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•CONTENTS•

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SERVICE DELINQUENCY OF THE PUBLIC CIVIL SERVANTS OF THE RUSSIAN FEDERATION

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Explores service delinquency of the public civil servants, the causes of its breed, forms of manifestation of service delinquency, as well as its relationship with legal nihilism of the public civil servants. Special attention is paid to corrupt forms of service delinquency of the public civil servants.

Keywords: delinquency, administrative delinquency, service delinquency, legal nihilism, forms of manifestation of service delinquency, public civil servants

Applying a systematic approach to an administrative delinquency E′. E. Genzyuk identified it as a complex dynamic system due to the complex of social factors and targeted socio-behavioral acts of unlawful nature, and representing the great number of elements in the form of separate administrative misconducts and committing actors which forms a repeatedly dismembered set characterized in certain spatio-temporal frameworks [3, 92]. The following scientific argument on the magnitude of administrative delinquency is not a surprise. Indeed, it is permissible and there may be situations when "the official body of the State Fire Supervision Service (SFSS) just engaged to the administrative responsibility of the perpetrator of the fire safety rules, after a short time having violated traffic rules becomes the subject of administrative misconduct by itself, and State Inspection on Traffic Safety inspector who has imposed the penalty on the SFSS representative, a few hours later, at leisure, was detained for poaching with Fish Protection inspector, and so on and so forth". [3, 95-96].

We absolutely agree with the scientist that an administrative delinquency manifests itself as a mass, changing phenomenon of social life, which is a system of most common cases of illicit conduct. However, we are interested in delinquency of civil servants.

It is necessary to note the difference in respect of the civil society on the level of extremely social condemnation of delinquents who are private legal entities and officials of the public civil service. If in respect of the first specified by us actors you can watch the toleration of much of the misconducts and the imperception of many, but the administrative offences of public civil servants are of great public interest, which is explained with administrative and legal status of government persons.

In considering the factors of public civil servants administrative delinquency, you can come to a natural conclusion that they are the same as the administrative delinquency of common subjects of administrative responsibility. Administrative delinquency of public civil servants consists of phenomena of socio-demographic nature (urbanization, migration, changing population structure by sex and age, etc.), economic nature (phenomena connected with the welfare, unemployment, economic and industrial infrastructure, etc.), social and socio-psychological nature (factors related to the weakening of traditional forms of social control, the role of the family in the upbringing of children, psychophysical condition of the health of individual social groups) and organizational and legal nature (factors arising from the status of normative-legal supply on the level of the Federation subjects, professional skills of public civil servants).

Also E'. E. Genzyuk noticed the impact of legislation of the Russian Federation subjects on the status and structure of the array of administrative offences, saying about the originality of the legal acts adopted on a number of really important issues of public administration, such that not only calls into question their legitimacy and social substantiation, but also affects the understanding of administrative delinquency as a system formation, which is more or less structured [3, 82].

We believe that the reason for delinquency of public civil servants is legal nihilism, which is expressed in many different directions and forms. This rejection of public civil servants of new ("market") values, discontent of changes in respect of property , social protests against carried out transformations; denial of numerous "Western" patterns of behavior, political-moral benchmarks not peculiar to Russian mentality [8, 74]. There are objective reasons. . After a long time of repression of individual rights and freedoms in Russia began the process of accelerated forming of new social relations, outstripping the subjective perception of it as a necessary change in society.

Considering the legal nihilism in Russian society, sociologists note many factors including social and historical development of the country, national, and spiritual traditions, the experience of public life, the current level of political and legal culture, geopolitical circumstances, etc. A significant influence renders

domination of authoritarian system of power and lack of rights by the vast majority of the Russian population prolonged in centuries.

M. Mesilov notes the absence of guarantees of the rights and freedoms of the individual, superior force-power-oriented methods and techniques in policy, adoption of the overly centralized disregard for the law of the country at various levels of State management [8, 77-78]. State Management System and suppress of any dissent, all of this, we believe, has led to deep dissemination of legal nihilism in the minds of the members of the Russian society, which invested with the various administrative and legal statuses restate the relevant relationship.

Reforms conducted in the country in no way altered the nature of executive power, with its tendency to "separation" from the society and "trampling" of the public interest, to lack of control and subjugation other powers in view of the special regime of its functioning. Formal bureaucratic behavior of public civil servants excludes citizens from their activities, creates an atmosphere of "mystery", mutual mistrust and undermines the Executive power.

The totality of delinquency causes of public civil servants should be defined in two groups. The first group consists of subjective causes, which are defined with internal, emotional-psychological, moral and ethical, educational, material and other personal attributes of a public civil servant. The second one consists of objective reasons – politico-legal events, facts and trends, not having a personality-attributive motivation.

We agree with M.A. Mesilov, that ability to a negative assessment of the law also appears along with a sense of person's autonomy, its well-known exclusion from public, i.e. individualism. In the era of socialism, this problem was not peculiar one because of weak development of person's autonomy, but sustainability of the public nature of the laws. Strict observance of laws was seen as unconditional debt [8, 81]. Currently unconditional subjection has changed to critical, including negative assessment of law.

It is no secret that there are serious problems in the condition of a professional sense of justice among public civil servants. For various reasons, there is a destruction of their legal views, attitudes, feelings, beliefs, quasi-judicial or unlawful legal constructions appear in their activities [6]. The lack of a sense of duty, the desire to achieve the goals by any means has a negative impact on the professional activities of public civil servants, contributes to the creation of the nihilistic relationship to law, torts in its use. But delictual behavior of a person vested with public authority, in its turn, initiates such a behavior among citizens and collective subjects. Citizen, who denies the law in everyday life

(out of office activity), then coming to the civilian public service, is unlikely to change his attitude towards the law.

There are open and hidden forms of delinquency of public civil servants in respect of the nature of external manifestations. Open form is characteristic of public civil servants directly violating the rights of citizens, as well as employees who are party to the external legal relation with the subject of control. Open forms take place where is weakened official control, or the authorities of the public civil servant are not fully defined, and when there is an execution of the unlawful order from a superior official. . With regard to hidden forms of delinquency they are more characteristic of the internal legal relation of the public civil service, as well as the part of external legal relations, where is no direct contact with the subjects of control.

Having ignored the law an official can generate not only the imperfection of laws, but also inadequate methods of legal regulation. There are three generally accepted methods of legal regulation: incentive, compulsion or persuasion. Legal nihilism or civil servants is born with misuse of any of these three methods.

It should be noted that the delinquency of public civil servants, to a large extent determined by the specifics of their professional activities and may be classified as a service one, based on its content and especially. Public civil servant implements not his private goals but versatile needs and interests of the components of society in the process of their development. And as stated by V.A. Potekhin, "implementation and enforcement of these needs and interests can be effective if the individuals are responsible for the public benefits on the base of the free and realized recognition of the claims brought to them" [9, 17].

Delinquency of public civil servants corresponds with:

- an absence of clear view at the public civil servant of his role and place in the structure of the State and society, his own social significance;
- an absence of voluntary and realized decision to take obligations of subordinating their activities to the tasks of realization of the State's and its public bodies' functions;
- an absence of awareness of the need to act in full accordance with the interests of the State and society and the social requirements and standards;
- an absence of ability to foreseen the results of their decisions and actions, their social consequences;
- a lack of readiness to bear responsibility in all its forms for all their illicit actions or inactions.

Yu. E. Avrutin noticed the causes of violations of the rights and lawful interests of citizens and organizations as the lack of the conceptual unity in the issues of balanced

and harmonious development of legal norms and the abundance of interdisciplinary and intraindustry contradictions [1].

Y.A. Rosenbaum highlighted the low level of public civil servants staff professionalism, which, together with their irresponsibility caused highly dangerous phenomena: fall of discipline performing and breaking the law. It's a long time ago "for officials it ceased to be an extraordinary event the failure or breach of the laws of the State, Presidential orders, decisions of the Government of the Russian Federation and other regulatory legal acts. Rarely any public officials are severely punished for this, at least, be removed from his post… As a result, today we have incompetent, extremely bloated officials' corps, much of which is not able to engage in management activities "[10, 53].

Analysis of periodic printed publications and judgments having highlighted the diversity of causes and conditions leading to delinquency of civil servants let to accomplish their classification on the areas of public life, grouping them into economic, social, psychological, ideological, organizational, and technical and legal. The most common are the following material reasons: the delinquent's desire to improve the material living conditions, dissatisfaction of the needs of the delinquent, desire to live in "affluence", large queries, unjustified expenses, including unplanned purchase. Among the nonmaterial reasons is carelessness in the performance of their tasks and responsibilities, limited memory, fear, laziness, poor organization of working time, illiteracy and incompetence [5, 108].

To excuse their offences public civil servants refer to the imperfection of the legislation, its incompleteness, unclear forms, controversy; insufficient budgetary funding; the crisis in the economy, politics and other areas; legal nihilism; bad social security; unemployment; occupation of highly paid jobs; the absence of the necessary material-technical base, communication equipment, office supplies; limited time to learn something; the low level of legal culture and comprehension.

Stated clearly shows that the most common reasons for and conditions of service delinquency of public civil servants are the causes and conditions of the economic, psychological, and technical and legal nature.

Despite the fact that the administrative offences are committed by their own reasons, there are specific conditions contributing to the emergence of such causes, we don't agree with A.N. Deryuga in the statement that "mostly they are committed through negligence, as a rule, without preparation (preparing, attempt), so there is no installation of the offender to commit illicit activities and his personality is not misshapen" [4]. Taking in consideration the position of the specified author concerning administrative offence under which he understands "the means of

resolving the contradiction between person's demand (actual or false understood) and order (injunction) formulated in administrative and legal law", we cannot accept the simplification and underestimation of the administrative tort.

A.N. Deryuga argues that "contradiction is not of an antagonistic nature, is not continuous, but the attempt to solve it by administrative offence is usually due not to antisocial essence of personality of the offender but to weakening of internal self-control, deformation of criteria for assessing the public danger of the deed" [4].

Service delinquency of public civil servants which is shown in committing of an administrative offence or decision made by organ of public power that restricts the rights and freedoms of the individual citizen (legal entity) is dangerous because this is not only the result of the offence committing but it's also the implementation of the powers of government public relations management, assigned to the public civil servants. And in this case, a set of special measures aimed at locking, neutralizing and eliminating the causes and conditions of administrative torts is needed.

Recently in administrative delinquency of public civil servants dedicate behavior leading to corruption and corrupt activities itself that indirectly or directly infringe on the credibility and the legal interests of the public service and public power in general.

