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THE NECESSITY OF FORMATION STATE SYSTEM OF MONITORING DRUG SITUATION DEVELOPMENT

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Notes difference in statistical data and absence of a unified approach in determination of drug addicts in the Russian Federation. Here are given examples of areas for cooperation of the Federal Drug Control Service of the Russian Federation with the European Monitoring Centre for Drugs and Drug Addiction, and justified the necessity of implementation of monitoring the drug situation development in Russia.

Keywords: drug control, drug situation, drug consumption, state monitoring of drug consumption.

One of the problems, now facing Russian society, is a problem of population drug addiction [8], which requires implementation of an effective anti-drug policy [9].

For an all-round understanding of the scope of the drug consumption problem it is required to take into account a number of indicators: assessment of drug use trough the prevalence factor (lifetime, year) of consumption among the population in general; assessment of the potential of problematic drug use through the example of drug use among young people, the costs and consequences of consumption drugs, measured by the demand for treatment; the abundance level of morbidity and mortality associated with drug use.

However, the study of statistical data about individuals admitting non-medical use of narcotic drugs and persons with a diagnosis of «drug addiction» shows that in the legal literature and normative legal acts are given different figures for the same phenomenon.

So, in the Federal target-oriented program «Comprehensive measures against drug abuse and illicit turnover for 2005 - 2009 years" [2] was pointed out that in

2004 the number of patients suffering from mental and behavioral disorders associated with drug use amounted to 493.6 thousand people, in 2003 – 495.6 thousand people, in 2002 – 532 thousand, in 2001 – 535 thousand in 2000 – 483 thousand, and in 1999 – 413 thousand people.

The Director of the Russian FDCS V. P. Ivanov at the meeting of the main narcologists and main children's narcologists of bodies of the Russian Federation subjects' health management on September 16, 2008 presented data on persons who use drugs regularly, are registered with the diagnosis of "drug addiction", according to which such persons have been recorded: in 1999 – 364,679 in 2000 – 441,927 in 2001 – 496,419 in 2002 – 498,745 in 2003 – 495,620 in 2004 – 493,647 in 2005 – 500 508 in 2006 – 517 839 [4].

According to all-Russian drug situation monitoring conducted under the Federal Program "Comprehensive measures against drug abuse and illicit turnover for 2005 - 2009 ", the number of persons who illegally consume drugs on January 1, 2005 totaled 5.99 million people [2].

In 2010 the number of persons registered in the institutions of the Ministry of Health Care and Social Development of the Russian Federation with a diagnosis of "drug addiction" amounted 350,936 (rate of increase in relation to 2005 was 2.2% (343,509). Including as a result of consumption: of opioids – 304 380 people (2005 – 301,711); cannabinoids – 23 097 people (2005 – 21,937); cocaine – 81 people (2005 – 50), psychostimulants – 4254 people (2005 – 5150), other drugs and combinations – 19,124 people (2005 – 14 661 [7, 8]).

Official data on registered persons who consume narcotic drugs for not medical purposes, i.e. who are not diagnosed as "drug addicted" is much higher. For example, in 2010 – 547,081, of whom 393,534 (71.9%) are injection drug users, and 14.4%, or 56 486 are HIV-infected [7, 28]. In its turn, among injection drug users in 2010: 84% or 330,695 people are men and a 16% or 62,839 women; aged between 0-14 years – 39 children, from 15-17 years – 1263 juveniles, from 18-19 years – 10,353 people, the majority of 20-39 years – 337 524 (in 2009 - 328,435) 40-59 years – 43,971 people (2009 – 42,077) 60 years and over 384 people [7, 29].

According to international methods of calculation, the actual number of drug users is approximately 5 times larger, i.e., up to two and a half million people, or nearly 2% of the population [10].

As rightly pointed out Professor V. S. Ovchinsky "an untutored mind hardly understands how a Narcomania patient differs from a drug user, and even more so from an injection drug users". The last 20 years continuously in exponentially have been growing the number of revealed crimes related to illicit drug turnover.

