-89 and 100 of the Tax Code, defining the powers of tax bodies officials during tax audits do not include supervisory powers for resolving disputes arising during an audit and for bringing to responsibility for violations of tax legislation. These actions are performed in the process of independent activity –administrative jurisdiction of state bodies in the tax field.

Consequently, tax administration and administrative-tax jurisdiction of the authorized state authorities in the tax field are closely related, but are independent, sequential types of activities.

In contrast to tax administration, within which exercise tax control that is primary and mandatory for tax authorities, administrative-tax jurisdiction is of optional and secondary nature, since it will not always take place, but only in the possibility of occurrence of a legal dispute on results of tax control.

We think the cited judgments of the author may be grounds for the early resolution of the considered problem or reason for further scientific discussions.

References:

1. Federal Law No. 137-FL from July 27, 2006 (as amended on 29.11.2010) "On Amendments to Part One and Part Two of the Tax Code of the Russian Federation and Certain Legislative Acts of the Russian Federation in Connection with the Implementation of Measures to Improve Tax Administration" ["Federal'nyi zakon ot 27 iyulya 2006 g. № 137-FZ (red. ot 29.11.2010) «O vnesenii izmenenii v chast' pervuyu i chast' vtoruyu Nalogovogo kodeksa Rossiiskoi Federatsii i v otdel'nye zakonodatel'nye akty Rossiiskoi Federatsii v svyazi s osushchestvleniem mer po sovershenstvovaniyu nalogovogo administrirovaniya»]. SZ *RF – Collection of Laws of the Russian Federation*, 2006, no. 31.1, article 3436.

2. Federal Law No. 229-FL from July 27, 2010 "On Amendments to Part One and Part Two of the Tax Code of the Russian Federation and Certain Legislative Acts of the Russian Federation, as well as on the Annulment of Certain Legislative Acts (Provisions of Legislative Acts) of the Russian Federation in connection with the settlement of arrears in the payment of taxes, fees, interest for late payment and fines, and some other issues of tax administration" [Federal'nyi zakon ot 27 iyulya 2010 g. № 229-FZ «O vnesenii izmenenii v chast› pervuyu i chast› vtoruyu nalogovogo kodeksa Rossiiskoi Federatsii i nekotorye drugie zakonodatel›nye akty Rossiiskoi Federatsii, a takzhe o priznanii utrativshimi silu

otdel›nykh zakonodatel›nykh aktov (polozhenii zakonodatel›nykh aktov) Rossiiskoi Federatsii v svyazi s uregulirovaniem zadolzhennosti po uplate nalogov, sborov, penei i shtrafov i nekotorykh inykh voprosov nalogovogo administrirovaniya»]. SZ *RF – Collection of Laws of the Russian Federation*, 2010, no. 31, article 4198.

3. RF Government Decree No. 506 from September 30, 2004 "On Approval of a Provision on the Federal Tax Service" [Postanovlenie Pravitel'stva Rossiiskoi Federatsii ot 30 sentyabrya 2004 g. № 506 «Ob utverzhdenii Polozheniya o Federal'noi nalogovoi sluzhbe»]. SZ *RF – Collection of Laws of the Russian Federation*, 2004, no. 40, article 3961.

4. Avetisyan K. R. Tax Administration and Administrative and Tax Jurisdiction as Legal Categories [Nalogovoe administrirovanie i administrativno-nalogovaya yurisdiktsiya kak pravovye kategorii]. *EKONOMIKA. NALOGI. PRAVO – ECONOMY. TAXES. LAW.*, 2012, no. 2.

5. Bakhrakh D. N. *Soviet Legislation on Administrative Responsibility* [Sovetskoe zakonodatel'stvo ob administrativnoi otvetstvennosti]. Perm: 1969.

6. Voronov A. M., Kokurina I. V. and others. *Administrative and Tax Jurisdiction: Study Guide* [Administrativno-nalogovaya yurisdiktsiya: Uchebnoe posobie]. Moscow: All-Russian State Tax Academy of the Russian Ministry of Finance, 2008.