Legal scholars provide the following features of actions leading to corruption in the management area: a) source, access to which is the purpose of persons participating in the corruption collusion; b) interest, which is the driving force of the corrupt participants (private or group different from public); c) damage, which could be caused to the public interest (the "common good") with any potentially corrupt behavior [11].

Thus, the corruption activities of a public civil servant are determined by his participation in a transaction with a private person, interested in a particular behavior of the public civil servant, and the transaction has a mutually compensative nature, but not necessarily material one. And the transaction is knowingly illicit.

Yu.A. Tikhomirov and E.N. Trikoz noted the high degree of corruption development in contemporary Russia, pointing to the existence of a "broad and sustainable corruption networks that are not simply profit from their illegal activities, but have already invested in the development of the corruption". According the authors data - monthly costs of the administrative barriers overcoming in trade and production in Russia are numbered with the sum of 18 to 19 billion. rubles, that is about 10% of retail trade turnover. Each year Russians spend on bribes 2.8 billion. $ and for the payment of income tax – 5.8 billion. $. [11]

The given by legal scholars personal origins of corruption in public administration are absolutely identical to ones of a service delinquency of public civil servants. This is deformed consciousness of public civil servants from normative models of their statuses and the statuses of the bodies in which they work, from job descriptions and characteristics. Another reason for the false and erroneous views of public civil servants is in their low common culture and a low level of professionalism [11].

In our opinion to service torts should be attributed some non-legal ethical violations, for example: presence at the holyday corporate events, organized by subjects of entrepreneurial activity, monitoring of whose activities fall within the competence of a public civil servant; public informal and regular communication with people who have convictions for economic crimes; accommodation in hotels or using cars whose value is not compatible with the size of the income of a public civil servant; foreign business trips paid for by interested private individuals.

Service delinquency of public civil servants, in all forms of its manifestation (disciplinary offences or administrative ones) is the opposite of the law as a social phenomenon. But despite this, takes the form of commonness. As noted by T. M. Belharoeva in her research of the socio-psychological aspects of the public civil servants' conduct "the official is not ashamed to purchase flats for many thousands of dollars and does not report on the sources of his income; accordingly, a major public manager does not respond to the charged against him in the media accusations of dishonesty, being money centered, corruption, etc. « [2, 146]. We should agree with the author that this behavior and actions of public civil servants cannot be assessed simply from a legal point of view - conform or do not conform to the law articles and the provisions of the instructions. Service torts of public civil servants simultaneously with the legal field are in the moral one – the field of public views. Serious immoral offences of public civil servants are the greatest destabilizing factor, become the subject of attention of public opinion [2, 151].

Service delinquency of public civil servant is essentially a deliberate disobedience to law, violation of rules, regulations, instructions, but without the use of force or attempts to avoid the adverse effects of such action. Delinquency shown in the form of official passivity - is the inaction of officials of the public civil service, ignorance or skepticism about the official duties or the statutory procedures. Active forms of manifestation of public civil servants' delinquency vary in degree of intensity of external behavioral manifestation. This are realized actions aimed at breaking the law in order to achieve any goals using his official position or without one. There are known active forms, such as:

- impetuous form, which is generally of people who are emotional or mentally unstable;
- affective form (when a public civil servant was in passion, in the condition of unbalanced mentality).

Yu.B. Istomina having analyzed the Code on Administrative Offences of the RF established a number of administrative offences which show legal regulation of inaction from the point of view of understanding under it the fulfillment way of the offence committed by a public civil servant for which administrative liability is provided [5, 56-57] It is the article 5.25 - not providing of information on the outcome of the vote or on the results of the elections, article 6.3 - violation of the legislation in the field of sanitary-epidemiological well-being of the population, article 8.5 - concealment or misrepresentation of environmental information, article 10.7 - concealment of information about a sudden loss or simultaneous mass animal disease, article 14.25 - violation of the legislation on public registration of legal entities, article 20.11 - violation of the terms of weapon registration (re-registration) or periods of statement on the record.

In reality, there are much more formulations of service torts of public civil servants, only in the current Code on Administrative Offences of the RF they are included in the officials' category. From analysis of judicial statistic for 2009-2010 we can form an image of magnitude of public civil servants' service delinquency, which took place in external legal relations with subjects of administration in respect with which private subjects of administrative law have claimed illicitly and invalidity of actions and decisions of public civil service officials [7]. having enumerated results of administrative and legal disputes, it is possible to state that in more than 50 % of cases service torts of public civil servants took place.

With regret we are to say that service delinquency of a public civil servant in our society, his irresponsible attitude to job duties implementation is not considered by legislator as an exception from a normal practice of public civil service, because of that the Russian administrative and delictual legislation should be reviewed and also the institute of an administrative responsibility of public civil servants should be developed and scientifically substantiated.

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THE TASKS AND PRINCIPLES OF THE LAW ON ADMINISTRATIVE RESPONSIBILITY OF THE PUBLIC CIVIL SERVANTS

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Supports tasks related to the participation of citizens in administrative prosecution of delinquents – public persons, combating corruption in the public civil service, with the removal of dual-use regulation (Federal and regional level) of the legislation on administrative responsibility of the public civil servants, etc. The principles of the legislation on administrative liability of the public civil servants for their regulatory consolidation in the Code on Administrative Offences of the Russian Federation are offered.

Keywords: public civil servants, administrative responsibility, the law on administrative responsibility, the principles of the law on administrative liability.

No doubt that the tasks of the legislation on administrative responsibility of public civil servants are an integral part of the common tasks of the legislation on administrative offences, enumerated in article 1.2 Code on Administrative Offences of the RF. Analysis of the article shows that the legislator declared tasks which are essentially an enumeration of legal relations' object, which protect the administrative and delictual legislation of Russia. This is a protection of the individual, the protection of human and civil rights and freedoms, citizens ' health, sanitary-epidemiological well-being of the population, protection of public morals, the protection of the environment, the established order of the state power implementation, public order and public security, property, the protection of the legitimate economic interests of natural or legal persons, society and the State against administrative offences. However, the legislation governing the administrative responsibility of public civil servants, in our opinion, has a more narrow and specific tasks.

For example, A.V. Chuev believes that "the main objectives, tasks, and functions of public civil servants responsibility, are greatly connected and are derived from the constitutionally vested regulations guaranteeing the recognition, observance and protection of the human rights and freedoms as a fundamental obligation of the State. Recognition of the highest value of human rights and freedoms is an

inherent feature of the Law abiding state. These constitutional orders are at the forefront of the administration and functioning of the State Machinery. The goals of this organization and its normative regulation system are in the protection of the individual's interests "[9, 82-83]. Indeed the priority of human rights cannot be realized without the obligation of the State not only to recognize shown principles, and without strict compliance with the human and citizen rights and freedoms. It follows that for any illicit acts, which violate the rights and freedoms of citizens committed by public civil servants, the servants must bear legal responsibility. And we believe that the mechanism of responsibility must be such that any citizen, whom interests have been violated, could initiate the procedure of holding an official liable.

The administrative responsibility of public civil service servants must have among its objectives: the protection of public relations, formed in the process of execution of the powers of federal governmental bodies, from illicit conduct of public civil servants contradicting to the interests of the State; the establishment of a mechanism to guarantee the rights of citizens; education of public civil servants in the spirit of compliance with the law , regulations and rules and thus preventing of administrative offences.

We agree with E.V. Sandal'nikova, that "the main purpose of the legal responsibility of public servants is not to punish the culprit and restore the violated law, but inducement of each public civil servant to lawful conduct and, ultimately, promoting of a legal culture formation of public civil servants and the whole society" [8, 55]. A similar view expressed A.V. Chuev: "the main purpose of the legal responsibility of public servants is inducement of each public civil servant to lawful conduct and, ultimately, promoting of formation of their legal culture" [9, 86].

The objectives of the administrative responsibility of the public civil servants, as well as overall legal responsibility, are: the formation of civil society and the Law-abiding state; prevention of new public servants' administrative delicts (i.e. the impact on future conduct); providing the lawful conduct of public civil servants; delinquency reduction, rehabilitation of social relations; education of civil servants' law abidance.

However, the role of negative component of legal responsibility, from our view, is also great, that is provided with an adequate punishment and inevitability of the delinquent punishment. The possibility to use severe punishment for an illicit deed contributes to forming of a public civil servant's need in lawful implementation of his official duties. When the public civil servant doesn't implement his duty, responsibility appears in its, so-called, negative (retrospective) significance – delinquent is subjected to measures of state compulsion for the committed offence.

As one of the objectives of the legislation on administrative responsibility of public civil servants we see overcoming of legal nihilism which takes place in the civil service. M.A. Mesilov considered the process of overcoming in two aspects – prevention and preventing of this negative phenomenon [6]. Prevention, in his view, consists of measures aimed at identifying and eliminating of the causes and conditions of the legal nihilism emergence, and preventing - from measures which are applied to ban the facts of distortion of legal consciousness and theirs overcoming.

And how don't accept with the author who rightly claims that "the law must be the result of the careful study of social relations' nature, time and place: the slightest omission in this area entails failure of the most positive aspirations. The law should clearly, accurately and distinctly formulate the content that the legislator had in mind. The main thing in the text of the Law – its accuracy» [6, 86].

As pointed out by A.N. Deruga "the building of administrative policy of the adequate administrative and delictual environment is essential for successful opposition to administrative offences. Modern understanding of this policy is based on the actions of federal legislation and subordinate normative legal legislations, directly or indirectly related to the Code on Administrative Offences of the RF.

Exactly here accumulate advanced views on the adequate measures of counter to certain types of administrative offences, the entire administrative delinquency; here are formed general and individual, professional and personal views about the qualities of an administrative offence, the importance and the need to combat with its massive manifestations "[2].

It is not a secret, about the number of problems in law-enforcement practice because of the low level of legal technology of the legislative body in Russia. The lack of scientific support of legislative activity at the gap between legislation and the law, we believe, is not the latest cause of legal nihilism of public civil servants. From our point of view, scientific provision of the law-making process should be presented at all stages, starting with question of the feasibility to develop this or that normative legislation, its concept and finishing with study the effectiveness of the application of already adopted law standards.

As one of the objectives of the legislation on administrative responsibility of public civil servants, we see the optimization of the relationship between the legal regulation of wide ranged public relations and the rights of law enforcement entities, while retaining control over their activities and clearly outlining the limits of discretion. We believe that it is impossible to predict all possible variants of tort conduct (deeds) of public civil servants. However, it is unacceptable that delinquent is able to evade responsibility for lack of structure (objective side) of the administrative offence, as

well as for the absence in the rule of law, the relevant legal categories and definitions, despite the detailed regulation of legal relations and their violation. As the task of the legislation on administrative liability of public civil servants we see formation of standards which provide mechanism for the implementation in national legislation the provisions of the Model Code of conduct for public servants, adopted in accordance with the recommendation № R (2000) 10 Committee of Ministers of Europe Council, for example, prohibiting public civil servant to extract personal gain from his official position in his relations with other State institutions, business, public organizations, etc. The public civil servant should bear an administrative responsibility for preventing such collisions, whether they are real, potential or may be established.