So, if in 1990 in the RSFSR there were about 16 thousand of them, in 2009 – 238.5 thousand, i.e. 15 times greater. But these figures are far from reality. If the number of drug addicts is calculated in the millions, then the number of drug-related crimes also should be calculated in the millions! Indeed, every fact of the acquisition by a drug addicts another dose – this is a crime on the part of those who sell this dose [6].

A significant discrepancy between the official statistics of the Ministry of Health and Social Development of the Russian Federation and the data obtained by monitoring the drug situation, in respect of the number of persons who illegally consume drugs, evidences of improper accounting the specified category of persons. Thus, it can be said about the lack of a state system of monitoring the drug situation development, as noted in the Strategy of state anti-drug policy of the Russian Federation until 2020 [1]. It should be noted that in paragraph 6 of the Strategy as one of the strategic objectives is defined the development and introduction of the system of state monitoring the drug situation in the Russian Federation.

The problems associated with narcotrafficking and its consequences in the form of addiction, no doubt, are very relevant for Russia and for the entire world community.

In the report of the International Narcotics Control Board, published in 2011, is stated that there is little evidence that drug abuse in most countries of Europe is declining. In contrast, in some countries emerges a trend to an increase in drug consumption [11]. Similar conclusions are contained in the report of the European Monitoring Centre for Drugs and Drug Addiction (hereinafter - EMCDDA). According to statistics from the center, each year in the EU about 8,500 people die from drug overdose, about 3,000 become infected with HIV when the consumption of drugs and nearly 2,100 people die after being infected with AIDS due to drug consumption [12].

Europe remains the second largest sales market for such drugs as cocaine. One of three young Europeans at least once tried an illegal drug. Besides a list of substances not under international control and becoming the subject of abuse in Europe, continues to expand. For example, in December 2010 taking into account the increase in the abuse of mephedrone States-Participants of the European Union decided to establish national control over this substance.

It should be noted that although the policy of combating illicit drug trafficking is an internal affair of the European states, European Union, however, has the authority in the field of combating drug-related crime.

The need for independent, scientifically confirmed information in issues of understanding the nature of drug addiction problems and optimization

the response to it, as well as the worsening drug situation contributed to the fact that in 1993 was established the European Monitoring Centre for Drugs and Drug Addiction (abbr. EMCDDA). The center was officially opened in Lisbon in 1995.

EMCDDA is a tool for improving the knowledge infrastructure of the EU concerning drugs and consolidation of information systems and measures related to drugs.

The main objective of the EMCDDA and the relevant national focal points of States-Participants of the EU (Reitox-focal points) is to ensure the EU and its States-Participants with actual, objective, reliable and comparable information on the drug situation [5, 20-27]. The Center contributes to the creation of important databases and appropriate methodologies that are useful not only for the States-Participants of the EU, but also for the international community. The Center collects, analyzes and disseminates information on drug abuse and its consequences such as infections and death. The Center focuses on health and social interventions, prevention, treatment and harm reduction, policy to combat drug addiction and ensuring law enforcement, the economy of drugs and drug trade.

Today the center provides policy-making bodies the necessary data to develop laws and strategies to combat drugs, as well as helps professionals in this field to determine best practices and new research areas.

Despite the fact that the activity of EMCDDA is concentrated mainly in Europe, the Centre also exchanges information and experience with partners from other regions of the world. Cooperation with European and international organizations in the field of drug abuse is also an important element of the Centre's activity as a means of gaining deep insight into the global drug addiction problem. The whole activity of EMCDDA is reflected in the annual review of the drug situation in Europe, that is provided in the format of multilingual report. This report is addressed to policy-making bodies, research associates and practitioners in the fight against drugs, as well as anyone interested in the latest data on the drug situation in Europe.