7. Ivanov A. V. *Administrative Jurisdiction of the Tax Authorities of the Russian Federation*: thesis abstract of a candidate of legal sciences [Administrativnaya yurisdiktsiya nalogovykh organov Rossiiskoi Federatsii. Avtoref. dis. … kand. yurid. nauk]. Nizhny Novgorod: 1999.

8. Kirin A. V. *Theory of Administrative-tort Law*: thesis abstract of a Doctor of law [Teoriya administrativno-deliktnogo prava. Avtoref. dis. … dokt. yurid. nauk]. Moscow: 2012.

9. Kobzar'-Frolova M. N. *Theoretical-legal and Practical Basis of Tax Tort Study:* thesis of a Doctor of law [Teoretiko-pravovye i prikladnye osnovy nalogovoi deliktologii: diss… dokt. yurid. nauk]. Moscow: 2010.

10. Korenev A. P. *Codification of the Soviet Administrative Law* [Kodifikatsiya sovetskogo administrativnogo prava]. Moscow: 1970.

11. Lazarev B. M., Muksinov I. Sh., Nozdrachev A. F. and others. *Managerial Procedures* [Upravlencheskie protsedury]. Editor-in-chief B. M. Lazarev, Academy of Sciences of the USSR, Institute of State and Law, Moscow: Nauka, 1988.

12. Petrov G. I. About Codification of the Soviet Administrative Law [O kodifikatsii sovetskogo administrativnogo prava]. *Sovetskoe gosudarstvo i pravo – Soviet State and Law*, 1962, no. 5.

13. Raizberg B. A., Lozovskii L. Sh., Starodubtseva E. B. *Modern Economic Dictionary* [Sovremennyi ekonomicheskii slovar']. 2nd revised edition, Moscow: INFRA-M, 1999.

14. Rossinskii B. V., Starilov Yu. N. *Administrative Law: Textbook* [Administrativnoe pravo. Uchebnik]. 4th revised and supplemented edition, Moscow: NORMA, 2009.

15. Studenikin S. S. Socialist System of Public Administration and Question about the Subject of Soviet Administrative Law [Sotsialisticheskaya sistema gosudarstvennogo upravleniya i vopros o predmete sovetskogo administrativnogo prava]. *Voprosy sovetskogo administrativnogo prava – Issues of Soviet Administrative Law*, Moscow: 1949.

16. Titov A. S. *Theoretical and Legal Bases of Tax Administration in the Russian Federation*: thesis abstract of a Doctor of law [Teoretiko-pravovye osnovy nalogovogo administrirovaniya v Rossiiskoi Federatsii. Avtoref. dis. … dokt. yurid. nauk]. 2007.

17. Faiol' A. *Main Features of Industrial Administration – Foresight, Organization, Managerial Activities, Coordination and Control* [Osnovnye cherty promyshlennoi administratsii – predvidenie, organizatsiya, rasporyaditel'stvo, koordinirovanie, kontrol']. Moscow: 1923.

18. Shergin A. P. *Administrative Jurisdiction* [Administrativnaya jurisdiktsiya]. Moscow: 1979.

ANNOUNCEMENT OF HOLDING VIII ALL-RUSSIAN SCIENTIFIC-PRACTICAL CONFERENCE "THEORY AND PRACTICE OF ADMINISTRATIVE LAW AND PROCESS" CONDUCTED BY NEBUG CLUB OF LEGAL-SCHOLARS, KRASNODAR UNIVERCITY OF THE RUSSIAN MIA AND CJSC "SANAR"

Dear scientists and legal practitioners!

We invite you to take part in VIII all-Russian scientific and practical conference "Theory and Practice of Administrative Law and Process", dedicated to the memory of Professor V. D. Sorokin (Nebug's readings), which will be hold 2-7 October 2012 in the complex "Gazprom-Yamal" (settlement Nebug, Tuapse district of Krasnodar region)

Organizers of the conference: Nebug club of administrative legal scholars, Krasnodar University of the Russian MIA, CJSC "Sanar".

On results of the conference will be published a collection of materials. The best articles will be published in the journal "Aktual'nye voprosy publichnogo prava" and its English-language version "The Topical Issues of Public Law" (translation of articles is carried out by editorial staff), which are included in the Russian Science Citation Index.