The administrative responsibility of public civil servants, in our view, should include the principle of proportional ascending and descending order. In the term of public civil servant is hidden the leader and specialist, public servant of power bodies at different levels and different competences, because of that their identical, due to object and objective side, administrative offences will have different public resonance (a different assessment of the civil society). The ratio should go from the volume of vested duties, the number of subordinates and level of subordination, the degree of infringement of the rights and lawful interests of citizens and legal persons, etc.

Previously A. f. Nozdrachev emphasized that "the Code on Administrative Offences of the Russian Federation doesn't contain formulations of administrative corruption offences, separated from criminal ones on the basis of the gravity of the consequences that have occurred. There are no administrative responsibilities of public servants for corruption offences in chapter "Administrative offences, infringing on the institutions of State power" [7]. The scientist also lamented the lack in the Code on Administrative Offences of the Russian Federation of an offence that is similar to bribe. "Getting by public servants of payment for performance of any action related to their official duties in favor of a bribe giver may not be a disciplinary offence. Judicial practice often recognizes bribe as a minor offence, if its size is insignificant. And in this case, the recipient is exempt from criminal responsibility and it's impossible to bring him to the administrative one, since there is no corresponding formulations in the Code on Administrative Offences of the Russian Federation"[7].

And we support A.F.. Nozdrachev in the call to formulate appropriate formulations of administrative offences of corruption nature. These formulations can be attributed not only to bribes, but abuse of official position, abuse of power, violation of professional ethics, extortion, and illicit engagement of entrepreneurial activity [5]. The task of the legislator will be to determine a clear line between corruption disciplinary misconduct, corruption administrative offence, corruption a criminal offence.

In the legal literature notes multilevel nature of the responsibilities of public civil servants with reference to the two-level system of the civil service. For example, A.V. Chuev notes that "the administrative responsibility of all public civil servants begins due to the Code on Administrative Offences of the Russian Federation, and public servants' of subjects of the Russian Federation one due to, adopted in accordance with it, the laws of the subjects of the Russian Federation on administrative offences. This is conditioned with the fact that administrative legislation in accordance with part 1 article 72 of the Constitution of the Russian Federation is related to subjects of joint administration of the Russian Federation and the subjects of the RF "[9, 87-88]. Therefore, the next task of the legislation on administrative responsibility of public civil servants should be adjusting the rules excluding the joint management of the issues that determine administrative responsibility of public civil servants. Absurd is the situation where different members of the Russian Federation will be perceived differently against unlawful actions by public civil servants, or even worse, the person disqualified from the civil service in one subject of the Federation will legitimately enter into public service of another subject of the Federation. The administrative responsibility of public servants should occur only on the basis of Code on Administrative Offences of the Russian Federation.

Legislation on administrative responsibility of public servants should not allow an abuse of right in evaluation of deeds which infringement to the rights and freedoms of citizens and economic interests of legal entities. It should not be forgotten that the civil public servants in the rank of officials of the administrative jurisdiction bodies implement measures of administrative compulsion against perpetrators of public interest protected by the rules of administrative law and, naturally, can implement the right limitation of management operators.

So, in legislation should be clearly seen the balance between public danger on administrative offences by administrative jurisdiction bodies' officials and managed entities.

D. N. Bakhrakh has rightly wondered – why citizen illegally brought to responsibility, after recognition of his innocence must continue to fight for his rights, and he responded: "If an official has violated the law, the natural sense of justice implies that the victim will be apologizing, and the perpetrator will be punished. Impunity corrupts power entities. The law could set a rule requiring authority, whose officials have hold or attracted a citizen to an administrative responsibility, if he is excused to bring him the formal apology "[1].

The norm of part 5 article 7 of the law of the Russian Federation from April 27, 1993 "On appeals to court of actions and decisions violating the rights and freedoms

of citizens" that provides the adoption of responsibility measures in respect of public servants who have committed actions (decisions) recognized illicit, does not really applied in practice. The legislator said: "A", but did not say "B". As said professor D.N. Bakhrakh, and we agree with him that in the law should be vested the right of the person whom rights or freedoms have been violated to submit a petition about bringing the guilty official to disciplinary, administrative or even criminally responsibility [1].

Existing administrative legislation rarely involves in the participation of interested individuals (citizens and representatives of legal entities) in proceedings on administrative offences of public civil servants. The administrative jurisdiction bodies as a whole negatively concerns to citizen participation in administrative prosecution of guilty officials of the public civil service. And only the status of the victim allows to private juridical entities to participate in the proceedings on administrative offences of public civil servants.

Unfortunately, the current Law of the Russian Federation actually establishes immunity not only civil servants but also all public organizations' officials from the claims of citizens, in respect of which they carried out illicit, inappropriate actions. As pointed out by D.N. Bakhrakh, "the maximum that can make the victims - the cancellation of an illegal act. Citizens not even have the right to raise the question of the possibility of bringing the servant to criminal or administrative, disciplinary, financial or civil liability, not saying that they don't have the right to hold officials liable. To any of these types of servants' legal liability a servant can be held liable only by other ones. A citizen has a right only to request administrative complaints against the impunity of those who have violated his rights "[1].

Science of administrative law should review the role of civil society in the administration and jurisdictional processes, introducing the so-called public control in cases on administrative offences of public civil servants. This will restore the confidence of civil society in the activities of the administrative and juridical bodies and will not call into question the inevitability of punishment of official- delinquent. From here follows the objective of the legislation on administrative liability of public civil servants is to ensure the participation of private legal entities to participate in the processes of administrative prosecution of delinquents – public civil servants of Russia by administrative jurisdiction authorities.

Solution of tasks facing the legislation on administrative responsibility of civil servants is not possible without compliance with the fundamental principles. In the legal literature are mentioned such basic principles of juridical responsibility as lawfulness, usefulness, democracy, responsibility only for a illicit act, the presumption

of innocence, inevitability, individualization, humanism, equality of all before the law, which in our point of view are also inherent in the administrative responsibilities of public civil servants. These principles are interrelated with defined by us objectives over the legislation on administrative liability of public civil servants. And this is natural, because under the principles of administrative responsibility as a legal institution are understood the fundamental, aspects, which determine the content of the legislation on administrative offences [3, 34]. Some of these principles are vested in norms directly applicable in the Code on Administrative Offences of the Russian Federation - principle of equality before the law (article 1.4), the presumption of innocence (article 1.5), the principle of legality (article 1.6). Other principles can be identified from the content of the articles of the legislation on administrative offences.

The meaning of the principles of legislation on administrative offences is in that their violation depending on the nature and materiality attracts recognition of the held proceeding on case to be invalid, the abolition of the decisions issued on the result of the proceeding or recognition of the collected materials that do not have the force of proofs. That's why, the authority of the administrative jurisdiction which prosecutes a public civil servant-delinquent must strictly observe with the principles determined by the legislation. In this part the Russian legislators should learn from the positive points of the Code of the Republic of Kazakhstan on administrative offences which establishes in articles 9-27 all the fundamental principles of administrative and delictual legislation:

- Article 9. Legality
- Article 10. Exclusive competence of the Court
- Article 11. Equality of persons before the law
- Article 12. The presumption of innocence
- Article 13. The principle of guilt
- Article 14. Inadmissibility of repeated bringing to an administrative responsibility
- Article 15. The principle of humanism
- Article 16. Immunity of person
- Article 17. Respect of person's honor and dignity
- Article 18. Personal privacy
- Article 19. Immunity of property
- Article 20. The independence of judges
- Article 21. The language of proceedings
- Article 22. Relieving from the duty to give witnesses' evidence
- Article 23. Guaranteeing the right to qualified legal assistance,

- Article 24. The publicity of court proceedings on administrative offences
- Article 25. Provision of security during case proceedings
- Article 26. The freedom to appeal procedural actions and decisions
- Article 27. Protection of rights, freedoms and lawful interests of persons [10]

The administrative responsibility of public civil servants has, in our opinion, all the features inherent to juridical liability. These include: punitive, regulatory, restoring, preventive and educational functions.

Regulatory function of administrative responsibility of civil servants is expressed in consolidating the legal status of a public servant and provides its behavior which is socially significant corresponding to the public and State interests. The disposition of the norms of law on administrative responsibility of public civil servants discloses their juridical meaningful conduct.

Punitive function of administrative responsibility on the part of civil servants is expressed in adverse consequences that are caused by a public servant – delinquent. Its means are public sentence (censure) of offender, and deed that he committed and application of the envisaged by law administrative penalties, up to the deprivation of the legal status of public civil servant (disqualification).

Preventive function of administrative responsibility of public civil servants consists in facilitating the formation of the public civil servant's informed choice of a behavior's positive variant by blocking the negative, anti-social conduct under threat of administrative penalty application. In respect of public civil servants, the effectiveness of this function is determined by the clear knowledge of the assigned responsibilities for implementation and compliance with the requirements of the norms of law and implementation the sanctions of negative nature in the case of an administrative offence.

Educational function of administrative responsibility of public civil servants aimed at individual consciousness of public civil servant as a subject of responsibility and influencing on the development of a legal, political and moral consciousness of legal culture of the individual and respect for the rights and freedoms of other persons. In our opinion this feature gradually loses its value, as evidenced by the growth of delinquency in the public civil service [4].

Restoring function of administrative responsibility is aimed at restoring of social relations which have been exposed to deformation as a result of offence committed by a public civil servant. This function is implemented in the process of proceedings on administrative offences of public civil servants, when together with the designated administrative punishment the official of public civil service must enter into legal relations with the victim and to implement legitimate legal action.

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Universal Decimal
Classification
342.9

Denisenko V.V.

REVIEW OF THE MANUSCRIPT OF KIZILOV VIACHESLAV VLADIMIROVICH "INSTITUTE OF ADMINISTRATIVE RESPONSIBILITY ON THE PART OF PUBLIC CIVIL SERVANTS OF THE RUSSIAN FEDERATION"

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Issues related to the increasing responsibility of the representatives of authorities have become more urgent after the elections to the State Duma. Common sense dictates that the daily aspects of the relationship of Government and civil society are not solved within the walls of the supreme legislative body of the country, but in the ordinary offices of officials, referred to as public civil servants. Bad law or good, its use is entirely dependent on the will of the subject – specific public civil servant with whom citizens and legal entities enter into legal relationships in everyday life.