The Russian Federation as an essential part of world community is fully experiencing the growing threat of drugs and is interested in application the European experience of combating illicit drug trafficking.

On October 26, 2007 in Mafra by Federal Service of the Russian Federation for the Control of Drug Trafficking and the European Monitoring Centre for Drugs and Drug Addiction was signed a Memorandum of Understanding [3].

In the memorandum is noted that the parties by following the concept of the "Road Map for the Common Space of Freedom, Security and Justice", agreed at

the Russia - EU summit in Moscow on May 10, 2005, reached an understanding on the following issues:

- the intention to exchange information on illicit drug consumption and turnover, including the exchange of information on drug use in the Russian Federation and the States-Participants of the European Union at the national and regional levels, prevention of drug-related crime, new types of drugs, their production technology, new methods of illegal turnover and new trends in illicit drug consumption;

- their desire to continue work on exploring the possibility of further development of collaborative methods for monitoring illicit drug use in order to harmonize their results, as well as the development and improvement of the joint harmonized indicators of assessment the drug situation;

- mutual readiness to provide information on their programs, plans and practices, as well as legislative and administrative measures aimed at reducing illicit drug use, promote mutual participation of experts of EMCDDA and Russian FDCS in meetings organized by each of the Parties on matters within their competence, in particular, in the EMCDDA expert meetings dedicated to indicators of assessment the drug situation and new types of drugs, as well as to share, as they deem it necessary, the information on the results of such activities undertaken by each Party;

- desire to assist each other in staff training, exchange of experts and the research results on the issues of illegal drug trafficking and monitoring drug situation, as well as on other issues of mutual interest.

Though this Memorandum of Understanding cannot be considered an international agreement and does not create international legal obligations to the Russian Federation or the European Union and its Participant-States, however, its adoption may be considered as the beginning of closer cooperation between Russia and the EU in the field of combating illicit trafficking of narcotic drugs.

The importance of cooperation with European Monitoring Centre for Drugs and Drug Addiction is determined by the need of development and implementation in the Russian Federation the state system of monitoring the drug situation, as outlined in paragraph 6 of the Strategy of state anti-drug policy of the Russian Federation until 2020 [1].

Formation of a monitoring system will give an opportunity to develop the most effective mechanisms for preventing illicit consumption and trafficking of drugs, forecasting the further spread of drug addiction and coordination in the fight against drug-related crime. Besides one of the key aspects should be the possibility of joint monitoring methods of illicit drug consumption and harmonized indicators of assessment the drug situation.

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ON ADMINISTRATIVE RESPONSIBILITY OF CRIMINAL EXECUTIVE SYSTEM EMPLOYEES

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Discusses the duality of the status of criminal executive system (CES) employee in matters of administrative responsibility for official (service) administrative offenses. Determines the concept of administrative responsibility with respect to an employee of the criminal executive service. On the basis of a critical analysis of articles of the Code on Administrative Offences of the Russian Federation it is alleged on the unacceptability of the mixing disciplinary and administrative responsibility of the special subjects for administrative offenses.

Keywords: administrative responsibility, administrative responsibility of criminal executive service employees, special and general subject of administrative responsibility.

Russian legislation provides for administrative liability, which occurs in cases of administrative offenses, which is recognized by the illicit, guilty action (inaction) of a physical person or legal entity for which the Code on Administrative Offences of the RF [1] (codified federal law) or the laws of the Russian Federation Subjects on Administrative Offences (e.g., the Law of the Vladimir region "On Administrative Offences in the Vladimir region" [2]) establishes administrative responsibility. These legal acts are the main sources of establishing administrative responsibility of physical persons or legal entities who have committed administrative offences.