Organizational fee – 2500 rubles.

The cost of travel and accommodation of participants is on their own.

Conditions of accommodation of the participants: single and double rooms at "Gazprom-Yamal" hotel, including three meals (buffet).

Application for participation in the conference shall be submitted in any form to the organizing committee and must include: title of the theme of your report (presentation), as well as the date of arrival and means of transport (personal car or number of train, wagon number, time of arrival at the railway station Tuapse or flight number and time of arrival in Krasnodar), contact cell phone number. Application should be submitted before September 25, 2013, through e-mail: nebug.2013@mail.ru marked "Application for Nebug 2013", its copy – profdenisenko@mail.ru; monyaksg@mail.ru.

Contact telephone numbers of the organizing committee:

Chairman of the organizing committee of the conference Professor Denisenko Viktor Vasil'evich – 8-929-839-18-75,

Head of the secretariat of the conference Monyak Snezhana Gennad'evna – 8-929-839-18-73,

Coordinator Associate professor Kizilov Vyacheslav Vladimirovich: 8-913-600-40-58.

PROGRAMM OF VIII ALL-RUSSIAN SCIENTIFIC-PRACTICAL CONFERENCE "THEORY AND PRACTICE OF ADMINISTRATIVE LAW AND PROCESS", DEDICATED TO THE MEMORY OF PROFESSOR V. D. SOROKIN (NEBUG'S READINGS)

October 2, 2013 (Wednesday)

Arrival of the participants of the conference
8-10 a.m. – breakfast
1-2 p.m. – dinner
6-10 p.m. – supper

October 3, 2013 (Thursday)

Arrival of the participants of the conference
8-10 a.m. – breakfast
1-2:30 p.m. – dinner
2:45-3:25 p.m. – registration of the conference participants
3:30-6:00 p.m. – plenary session

October 4, 2013 (Friday)

8-9:45 a.m. – breakfast
10-11:30 a.m. – plenary session (continuation)
11:30 a.m. - 12 p.m. – coffee-break
12-1:30 p.m. – speeches of the participants of the conference
1:30-3 p.m. – dinner
3-4:30 p.m. – speeches of the participants of the conference
4:30-5 p.m. – coffee-break
5-6:30 p.m. – speeches of the participants of the conference
7-9 p.m. – supper

October 5, 2013 (Saturday)

8-9:45 a.m. – breakfast
10-11:30 a.m. – plenary session (continuation)

11:30 a.m. - 12 p.m. – coffee-break
12-1:30 p.m. – speeches of the participants of the conference
1:30-3 p.m. – dinner
3-4:30 p.m. – speeches of the participants of the conference
4:30-5 p.m. – coffee-break
5-6:30 p.m. – speeches of the participants of the conference
7-9 p.m. – supper

October 6, 2013 (Sunday)
8-9:45 a.m. – breakfast
10-11:30 a.m. – summing up the conference
1:30-3 p.m. – dinner
Departure of the participants of the conference

October 7, 2013 (Monday)
Departure of the participants of the conference

REQUIREMENTS FOR MATERIALS

Font: Times New Roman, size – 14, spacing – 1.5, fields – 2 sm., first-line indentation – 1.25 cm, paginal footnotes (font size 12). The text in paper or electronic formats up to 12 pages (for Doctors of law up to 24 pages) shall be represented by a participant of the conference at the registration desk.

An example of the text of a report, speech

Ivanov Ivan Ivanovich, Professor of the Chair of administrative law at Tihodon State University, Honored Scientist of the Russian Federation, Doctor of law, Professor (ivanov2012@mail.ru)

PROBLEMS AND PROSPECTS OF ADMINISTRATIVE-TORT LEGISLATION*

Administrative-tort legislation, whose main source for 10 years has been being represented by the Code on Administrative Offences of the Russian Federation, is very dynamic and it is constantly being updated. No accident that the issues of development of the legislation on administrative responsibility have attracted the attention of scientists, including they have been the subject of many discussion of scientific and practical conferences, parliamentary readings, round tables ...