Correctly having identified the duality of public civil servant among the subjects of administrative and tort legislation, author rightly argues that the official of public civil service can be as a delinquent and a person that prosecutes the offender.

On the basis of generalization of the practices of the Higher Arbitration Court of the Russian Federation, as well as statistical data on the structure of the State service the author displayed the objective conditions of necessity to introduce full-fledged Institute of administrative responsibilities of public civil servants. Among the objective preconditions for introducing of institution of administrative responsibility the author notes and historical predetermination of having been existing for many years relations between Government and citizens, Government and society, the tradition of "obedience of officials not to law but to regulations and the Chief". The author's comment is quite right that "formed Institute of appeal against illicit decisions or illegal actions or inactions of the governmental bodies and their officials is not bordered by the Institute of administrative responsibility on the part of government officials who have taken illegal decision or allowed an unlawful action or inaction", which is regrettable.

The absence in the current legislation of the Russian Federation of a crime structure for specific administrative offences leads to the situation when tort behavior of public civil servants remains without adequate State response to it. It is no accident that at a session of the Government Presidium of the RF, on June 9, 2011, the Chairman

of the Government focused attention on the need for the imposition of administrative liability of officials of the Federal Government for violations of the standards and procedures of provision of state services and further spread of this liability to the regional and local levels of Government (http://premier.gov.ru/events/news/15535/).

Appeal of the Chairman of the Government on the above issue to the Agency of strategic initiatives we think illustrates the lack of legislative approaches to solve the problems raised. That in its turn gives the value to the work of the author, who offered a range of structures of administrative offences, connected with tort deeds in public civil service area.

In contrast to studies of authors who claim on the presence in current legislation of the Russian Federation of norms on administrative liability of public civil servants in his work V.V. Kizilov shows convincing arguments about the absence of normative vesting of the institute of administrative responsibility on the part of public civil servants.

Rightly dividing the official offences of subjects of administrative responsibility – officials and public civil servants, the author implements his own analyses of administrative offenses' structures of the Code on Administrative Offences of the RF on object of normative vesting of administrative responsibility of public civil servants for torts which have been committed in the exercise of functions of the public civil servant.

There is no doubt that civil servants who perform organizational and instructive, administrative and economic functions, are subject to administrative liability, but in this case the responsibility is associated with failure to perform duties as head of the public body and is not very different from administrative liability of any legal entity's leader. This adoption is quite true. The author shows an illustration of approach to the issue of the administrative responsibility of public civil servants, the illustration contributes to the perception of the author's ideas.

Correctly indicated impossibility of borrowing the experience of Western democracy that relates to the formation of the Institute of administrative responsibility of public civil servants because juridical responsibility of civil servants in mentioned States has structure different from Russian one.

The author rightly connects a large number of recognized by courts unlawful decisions and actions of the power bodies and their officials with a huge number of

public civil servants. Deserves support the thesis about being involved in the illegal decisions and actions the power bodies of not heads of public bodies but public civil servants serving as the professionals.

It should be noted the correctness of that approval on feasibility of use of the individual responsibility of public civil servants, instead of collective one of a public body.

The study by the author of the intentional guilty deed of a public civil servant in the administrative offence is no coincidence and dictated by the realities of life. There are no developed theories of intentional guilt in Administrative Law unlike Criminal Law, and administrative practice is guided by development of colleagues another branch of law. Undoubtedly, there are differences in intentional guilty deeds in administrative and tort relations among the different subjects of administrative responsibility. The author having based on the special status of a public civil servant as a subject of administrative and tort relation, what is proved by the author's definition of administrative offence of a public civil servant, examines the intellectual and volitional aspects of intentional tort deed committed by a public civil servant.

Noteworthy the author's contraposition of the intent and good faith misconception. Indeed, unlike other individual subjects of administrative law, public civil servant, especially empowered official's executive authority in his professional activities should be governed by the laws and know them, his activity must be lawful and not cause harm to citizens and legal entities, and good faith misconception (juridical mistake) of the public civil servant is permissible only in the rare cases reviewed by the author.

Deserves support the conclusion of the author that the presence of intent in subjective side of administrative offence of public civil servant, should be a ground of the offender's stricter administrative responsibility.

Considers the issue of careless guilty deed of a public civil servant in administrative offence, the author does not accidentally found the lack of classical forms of negligence in cases of guilty act of a civil servant in the administrative and tort relations. Are quite possible cases of informed desire of the specific consequences of the deed of the offender – public civil servant, but with a lack of understanding of the wrongfulness of his acts, and the author proposes to allocate the cases as a kind of careless forms of guilt.

The author quite rightly comments that careless form of guilt is bordered by the lawful actions of public civil servant, arising from his discretionary powers. One cannot but agree with the author's claim that the

It's impossible to disagree with the author that "person which provides obligatory for implementation instructions and influence the emergence, modification or termination of the rights and duties of a managed entity should be imposed with the duty to foresee the possibility of harmful effects as a result of his acts ". The author rightly identified difficulties that can arise when establish guilt in the form of negligence, and paid his attention to the fact that "assessments of public civil servants of their own deeds quite strongly correlates with his intellectual and mental characteristics."

Author's study of issue of administrative fine to a natural person, as seems to us forced the author to address the problem of the legality of the use of mentioned sanction in extrajudicial procedure to an individual entity of liability which is a public civil servant.

In our view, the thesis on possibility of extrajudicial use of administrative fine to public civil servants is quite well-founded. Undisputed is an adoption on presence of features of public civil servant status in the system of individual subjects of administrative responsibility, due to offences which are being committed by officials.

In the light of recent changes to the tort legislation of Russia one cannot accept another author's thought about the application of warning in limited cases – if offence is committed for the first time and not associated with the offence in respect of property, health, rights and freedoms of natural persons, as well as the property rights and interests of legal entities.

The refereed work has a polemic with the famous legal scholar A.B. Agapov on the purpose and value of monetary penalty (an administrative fine). Support should be given to the author's opinion that the administrative fine is not a restriction of property rights, but their termination.

I will agree that the administrative fine shall be the principal administrative penalty applying to a public civil servant. In our opinion, the author's suggestion about changing of the way of calculating administrative fines applicable to public civil servants is actual. We should, as stated in the manuscript, move from setting fines in absolute calculation to the introduction of the principle of multiplicity of wages (salary) or other income of the offender.

It was appreciated that the author did not stop at delinquencies of public civil servants themselves, and covered all relations arising in the sphere of legal regulation of public civil service, including cases occurring before citizen's entering to the civil public service and after its completing, and he also provided administrative responsibility of third persons violating the Law on the public civil service (illegal employment of civil servant).

Justified is the development by the author of certain administrative offences on the basis of the ideas of the author on the decriminalization of some offences which are consistent with the direction of the modernization of tort Law, given by the President of the Russian Federation.

Continuing to develop the theme of administrative responsibility on the part of public civil servants, the author logically come to the need for research elements of administrative offences' structures of the specified subjects, one of which is the objective side of an administrative offence.

Feature of the author's approach to the research is definition of the forms of objective side of empowered subject's administrative offence through the prism of the implementation by public civil servants of administrative and legal norms. In this work correlated application, usage, compliance with and enforcement of administrative legal norms with possible tort deeds (actions or inactions) of public civil servant.

Unlike the authors' researches which focus on the objective side in form of inaction the author gives convincing arguments about the existence in objective side of offences of civil servants simultaneously both forms of an illicit deed – actions and inactions.

The author successfully argues his point of view on the possibility of the greatest manifestation of tort actions in process of public civil servants' realization of administrative and legal norms by applying ones.

Rightly the author notices defectiveness of the definition of administrative offence applied by the legislator as to collective and individual subjects of administrative responsibility, as we see it, he doesn't arbitrarily raised the need to formulate concepts for special subjects, which include civil servants. Today the problem of forming the institute of administrative responsibility of public civil servants is actual, this problem cannot be solved without identifying its main provisions, central place among which must be given the definition of administrative offence of public civil servant.

The author is certainly right by entering into the definition of administrative offence specifying for an exception from this type of offences the torts that are criminally punishable.

Despite the need to discuss definitions of administrative offences for various subjects of administrative responsibility, author's definition of administrative offence of public civil servant, in the light of being held administrative reforms and anti-corruption activities of the State, meets with approval.

Indeed, an official of the public civil service is a special offender, due to possession at the time of the administrative offence of a special status.

The author reasonably raises the question of the separation from the Institute of administrative responsibility of Sub-institute (a special Institute) of administrative responsibility of public civil servants. There is no doubt in the need to reform the institution of administrative responsibility, because in recent times repeatedly have been raised the issue of establishing an effective mechanism for countering with delinquency exhibited by the power bodies.

Proposed by the author way of forming of special institutions of administrative responsibility which will be differ in subject composition deserves careful consideration.

Feature of the author's approach to the study is the use of related legal science – theory of State and law. The reasoning of the author about the content of the legal institution of administrative responsibility on the part of public civil servants is considered to be logical. It is competently and in accordance with the classification of legal institutions has been set out the characteristics of the Institute which is being studied by the author.

The author gives convincing arguments about the existence of the objective preconditions for forming of the Institute of administrative responsibility on the part of public civil servants, as well as examines the subjective factors impeding the process.

Defines institution of the administrative responsibility of public civil servants as guarding and legal Institute of administrative law, the author correctly points out that there is regulatory functions in the Institute.

Existing scientific and practical commentary to article 2.4 of the Code on Administrative Offences of the RF although note the broad category of «official» potential delinquents which are being brought to administrative liability, how-

ever, do not provide adequate scientific and legal evaluation of associated by the legislator all persons in a note to the article. In the works of legal scholars the issues of feasibility of such consolidation in a normative definition of official of autonomous subjects of administrative law also haven't been adequately reflected. That is why the study of the multiplicity of the real subjects of administrative liability united with help of the legal category of an official of administrative and tort legislation is timely.

It should be noted that the author's approach to the analysis of the norm of article 2.4 of the Code on Administrative Offences of the RF to the object of feasibility of normative fixing on the part of administrative responsibility for official offences of various subjects of administrative law is innovative and is based on identifying the differentiation of subjects, as the participants of administrative-legal relations.

The value of research is increased through author's position, expressed on the need to divide categories of officials at the separate subjects of administrative responsibility: public civil and municipal servants, representatives of the authorities, officials, individual entrepreneurs. However the author hasn't limited mechanical division of the category "official" but has introduced sufficient arguments to this division and his own definitions, relating to the administrative responsibility of officials.

The author's definition of an official of the public civil service deserves the attention, as well as the highlighting among the officials of the public service a person vested with special powers of a representative of the authorities.