In order to ensure uniform and correct application of the law, as well as to improve the law-enforcement practice of administrative offences adopts specifying documents of subordinate nature [4]. In addition, public authorities vested with administrative and jurisdictional powers issued the departmental documents (orders): on the officials authorized to draw up protocols on administrative offences [5] and carry out administrative detention; on the establishment of standard forms

of procedural documents; on the determination of execution procedure of certain administrative penalties and application measures to ensure proceedings on the cases of administrative offenses.

The analysis of sources of law in the field of administrative responsibility, showed the absence of many fundamental provisions of theoretical and methodological nature, such as definitions revealing the concept of "administrative responsibility", "administrative responsibility of persons who have special ranks", etc.

Science of administrative law took upon itself the function to fill emerging gaps. There are different points of view about administrative responsibility in theory of administrative law.

In reference books, for example, administrative responsibility is seen as responsibility of citizens and officials to the state for committing an administrative offense, as one of the forms of legal liability which is less strict than the criminal liability [11].

For example, A. V. Melekhin believes that administrative responsibility this is a form of legal liability, which is the application of administrative penalties measures for physical persons and legal entities who are guilty of committing an administrative offense [17].

D. M. Ovsyanko understands the administrative responsibility as the use by judges, bodies and officials established by the state administrative penalties measures to physical persons and legal entities for commitment of administrative offenses [18, 227].

According to M. Yu. Buravlev, administrative responsibility in the public service refers to the application in the manner prescribed by law of state compulsion measures for administrative offenses in order to protect the rights and lawful interests of physical persons and legal entities by specially authorized state bodies and officials within their competence provided for by the federal laws and laws of the subjects of the Russian Federation [12].

In the Code on Administrative Offences of the RF are vested the following two legal regime of administrative responsibility of employees of the criminal executive system (hereinafter – CES):

1. In part 1 article 2.5 is vested a special regime for bringing CES staff to administrative responsibility. Thus, for administrative offenses, except ones provided in part 2, employees of CES bodies and institutions bear disciplinary responsibility in accordance with federal laws and another normative legal acts of the Russian Federation regulating the going through the service and their status [3, 6].

The specified allows to speak about actual replacement for CES employees administrative responsibility to the disciplinary responsibility for the commission of certain types of offenses.

2. In part 2 article 2.5 of the Code on Administrative Offences of the RF is provided a common regime (conditions) for bringing to administrative responsibility of CES bodies and institutions [7]. Thus, CES staff for administrative offenses envisaged by articles 5.1-5.26, 5.45-5.52, 5.56, 6.3, 7.29-7.32, chapter 8 article 11.16 (in terms of violations of fire safety outside the place of military service or the passage of military training), chapters 12, 15 and 16, Art. 17.7, by articles 18.1-18.4, 19.5.7, 19.7.2, 19.7.4 and article 20.4 (in terms of violations of fire safety outside the place of military service or the passage of military training) of the Code on Administrative Offences of the RF shall be administratively liable on general grounds.

On the basis of the legal provision the administrative responsibility of CES employees can be divided into the following two types:

1. Administrative responsibility of CES employees on general grounds (general civil), i.e., they act as general subjects of administrative responsibility. For example, for violation of traffic rules; fire safety requirements outside the place of service; for administrative violations in the area of taxes, fees and finances; failure to meet the lawful demands of a prosecutor, investigator or person conducting an inquiry or the official conducting the proceedings on a case of an administrative offense, and etc.

2. Administrative responsibility of CES employees in accordance with the normative legal acts regulating the career program in the Federal Service for Execution of Punishment of Russia in its institutions and bodies and right status, i.e., they act as special subjects of administrative responsibility. Responsibility is conditioned by special features of legal status – the presence of specific ranks of the subject of administrative responsibility (e.g., when disorderly conduct (Article 20.1), firing of a weapon in a non-designated areas (article 20.13), and others).

So, under the administrative responsibility of CES employees, for the protection of the rights and lawful interests of physical persons and legal entities by specially authorized state bodies and officials within their competence, we can determine the application in the manner prescribed by federal law and established by the state of administrative penalties to the employee of the Federal Service for Execution of Punishment of Russia of its institutions and bodies for administrative offenses in accordance with the provisions of article 2.5 of the Code on Administrative Offences of the RF.