Author's works, like the refereed monograph, in our view, should have a resonance in legislative activities, as it helps to see the real issues of legal regulation requiring resolution at the legislative level.

In our view the monograph "Institute of administrative responsibility on the part of public civil servants of Russia» is the result of the author's serious scientific investigation of problem issues of administrative law, namely the Institute of administrative responsibility.

General conclusion: the monograph of Kizilov V.V. "Institute of administrative responsibility on the part of public civil servants of Russia" on its scientific level and practical orientation deserves an appreciation and can be recommended for publication in the form of a monograph.

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Kizilov V. V.

REPRESENTATIVE OF THE AUTHORITY AS A SUBJECT OF ADMINISTRATIVE RESPONSIBILITY

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Provides the analysis of the legal category of «representative of the authority» used in administrative law. Shows examples of empowering individuals with instructive powers in respect of those who are not in the service depending on them. Discusses the distinction between instructive powers of the representative of the authority and organizational and instructive ones of the officials. Defines the real composition of subjects of administrative responsibility that are covered by the legal category of "representative of the authority".

Keywords: the representative of the authority, administrative responsibility, administrative responsibility of the representative of the authority.

In the normative definition of an official in the Code on Administrative Offences of the RF founded identity between the person permanently, temporarily or under special powers exercising functions of a representative of the authority and a person legally vested with instructive powers with regard to persons that are not in the service dependence of him [5].

Commenting on the article 2.4, Code on Administrative Offences of the RF, A. N. Guev defines a representative of the authority as a person with "(in accordance with the rules established by law, such as Law on Civil Service, Law on FSS (Federal Security Service), Law on Police) instructive powers (so his instructions, orders, etc. are necessary for execution by other citizens, organizations, officials) in respect of persons who are not his subordinates. For example, orders given by a police officer in accordance with articles 10-12 of Law on Police must be executed by all citizens and organizations «[15]. It seems to us that this comment is not much different from the rule vested in the Law.

In another comment of Code on Administrative Offences of the RF considering representative of the authority, has been given an explanation that "we are talking

about officials of law-enforcement and state control bodies. Functions of representative of the authority can be implemented temporary, permanently or in accordance with a special authority" [19].

A more detailed definition of the representative of the authority gave authors of the commentary, edited by Eh.G. Lipatova and S.E. Channova [18], using the legal position of the judicial bodies that is set out in resolution of The Plenary Session of the Supreme Court of the Russian Federation № 6 of February 10, 2000 "about judicial practice in cases of bribery and bribery in a profit-making organization".

In the shown resolution establishes that «representatives of the authorities should be considered as persons exercising legislative, executive or judicial power, as well as public employees of supervisory or controlling bodies, legally vested with instructive powers with regard to persons who are outside of the service dependencies or with the right to make decisions obligatory for execution by citizens and organizations regardless of their departmental subordination « [25]. Therefore, the authors of the commentary list the following persons, who, in their view, fall within the legal category of representatives of the authority:

- members of the Federation Council, deputies of the State Duma, deputies of legislative governmental body of subjects of the Russian Federation,

- members of the Government of Russian Federation and executive bodies of subjects of the Russian Federation,

- judges of Federal Courts and justices of peace,

- endowed with appropriate powers prosecutors, tax authority, customs bodies' employees, the Ministry of Internal Affairs of the Russian Federation and the FEDERAL SECURITY SERVICE of the Russian Federation ones,

- government auditors, state inspectors and controllers,

- military personnel in carrying out their duties of keeping public order, safety and other functions, in which soldiers possess instructive powers [18].

It seems to us that in this context, the representatives of the authorities should include officials of local self-governments, that is elected or contracted (labour contract) persons, with executive and instructive powers conferred to solve local issues and (or) to organize the activity of the body of local government [8].

It is significant that in the above comments has been made a reservation that the representatives of the legislative and judicial authorities are special subjects of administrative responsibility. Also specific subjects include representatives of a law-enforcement agency and Armed Forces of the RF [18].

As we see the expression "given with instructive powers by law order" is broader then interpretation given by A. N. Gueva in which as an example has been viewed empowering individuals by instructive powers only on the basis of the law. We believe that empowering the authority with powers, in accordance with the law order is not the same as giving powers by established Law. However, none of the above comments views establishment of instructive powers by subordinate legislation in the manner prescribed (established) by law. We believe that this is related to the understanding of the principle of legality in the activities of public figures which is defined at the legislative level of rights and responsibilities (competence and powers) those persons but not in subordinate legislations. That's why obligatoriness for subjects of management of representative's of the authority instructive powers also should be established only by law.

Contextual search of the phrase "instructive powers" in reference and legal system "GARANT" was shown in Federal Law No. 54-FZ of June 19, 2004 on "Meetings, rallies, demonstrations, processions and picketing" in which a norm is provided on empowering of an organizer of public activities to perform instructive functions for the organization and performing of public activities [9]. This law in accordance with legal definition of a representative of the authorities in Code on Administrative offences of the Russian Federation, in fact transfer into mentioned category any person (including those who aren't public or municipal servants) on the base of empowering this person instructive functions in respect of persons who are not in direct dependence of him. Only powers' area of this representative of the authorities is limited by organization and holding of a public activity.

As we think in a normative definition's context of a representative of the authorities in the mentioned category should be included private security guards, the order of application of instructive powers of which is established by the Law of the RF No. 2487-I of March 11, 1992 on Private Detective and Protective Activities in the RF. If there is a contract to provide security services and during implementation of the interfacilty and carrying regimes within the object of protection, as well as during transportation of protected goods, money and other property private security guards have the right to:

1) Require staff and visitors of the object to keep the interfacility and carrying regimes (compliance rules of interfaculity and carrying regimes installed by client or customer, should not contradict the legislation of the Russian Federation);

2) access to the objects of protection of the carrying regime, those persons who have documents entitling entry (exit), entry (exit) of vehicles, taking-in (-out), import (export) of property to the objects of protection (from ones), which is equivalent to prevent entry (exit) of persons and vehicles, undocumented;

3) produce within the limits established by the legislation of the Russian Federation, at the object of protection of carrying regime, examination of entering to the object (leaving the object) vehicles if it is suspected that these vehicles are used for illicit purposes, as well as the examination of property brought to (taken out) the objects of protection, with the exception of operational services State paramilitary organizations' vehicles. Inspection of the vehicles and property must be carried out in the presence of the drivers of vehicles and persons accompanying the vehicles and ptoperty;

4) apply physical force, special means and firearms in cases and by the procedures established by the legislation of the Russian Federation;

5) assist law-enforcement agency in solving their tasks [2].

It should be noted that the Legislative Act has direct links to the job description of a private security guard, which shall govern the acts of private guards at the objects of security [2].

Transport safety issues cannot be resolved without a vesting of instructive powers of public character to officials of private subjects in their respective fields of activity as air, sea and land transportation. On the basis of an analysis of federal laws' norms one can define private legal entities with instructive powers over persons who are not directly dependent on the first.

For example, a person with instructive powers powers is an aircraft commander. In order to ensure the safety of the flight of an aircraft, he may order any person on board the aircraft and to demand their enforcement. "The Commander of the aircraft has the right to apply all necessary measures, including enforced execution measures against those who represent a direct threat to the security of the aircraft flight and refused to obey the orders of the Commander of an aircraft. Upon arrival of the aircraft at the nearest airfield, the Commander of the aircraft have the right to remove such persons from the aircraft, and in case of commission of the act containing the characteristics of an offence, refer them to law-enforcement agencies «[1]. According the article 84 Air Code of the Russian Federation instructive powers are given to the workers of air traffic security services. Paragraph 3 of the mentioned article stipulates that the «air traffic security services have the right to detain persons violating the requirements

of safety of the flight for the transfer to law-enforcement agency, as well as baggage, cargo and mail containing items and substances, prohibited for air transportation and, in cases where the life or health of the passengers and crew of an aircraft or other citizens are in danger, apply measures in accordance with the legislation of the Russian Federation. Air traffic security officers in the line of duty are allowed to carry and use service weapons in accordance with the procedure established by federal laws" [25].

According to article 67 Merchant Shipping Code of the Russian Federation orders of the captain of the vessel within his authorities are obligatory for execution by all persons on board of the ship. Also the ship master have the right to isolate the person whose actions do not include elements of a crime by the criminal legislation of the Russian Federation, but threaten the security of the vessel or the persons and property[6]. Similar powers are given to the ship master according to the Code of the Inland Water Transport of the Russian Federation [4].

Captain of the sea ship may refer to the competent authorities of a foreign State, if provided for by an international treaty of the Russian Federation, the person to whom the captain of the ship has the reasonable grounds for believing that he has committed an offence against navigational safety, with the exception of citizens of the Russian Federation, as well as permanent resident of the Russian Federation without citizenship. In this case the ship master if possible before the vessel enters territorial sea of a foreign State shall submit if feasible to its competent bodies notification about his intention to hand this person to them and about the reason of this transfer, as well as provide the evidences to the authorities [6]. The ship master is given other powers vested in the legally specified circumstances.

Paragraph 36 on the Rules of service provision for the transport by rail of passengers and cargo, luggage and freight for personal, family, household and other needs, not related to business, has defined persons who have powers of removing a passenger of the wagon (instructive power). In addition to servants of Internal Affairs to the representatives of the authorities (in the context of the Code on Administrative Offences of the Russian Federation) are included:

- medical workers – in case of passenger disease that interferes the possibility of his travel or threatens to the health of other passengers, if it is not possible to place him separately;

-employees of the carrier who are responsible for monitoring of the presence

of passengers' travel documents (tickets) – if a passenger travels without a travel document (ticket) or with an invalid travel document (ticket) and refuses to pay the fare in the manner determined by the rules of carriage of passengers, baggage, freight [10].

Ours examples show that the circle of persons to which the legislator has given authority to give orders to individuals not directly dependent to the first is much broader than one that has been determined by authors of the commentary to article 2.4 Code on Administrative Offences of the RF.

Unfortunately, analysis of juridical literature shows that legal scholars don't pay enough attention to the disclosure of composition the real subjects of administrative responsibility, united by the category of «representative of the authority». In a special course of lectures of B. B. Rossinskiy reproduces the norm of law on administrative liability of an official without an analysis of the shown by us category [22, 67-73].

D. N. Bakhrakh, describing the signs of a subject of the administrative offence, also doesn't disclose the category of a representative of the authority [14, 485-487].

The position of A. B. Agapov in respect of representative of the authority repeats the provisions laid down in the decision of the Plenary Session of the Supreme Court of the Russian Federation No. 6 of February 10, 2000 «on judicial practice in cases of bribery and bribery in a profit-making organization» [12, 46-47].

L. A. Kalinina, perceiving persons with powers of instructive nature in respect of third persons as those which have auditing powers and implement jurisdictions to hear cases on administrative offences (their competence is in chapter 23 of CoAO of the RF), however, considers that these persons cannot bear administrative responsibility in the context of article 2.4 CoAO of the RF [17, 64-65].

In educational-methodical complex, edited by N. M. Konin notes that «instructive powers of a public character are given to persons exercising State control or supervision (inspectors of Traffic Police of State Inspection on Traffic Security, tax inspectors, inspectors of sanitary and epidemiological service and so on).

In separate articles of the special part of Code on Administrative Liability of the RF legislator specifies what persons from the aforementioned list shall incur administrative liability. For example, for actions aimed at unlawful restricted liberty of trade (article 14.9 CoAO of the RF) administrative responsibility is taken by officials of executive bodies of subjects of the RF or ones of bodies of local government" [13, 123].

D. M. Ovsyanko identifying the representative of the authority with an official claims that "the officials (representatives of the authorities) are employees of public bodies whose powers of public nature beyond these bodies. Their instructive actions (powers) can be applied to citizens and legal entities, not subordinate to the service" [21, 90]. Later professor enumerates the following persons: prosecutor, investigator, police officer, tax police (now the body of tax police is missing), bailiff, State inspectors of auditing bodies, representatives of the State in joint-stock companies [21, 90].

It is no secret that the officials who may be empowered to carry out inspections by instructive act of the competent body to perform the verification shall include the head of the authorized body, the deputy head of the authorized body, heads and deputy heads of the structural subdivisions of the authorized body, as well as other public civil servants of the authorized body, official regulations of which provides for the examination of State control (supervision) in the appropriate area of state administration. However, not all their actions and requirements will be mandatory for the subject of management.

In this case the decision of a judicial body on prosecutor's activity, which is set out in the administrative and legal dispute of economic unit, seems to be interesting. According to the judges of cassation instance, prosecutors «exercise special constitutional activity monitoring legislation and do not participate in economic activity, including with respect to the applicant, have no instructive powers while exercising monitoring compliance with laws, therefore their actions (inactions) don't create obstacles to the implementation of entrepreneurial and other economic activity of the applicant" [11].

Of the results of judicial practices of bringing to criminal responsibility for crimes of corruption nature on results of work of courts for the Tula region - 1st half 2010, show that became criminally responsible the following representatives of the authorities:

- police officers – in 6 cases;
- workers of the Federal Service of Punishment Execution – 5;
- officers of justice – 3.

Cases where the representatives of the authorities have been correlated to persons holding positions in local government, and carrying out the functions of the authority of these bodies, haven't took place in judicial practice "[20].

Study on the issues of administrative liability of an official, his administrative and legal status reveals the lack of scientific validity (doctriness) of legal constructions

of official and a representative of the Authority set forth in federal laws. They are built on the principle of mirroring concepts "an official – this is a representative of the authorities ..." and "a representative of the authorities – it's an official ..." [16: 24].

Closest to our understanding is view of Yu. N. Starilov on representative of the authority, he points out the following signs:

- it is a law-enforcement officer,
- it is an official of a control body,
- it is an official that in the prescribed manner empowered instructive powers,
- instructive powers of the representative of the authorities apply to persons who are not in the service dependence of him [23, 370].

Yu. N. Starilov shows the presence of officials in the category of the representative of the authority that is correlated with ours examples of powers conferring of the captains of aircraft and ships, the persons responsible for the organization and conduct of public events, etc.

However, the question of the real subjects' category of the representative of the authority will not be fully taken up, if not to explore the notion of "instructive powers" and the question of its obligation for managed entities.

Management Science (management) is considering instructive powers under the assumption that their holders have the right to make decisions obligatory for those whom they affect. Among instructive powers there are general, linear and functionality associated with the adoption of the initiative decisions, involving vigorous actions. In fact, the powers - are limited rights of empowered person on the use of resources and command of the people.

Empowering individual instructive powers in the manner prescribed by law, is their delegation, i.e. transfer of tasks and powers to the person who assumes responsibility for their implementation.

Powers are delegated to the post, but not to the subject who is at this post at the moment. When the subject changes job, he loses his powers to old post and gets new ones, i.e. you cannot delegate if the post does not have a person, and therefore usually talk about the delegation of powers to the subject [26].

We take the position that there is a distinction between instructive powers and organizational and instructive functions. Organizational and instructive functions include, for example, direction of staff, placement and recruitment, organization of labour or work of subordinates, discipline, and application of measures for the promotion and discipline. Instructive powers are something different, although they are elements of control.

As pointed out by Yu. N. Starilov, under menegment "in the very general sense can be understood as targeted impact of management subject on management objects to create an effective, functioning system on the basis of information links and relations" [23, 24]. Any management process has the following characteristics: a) presence of subjects and objects of management as essential participants of the management; b) using various forms of subordination of an object to the subject of management. The science of administrative law deals with social public management, i.e. the management of public relations. For successful management (implementation of management functions) the subject of management is given necessary powers. According to Yu. N. Starilov, "social management should ensure the interaction of two factors: on the one hand, the power and authority of the management subject and management (in the broad sense, is the authority of the State), and on the other hand, the voluntary execution of people and their organizations of social norms, conscious obedience to the subject of the authority and management, as well as its orders" [23, 28].

Managing impact of the subject of representative of the authority is nothing more than determined by Yu. N. Starilov "sovereign management" – ""forcing" management (law-enforcement, attacking, "assaulting", limiting subjects' of legal entities, tough), i.e. applying measures of administrative coercion [23, 39]. Concurring with the views of the famous scientist, the main aspect of this management – the subjects of management (in our case the representatives of the authorities) have the right to apply measures of a security, warning, stopping, punishing and restorative nature.

However, we cannot mix power and authority. Authority has a real ability to influence the situation. Therefore you can have power without authority, and, on the other hand, have the authority, without power. The powers of the representative of the authorities establish that he is entitled to do, and the membership of the authority determines that he can really do.

In view of the stated we can notice that in the context of this category in Code on Administrative Offenses of the RF there are more subjects of authority than representatives of the authority. We understand that authority entities are all persons in the system of organs of State and municipal management, as well as those who are endowed with certain powers of State and municipal management. Broadly representative of the authority (as a subject of the administrative law) covers all categories of officials described in the notes and educational literature, reviewed in this article. However, in the context of the subject of administrative

liability the range of real subjects of the category "representative of the authority" is much less.

It should be pointed out that the representative of the authorities in administrative and tort legislation cannot be the person whose order, despite its legitimacy and membership of the authorities' powers, is not accompanied by measures of coercion and may not be implemented by managed party. Coercive measures reinforce the orders of officials and law enforcement officers. Orders of other subjects of authority may be challenged by person to whom the order has been addressed. Thus, in ordinary daily life workers of public controlling or supervisory bodies empowered by law instructive powers, in relation to persons outside of the service dependence, practically are not representatives of the authorities. This, we believe, is associated with the subjective judgment of managed entities requiring power orders. By virtue of their own perception of the rule of law (unlawfulness) of authority's order, feasibility of implementation managed entity under the law [3; 7] has a right to appeal against decisions and actions of government officials, local government, institutions, enterprises and their associations, voluntary associations or officials, civil servants, can exercise protection of his rights by default of the authority's order followed by its appeal (or not). In this case from our point of view authorities' order is conditionally mandatory. Bound by the authorities' order can be achieved only by threat of unavoidable use of coercive measures.

Not by chance, as we see it, is the refusal of the judicial body in the terminology of authorities' subjects of the notion of "representative of the authority". Plenary Session of the Supreme Court of the Russian Federation No. 2 of February 10, 2009 on the Practice of the consideration of the courts on challenging the decisions, actions (inaction) bodies of state power, bodies of local government, officials, public and municipal servants [25], unlike the earlier judicial decision (resolution of Plenary Session of the Supreme Court of the Russian Federation No. 6 of February 10, 2000 on the Court practice in cases of bribery and bribery in a profit-making organization) hasn't already contained the concept of the representative of the authority.

In sum, saying about representative of the authority, we can define the category as a special subject of administrative responsibility, including empowered persons whose delinquency manifests in public relations, where the subject is an administering party for persons not being in direct dependence of him, but this persons are not able to defend their legitimate interests by failure to execute illegal orders of representative of the authority.

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THE ADMINISTRATIVE RESPONSIBILITY OF A MANAGEMENT COMPANY: THE PROBLEMS OF LAW-ENFORCEMENT

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Examines normative grounds for bringing to administrative responsibility management companies and practice of application articles of the Code on Administrative Offences of the RF to management companies when administrative offenses have been committed by subjects controlled by them. Analyses options of forming control by subjects of economy, while the devolution of the sole executive body's authorities to commercial management company.

Keywords: administrative responsibility, administrative responsibility of legal entities, management company, administrative responsibility of officials

Participation of management companies in the activities of the economic units is due to the choice of the owner (shareholders) legal way to manage the current activities of legal entities [1; 2; 3; 5]. The transfer of powers of the sole executive body of economic unit is carried out on the basis of an agreement with a commercial organization, which in this case becomes a management company (organization). The society whose sole executive body's powers have been passed to management company or manager acquires civil rights and shall assume civil obligations through the management company or manager in accordance with paragraph 1, clause 1 of article 53 of the Civil Code of the RF.

However, from our point of view, mentioned replacement of a sole executive body (an official in the context of the Code on Administrative Offences of the Russian Federation) to the management company does not lead to unconditional punishment of the management company for administrative offences occurring in the management of the economic unit. Despite the fact that bringing to administrative responsibility of management companies shall be carried out in accordance with clause 9 of article 2.10 of the Code on Administrative Offences of the Russian Federation, the management company is seen in real legal relationships as a collective executive body within the category of an official that is defined by article 2.4 of the Code on Administrative Offences of the Russian Federation. Management company as well as the head of a commercial organi-

zation, carries out organizational and instructive, administrative and economic functions through specific officials who are given this powers in accordance with the staff list, organizational structure of management and internal normative acts. That is why the question of the definition of management company's (quasiofficial's) guilt cannot be considered on the principle of objective imputation of guilt that is applied to the economic unit – legal entity. From our point of view the person who conducts proceedings on the case should establish the guilt of the management company through company's officials, by analogy with the provisions of clause 4 article 110 of the TAX CODE of the RF. In the relation to the administrative offence of a management company the norm on establishment of guilt can consist in the following:

Guilt of a managing company in committing of an administrative offence is determined depending on the fault of its officials, actions (inaction) of which have led to the commission of this administrative offence.