Let us consider problems of the content of part 1 article 2.5 of the Code on Administrative Offences of the Russian Federation, relating to special rules of bearing responsibility for administrative offenses by CES employees in accordance with the normative legal acts regulating the order of service passage and their status.

As previously mentioned, in this case, the administrative responsibility is essentially replaced by the disciplinary responsibility.

In the normative basis of administrative responsibility is of great importance sub statutory legal acts, which contain either guidance to law enforcement bodies, and recommendations for their proper understanding and application, as well as examples of procedural and other documents.

Thus, some of the executive bodies of state power recommend bodies (officials) that have been granted the right to impose administrative fines in respect of servicemen, soldiers and officers of bodies of internal affairs instead of imposing penalties submit materials on offences to relevant authorities for resolving the issue of bringing the perpetrators to disciplinary responsibility [8].

When transferring materials in practice there may be a situation where, at the discretion of heads (commanders) authorized to impose disciplinary sanctions, the guilty persons may be being subjected to disciplinary punishment: to announce demerit, to assign service duty out of turn (for CES employees passing service as cadets), and possibly even to release them from punishment. Such decision of issue contradicts with the principles of equality before the law and equal administrative responsibility for guilty deeds. The list of heads' positions and their rights for the application of rewards and imposition of disciplinary sanctions are determined in annex 17 to the Instructions on the application of the Regulation on the service in the internal affairs bodies of the Russian Federation in institutions and bodies of criminal executive system.

Besides in the definitions "breach of service discipline by CES officer", enshrined in article 34 "Regulation on the Service in the Internal Affairs Bodies of the Russian Federation", it is an guilty action (inaction), which resulted in a violation of Russian legislation, disciplinary statute, official regulations (job description), the internal regulations (of subdivision), or it is expressed in non-compliance with the requirements of official conduct or non-fulfillment (improper fulfillment) obligations under the contract, job responsibilities, orders, directives and instructions of direct superiors and immediate commanding officer, if for the specified action (inaction) the Russian legislation does not establish administrative or criminal liability.

In the "Instructions on the application of the Regulation on the service in the internal affairs bodies of the Russian Federation in institutions and bodies of Criminal Executive System" administrative responsibility of CES employees is not provided. It refers to the disciplinary responsibility of the relevant employees. Thus, in view of the fact that the disciplinary and administrative responsibilities differ from each other, then the provisions of part 1 article 2.5 of the Code on Administrative Offences of the RF require editing [9].

For guilty committed administrative offenses the current legislation provides for various types of administrative penalties. Under the law an administrative penalty is a prescribed by the state measure of responsibility for committing an administrative offense, and is used to prevent the commission of new offenses, both by the offender and other persons (article 3.1 of the CAO of the RF). Normative regulations on administrative penalties are set out in chapter 3 of the Code on Administrative Offences of the RF. Based on the features of service in Criminal Executive System, as well as on inexpedient use of a number of administrative penalties and in accordance with law administrative arrest is not applied to them. So, in accordance with part 2 article 3.9 of the CAO of the RF administrative arrest is established and shall be imposed only in exceptional cases, for certain types of administrative offenses and may not be applied to persons who have special ranks, including CES staff.

In the practice are used existing auxiliary measures, which lead to the most qualified and effective enforcement of the law [14, 20].

Finally, let us focus on reforming the legislation on administrative responsibility, which implied the development of the Administrative Procedure Code of the RF, but this project approved by an act of the President of the country [10], was not fated to come true, even though the scientific community had devoted to this problem quite a lot of attention [13, 15]. In current legislation the procedural norms are concentrated in section IV of the CAO of the RF, which is called the "Proceedings on Cases of Administrative Offences".