Unlike the norm of clause 4 of article 110 of the TAX CODE of the RF in case of an administrative offence we exclude the guilt of the management company and here is why. In practice, there are two variants of building the system that administrate the current activities of the economy unit. The first variant is that the management of the managed subject is implemented through the highest official given with the powers of the management company; however this person is an employee of the managed subject (see Figure 1)

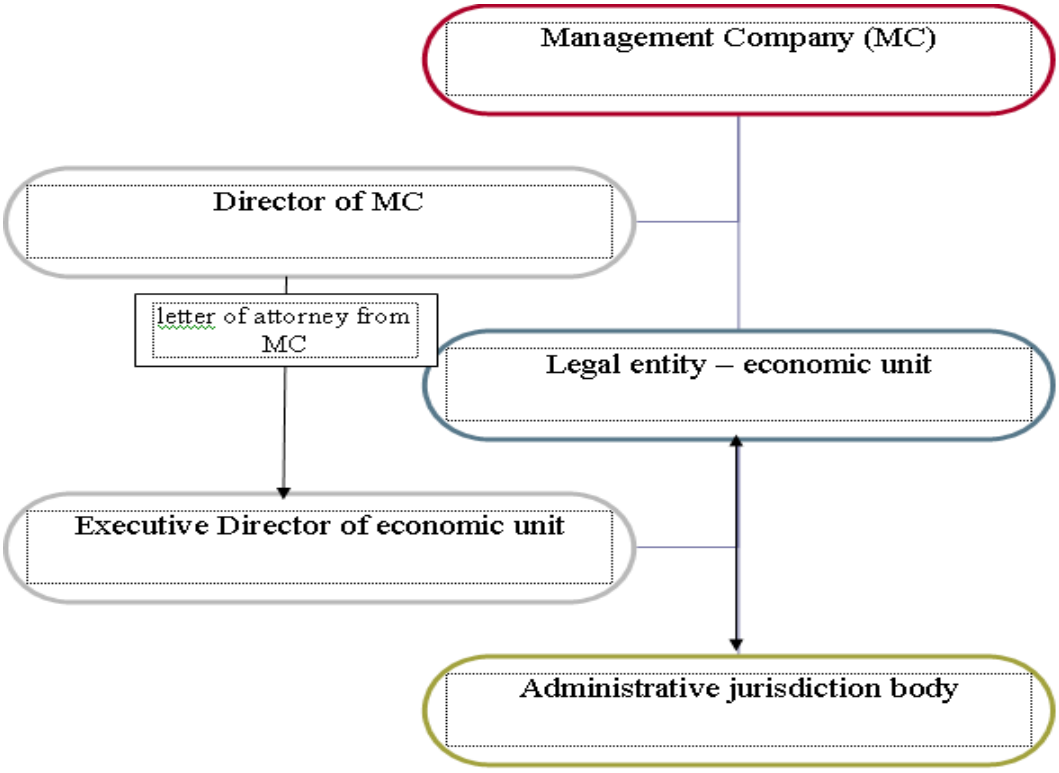

Figure. 1. The scheme of management of economic unit through the Executive Director of the economic unit.

The second version would be for the direct management of the economic unit by an official of the management company (a leader of the management company, or by an empowered official in the staff of the management company, see Figure 2).

Differences in schemes of management of economic unit, in our opinion should define when administrative responsibility should be born by the management company and when by a specific official which is given management company's powers.

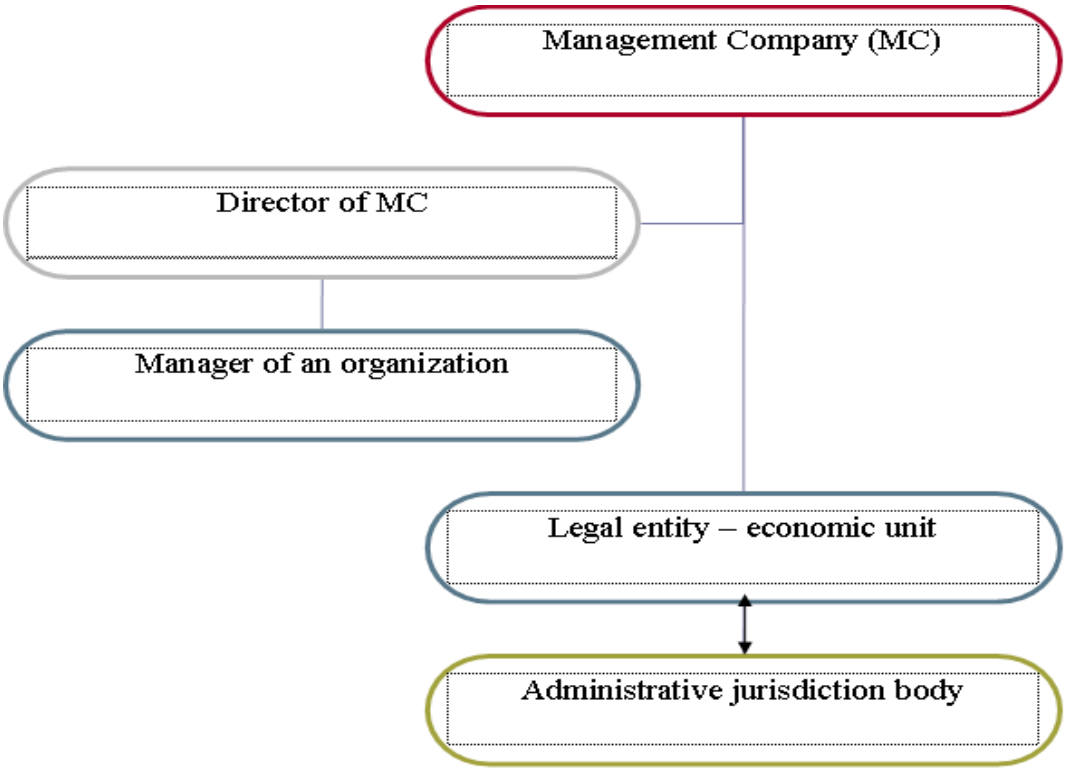

Figure. 2. Scheme of direct control of economic unit by officials of the management company.

The presence of the fact of administrative offence of economic unit – a legal entity is not sufficient to bring to administrative responsibility the management company which performs functions of the sole executive body of an economic unit. Clear evidences that the managing orders of the Management Company have led to committing an administrative offence by an economic unit are necessary.

We believe that the practice does not know any agreements for the implementation of functions of the sole executive body of an economic unit that would contain provisions aimed at the realization of organizational-instructive and administrative-economic functions through managed legal entity, which could lead to the commission of administrative offences by an economic unit.

Vesting of powers which are determined by legislation of the Russian Federation and charter of an economic unit for the manager of a joint-stock or limited liability company under the management company in the agreement on

performance of the functions of the sole executive body of an economic unit does not preclude empowering relevant powers (partial powers) to staff of the management company as well as economic unit's ones, with the definition of the limits of the allowed actions and level of responsibility. And in this case takes place delegation of powers of collective subject of law to individual entity.

Due to the fact that the annotation to article 2.4 of the Code on Administrative Offences of the Russian Federation within the category of official provides administrative liability not only to heads, but also to «other workers» for committed administrative offences, ignoring of this provision by the body of administrative jurisdiction can be explained only by the fact that the body (official) of administrative jurisdiction applies only to fiscal objectives in matters on administrative offences, where subject of liability is a management company. The amount of the fine from a management company is several times higher than from its official for committing of the same offence.

The introduced scheme of management of economic unit, through the executive director of the economic unit (see Figure 1), to our mind, in all cases excludes the administrative responsibility of the management company for administrative offences committed by economic unit and which provide responsibility for an official-offender – legal entity. The Executive Director of the economic unit shall be fully empowered the same rights and obligations of the Chief, but unlike the sole executive body, empowering is carried out on the basis of a letter of attorney issued by the management company. The Executive Director shall arrange monetary and material resources, perform all business correspondence and enter into relations with all persons on behalf of the economic unit, direct the staff, allocate rights and responsibilities among structural units and officials. The Executive Director is the highest official of the economic unit. In this case the management company only supervises the Executive Director and has minimal impact on economic entity. The existence of such a scheme is justified by the fact that the change of an official – the real head of the economic unit, occurs under the simplified procedure (through revocation of the letter of attorney), without meeting of shareholders (participants) of the company and without relevant notification procedures of the registering body (no entries in Unified State Register of Legal Entities; EGRYUL in Russian).

The practice of resolving administrative and legal disputes with the specified option of management of economic unit reflects the same approach to understanding of responsibility of an official and managing company of the author and judicial bodies. Thus, having brought to administrative responsibility leasing

company according to the article 15.27 of the Code on Administrative Offences of the Russian Federation for failure to comply with the legislation on combating the legalization (laundering) on the part of recording, storage and presentation of information about operations which are subjects of compulsory monitoring, Federal Financial Monitoring Service of the RF imposed an administrative penalty to the managing company on the same article having identified it with the guilty official who is responsible for compliance with law and relations with Federal Financial Monitoring Service of the RF [12]. As a result of judicial appeal – resolution of administrative jurisdiction body was declared illegal. Supporting the legal position of the management company, the arbitration court stated the following:

"Bringing to administrative responsibility CJSS "SANAR», Interregional Department (MRU in Russian) of Federal Financial Monitoring Service of the RF in Volga Federal District has not established, as required by the law (article 26.1 of the Code on Administrative Offences of the Russian Federation), persons-employees of LLC «leasing company "E'NAKS" who are guilty of committing administrative offence by and did not provide such evidences to the Court.

A contract for the performance of the functions of the individual executive body, according to which in the context of article 42 of the Federal law on the Limited Liability Companies JSC «SANAR» is a managing company, does not contain provisions which point to the existence of the rights and responsibilities, failure or improper performance of which by the JSC «SANAR» could result committing of an administrative offence by «Leasing company «E'NAKS».

In accordance with clause 2, article 7 of the Federal Law No. 115-FZ, JSC «SANAR» appointed to «Leasing company» E'NAKS» a special official responsible for compliance with the rules and implementation of the programmes mentioned in the Law.

Interregional Department (MRU in Russian) of Federal Financial Monitoring Service of the RF in Volga Federal District has not provided evidences that JSC «SANAR» obstructed the execution of statutory obligations envisaged by law by an official of LLC «Leasing company "E'NAKS" or dismissed this official from his duties.

In accordance with clause 4 of the Regulation on registration in the Federal service of financial monitoring of organizations conducting transactions involving monetary or other assets in the areas where there are no supervisory bodies (approved with regulation of the Government of the Russian Federation No. 28 of January 18, 2003) LLC "E'NAKS" provided to the Interregional Department (MRU in Russian) of Federal Financial Monitoring Service of the RF in Volga Fed-

eral District card of registration by form No. 1 CR (card of registration; KPU in Russian) approved by the Federal service for financial monitoring, clause 16 of which shows that Executive Director of LLC "Leasing company «E'NAKS» is an Organization's official that implements operations with funds and other assets, as well as is responsible for the compliance with the rules of internal control.

From the case materials has been established and not disputed by Interregional Department (MRU in Russian) of Federal Financial Monitoring Service of the RF in Volga Federal District that according to the order No. 1 of December 07, 2004 LLC "Leasing company «E'NAKS» appointed an Executive Director in the person of H.E.V., the duties of which are enclosed in the performance of the functions of the sole Executive Body of LLC "Leasing company «E'NAKS».

The Court considers that the argument of the administrative body that JSC "SANAR" is an official that is responsible for the Organization of internal control in the leasing company LLC "E'NAKS" is not well-grounded and placed on an incorrect interpretation of article 2.4 of the Code on Administrative Offences of the Russian Federation.

An official unlike a legal entity is an individual subject of law, and official's forms of guilt (art. 2.2 of the Code on Administrative Offences of the Russian Federation) differ from legal entity's ones.

Applying the principles of common directing of management company, JSC "SANAR" has not intervened in the ongoing activities of LLC "leasing company "E'NAKS" having appointed for the mentioned company the highest official who is the Executive Director who is included in the staff of the "leasing company "E'NAKS ".

The Law "on Joint-Stock Companies", the Law "on the Limited Liability Companies," Labor Code of the RF do not prohibit economic units to pass (charge) all or part of its governing and instructive powers, as well as the responsibilities for its non-implementation to person who performs management.

Due to the specific of legal relations which are regulated by Federal Law No. 115-FZ, , it is normatively vested that in these relations on the part of managed subject (in this case "Leasing Company "E'NAKS ") participates not just the head, but specifically empowered and trained person – the employee of "Leasing Company OOO "E'NAKS ".

Thus, a person with rights and responsibilities to act on behalf of "Leasing Company "E'NAKS" in legal relations with the Interregional Department (MRU in Russian) of Federal Financial Monitoring Service of the RF in Volga Federal District since assuming to the position of Executive Director of LLC "Leasing

Company "E'NAKS" and so far is the H.E.V. who according to article 2.4 of the Code on Administrative Offences of the Russian Federation is subject of responsibility for the offence stipulated under article 15.27 of the Code on Administrative Offences of the Russian Federation.

Interest in the case is that here takes place another circumstance that excludes responsibility and guilt of the sole executive body of economic unit; it is a normative vesting in role of a participant in public relations of the economic unit – the special subject of legal relations, to which are assigned duties and responsibilities. In leasing companies such a special subject is a special official who possesses certain competences [4].

Participation of the specially designated official (but not the leader of a legal entity) in legal relations with the Federal Service for Financial Markets have been provided for joint-stock companies, which themselves carry out keeping of the register of shareholders [8]. This official of a joint-stock company, in our view, would be responsible for administrative offences in the area of securities market under articles 15.19 and 15.22 of the Code on Administrative Offences of the Russian Federation.

It should be noted that areas of activity of economic units, which are regulated by the State, require in-depth knowledge and competencies on a number of issues which may be located outside the professional training of sole executive body. In this regard within economic units establishes the special services (subdivisions) which are responsible for safety, compliance with employment protection, industrial hygiene, ecology, etc. There are structures of the Chief Engineer, Chief power engineer, Chief Technologist in the industrial productions. Therefore, in addressing the issues of bringing to administrative liability of economic units' officials for administrative offences arising from unfair enforcement of responsibilities on the part of performance of administrative and economic functions, one should always install a particular person who is competent to perform those functions.

An interesting case No. A56-4947/2011 in which the management company challenged the decision of the Regional Branch of the Federal Service for Financial Markets in the North-West Federal District on bringing to administrative liability provided under part 9 of article 19.5 of the Code on Administrative Offences of the Russian Federation. Federal Arbitration Court supported the legal position of the managing company on the issue of its innocence in committing of administrative offence by its economic unit, having grounded its decision as follows:

The courts of first appeals instance have found that as a result of a field

inspection of Housing Accumulative Cooperative "Novyj Mir" Regional Branch gave this cooperative an order on removal of detected breaches.

In view of that, the subject of the administrative offence, whose objective side is expressed in fail to perform within the prescribed time-limit of lawful order of a federal body of executive power in the area of financial markets, is a person who has been given an injunction, the Court of first instance found that there was no structure of the Organization's administrative offence, that in force of paragraph 2, part 1 of article 24.5 of the Code on Administrative Offences of the Russian Federation is a circumstance precluding proceedings on case of administrative offence"[11].

Similarly, the dispute was resolved with the same management company but with other managed subject [10]. Also in the other federal judicial district the Federal Executive Body in the field of financial markets lost administrative legal dispute, based on attracting management companies to administrative liability for failure to comply with injunctions for managed subjects who are participants to legal relationships in the area of financial markets [9].

As you can see from these examples, the Court focuses on targeting of an order to administrative jurisdiction body. The fact that the management company did not enter into legal relations with the administrative jurisdiction body, the Court considered bringing to administrative responsibility as an official (sole executive body) of the offender to be wrongful.

The following example, as we see it, shows how far officials of the administrative jurisdiction bodies (Federal Tax Service of the RF; FNS in Russian) from the proper implementation of articles of the Code on Administrative Offences of the Russian Federation for offences of an economic unit in the tax area with participation of the management company. In the viewed case the leasing company did not submit auditor's conclusion of annual tax reporting, that was classified by a tax inspector as an administrative offence under article 15.6 of the Code on Administrative Offences of the Russian Federation (failure to provide information required for the implementation of tax control) committed by the sole executive body of the ***management company***.

At the time of making up a Protocol on administrative offence under part 1, article 15.6 of the Code on Administrative Offences of the Russian Federation the official of Federal Tax Service was ignoring the existence of the labor contract between Executive Director (Official of the leasing company) and management company, according to which the Executive Director bears the rights and duties of the highest official in volume corresponding to the rights and obligations of

the individual Executive Body of the leasing company. The tax inspector has not adequately assessed that the Executive Director possessed a letter of attorney authorizing the Executive Director to sign outbound documents of the leasing company to the tax authorities, including quarterly and annual accounts, statements, explanations, declarations, applications for VAT refund, returning (offsetting) the amounts of excessively paid taxes, unlawfully collected sanctions. Also have been ignored facts of relations of the leasing company with the tax authority, which confirms participation in legal relations of Executive Director as the sole empowered by management company official of the economic unit.

Its position with regard to the bringing of the Director of the management company to administrative liability for the offence of an economic unit tax authority argued that the Director of the management company is a Director of the leasing company [13]. A justice of the peace has terminated proceedings on a case against the Director of the management company due to the lack of the administrative offence structure in official's actions. The Court found that a Protocol on administrative offence provided under part 1, article 15.6 of the Code on Administrative Offences of the Russian Federation was compiled against improper persons.

As you can see from the example, the tax inspector due to subjective reasons incorrectly identifies the Executive Director of the management company of an economic unit with the sole executive body of this economic unit. It seems to us that the tax inspector was led to essential error by the information from Unified State Register of Legal Entities (EGRYUL in Russian), which contains information on the sole executive body of the leasing company – the managing Organization (string 8 page 2 of form P 11001) and on the natural person who has the right to act on behalf of a economic unit (Leasing Company) without a letter of attorney. Also in the above case we see the reason of an error on the part of bringing of the official to administrative liability in the existence in the footnote to article 2.4 of the Code on Administrative Offences of the Russian Federation of the following phrase:

"Managers of organizations carrying out powers of sole executive bodies of the other organizations, bear the administrative responsibility as officials".

At first glance, the focus of the legislator to leaders of organizations carrying out powers of sole executive bodies of the other organizations is not absolutely clear. So much so that before this phrase in the footnote, in the role of officials bearing the administrative responsibility, are mentioned managers and other employees who have committed administrative offences in connection with

the implementation of the organizational-instructive or administrative-economic functions. What is the difference between the functions of the leader of the management company and functions of the leader of a legal entity who is an ordinary subject of economic activity? As we see it, the answer to this question is that the powers of the head of the management company include instructive powers in respect of persons who are not directly influenced by him. The Head of the management company, we believe, has the powers of a representative of the authority over the managed subject's workers of an economic activity.

We believe it is necessary to note one more circumstance in the part of the administrative responsibility of managing companies. Clause 9 of article 2.10 of the Code on Administrative Offences of the Russian Federation was introduced by Law No. 9 of 09.02.09 [7] and has come in force since April 13, 2009. The clause shows that "in cases of administrative offences by the sole executive body of a legal entity with status of a legal entity, administrative penalty is assigned to him within the limits of the sanction applicable to legal entities". Before the coming into force of the mentioned norm, according to K. Trukhanov and A. Trushkov, sometimes management companies were imposed penalties provided for officials because they implemented powers of the head of an organization [14].

Legal Practitioners also note incidents of illicit involving of a management company liable for economic units' offences in the area which is regulated by the Law on Protection of Competition [6]. K. Trukhanov and A. Trushkov consider illegal when an administrative jurisdiction body issues an order to management company to transfer income obtained by managed subject through the violation of the Antimonopoly Legislation to the federal budget [14]. Their position is reasonable, since the management organization is not a subject that violates the legislative prohibition on abuse of a dominant position, and does not receive the income:

"Administrative liability for abuse of a dominant position in the commodity market is set by article 14.31 of the Code on Administrative Offences of the Russian Federation. The subject of offences, responsibility of which is provided in a specified article of the Code on Administrative Offences of the Russian Federation is the economic unit that occupies a dominant position in the commodity market. Management organization PJSC "B" is not such a subject, dominated position is only occupied by managed organization PJSC "A". Thus, PJSC "B" could not be regarded as a subject of the administrative offence under article 14.31 of the Code on Administrative Offences of the Russian Federation" [14].

Moreover, as rightly pointed out, "The administrative responsibility under article 14.31 of the Code on Administrative Offences of the Russian Federation is

established for legal entities in the form of fine, calculated as a percentage of the amount of the proceeds from the sale of the offender's goods (work, service) on market of which have been committed an administrative offence. PJSC "B" again, cannot have such proceeds *A priori*.

It also seems that the management organization cannot be held responsible under article 14.31 of the Code on Administrative Offences of the Russian Federation and as an official as it is not so according to article 2.4 of the Code on Administrative Offences of the Russian Federation" [14].

Summarizing the research, it can be stated that the administrative and tort legislation falls short on the issues of definition subjects of administrative responsibility from rapidly developing relations in business area.

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