Plenipotentiary on human rights in RF noted that the administrative proceeding – this is the only procedural branch, which does not have its own Procedural Code. Deeming timely and urgent the development and adoption of an Administrative Procedure Code, he turned to the federal executive and legislative authorities to expedite the preparation and submission of the relevant bill to the State Duma as a legislative initiative of the Government of the Russian Federation, assuming its priority review in the Federal Assembly – Parliament of the Russian Federation [19].

Today, there are several projects of the Administrative Procedure Code, including those proposed by M. Ya. Maslennikov [16].

All this leads to the conclusion that the researched Institute of administrative liability of CES employees is not legislatively developed, has no wide application in practice and is not developed enough in theory. We believe that the administrative responsibility of CES employees as of special administrative responsibility subjects is better to transfer to the category of administrative responsibility of general subjects (on general basis) and comprehensively develop exactly this Institute.

In this connection, in order to enhance the role of administrative responsibility as one of the means of ensuring the rule of law and discipline in the Criminal Executive System, everyone's equality before the law and exclude the replacement of administrative responsibility to disciplinary one, in our opinion it is expedient to exclude from the CAO of the RF provided for by part 1 article 2.5 exemptions in part of bearing by the CES employees disciplinary responsibility for administrative offences.

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Kasymova M. O.

NORMATIVE-LEGAL BASE OF THE REPUBLIC OF KAZAKHSTAN IN THE FIELD OF COMBATING CORRUPTION: RETROSPECTIVE ANALYSIS

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Represented in historical sequence the normative legal acts of the Republic of Kazakhstan regulating the issues of combating against corruption. Particular attention is given to acts of the President of the Republic of Kazakhstan, which are driving force in organizing the work to counter and eradicate corruption in Kazakhstan.

Keywords: corruption, combating corruption, anti-corruption legislation

The history of corruption is not inferior in antiquity to history of human civilization. The roots of this negative social phenomenon go in the deep past. It is illustrated in Bible sayings about the facts, which today are recognized as corruption. Here are some quotes from the book: "Thy princes are rebellious, and companions of thieves: every one loveth gifts, and followeth after rewards..." " Woe unto them,… Which justify the wicked for reward, and take away the righteousness of the righteous from him!" [14, 13].

Considering the history of Kazakhstan it is well known that the rules of customary law, adopted in tribal communities in the territory of the Kazakh steppe was largely predetermined by the traditions of a legislative nature, established by principles of nomadic culture.

According to Zh. A. Tuyakbaj, the first phase of foundations development of the legal system in Kazakhstan should be attributed to the period of the Middle and late Middle Ages and approximately dated to XIV - first half XIX centuries. The major features of it was the combination of the legal foundations of the traditional Islamic system of law and customary legal institutions of the Mongolian nomadic civilization with the determining influence of the latter.

Since the beginning of the XVI century in Kazakhstan were acting the laws of Kasim Khan, the so-called "High road Kasim", the basis of which were laid down rules of customary law (adat). Norms of Kazakhs Customary laws were finally

codified and completed at the end of the XVI century during the reign Khan Tauke in a single code entitled "Zheti Zhargy" (Seven regulations).

The provisions of the fundamental code of the Kazakh Law "Zheti Zhargy" are quite diverse. They contain the norms of civil, administrative and criminal law and the provisions on religion, taxes and other, thus effectively covering all sides of the Kazakh society.

Decentralization of power and lack of a unified state officialdom, the implementation of public administration by bodies of the feudal patrimonial power in the aggregate excluded possibility at least the formal inception in the Kazakh law the norms providing for liability for bribery, abuse of position, etc., i.e. for corruption.

The next stage in the formation of the legal system in Kazakhstan, which objectively influenced on the change in socio-legal nature of corruption dates back to the period of approval of the Russian colonial policy and expansion of the empire. At the same time judicial system in Kazakhstan during its annexation to Russia constituted two systems operating in parallel:

1) local and national courts – the courts of Bij and the courts of Kazij, who heard relatively minor criminal and civil cases between the Kazakhs, who acted on the basis of adat and the Sharia law;

2) Imperial judicial institutions, heard particularly important criminal cases of the Kazakhs and all matters arising between representatives of different nationalities.

More stringent and widespread use of punitive measures have not led to a reduction in the number of such crimes. Therefore, in imperial Russia began to explore new approaches to combat bribery, providing revealing and elimination of causes contributing to the prevalence of this phenomenon. In the reign of Nicholas II in 1845 was adopted the Code on criminal and correctional penalties, which has changed significantly updated the legislation on responsibility for for bribery and other forms of corruption, introduced new norms. In the sixth chapter of the fifth section of the Code was envisaged the criminal responsibility for venal abuse of power, including bribery. This chapter was called "On Venality and Bribery" ("O Mzdoimstve I Lihoimstve" – in Russian) and included 30 articles.

At the beginning of XX century in 1903 was designed "Criminal Code" of Russia, where were automatically transferred all the rules on official crimes from the preceding "Code on Criminal and Correctional Penalties" of 1885. Despite the fact that most of the norms of the "Criminal Code" from 1903 were of blanket nature, causing some difficulties and disadvantages in establishing violated clauses

of these or those rules, this or that statute or resolution, however, it was largely more progressive than previous normative act. Greatly simplified the system of forming a new criminal legislation, reduced the number of articles, has been formulated the definition of an official.

The Soviet period was full of various forms and manifestations of corruption so the general trend of the evolution of corrupt relations in the XX century represented a gradual multiplication of forms, the transition from episodic and lower corruption to systematic upper and international one.

Decree of the CPC of the RSFSR "On Bribery" from May 8, 1918 became the first in the RSFSR legal act providing for criminal responsibility for these acts. According to it, to holding liable for bribery were involved persons who were in government or public service, "persons guilty of taking bribes for performing an action that was included in the scope of their duties, or for assistance in implementing the actions constituting official duties of another agency official" [11].

By the Decree of the CPC of the August 16, 1921 the wording of article in part of qualification actions of a bribetaker was slightly modified. In the new version to responsibility had to be brought persons "which were in the state, union, or public service, either personally or through an intermediary had received or tried to get in whatever form that might be a bribe for performing for the bribe giver benefit any action that is included in the scope of their duties" [15, 30].

The history of Soviet power struggle with corruption ended together with the very power, having failed. This fight is characterized by several interesting and important features. First, the government did not recognize the word "corruption", having allowed to introduce it into use only at the late 80s. Instead of it were used the terms "bribery", "abuse", "connivance ", etc. Rejecting the term, denied the concept, and hence – the phenomenon, thereby in advance dooming to failure the analysis of this phenomenon, and any combating with its separate criminally liable manifestations. Secondly, the Soviet "legal consciousness" is always amazingly naive and counterproductive explained the causes of corrupt phenomena.

We remark that among the CIS countries Kazakhstan is the first that began to develop anti-corruption legislation and the state system to counter this phenomenon. In the early stages of formation a sovereign state were adopted normative legal acts aimed directly at combating corrupt offenses, to maintain law and order in the country. Thus, the Decree of the President of the Republic of Kazakhstan No. 684 of March 17, 1992 "On Measures to Strengthen the Fight against Organized Forms of Crime and Corruption" included measures aimed at the revealing,

prevention and solving of such crimes. General Prosecutor's Office was obliged to take all necessary measures for solution of these crimes.

For execution the presidential decree, some work had been done, but the situation remained difficult. Comprehensive study of all aspects of the problem on combating criminality, including corruption, set the task of further improving anti-corruption legislation and methods of combating it. Significant role in the fight against organized criminality and corruption had played the Decree of the President of the Republic of Kazakhstan No.3558 of June 20, 1997 "On State program of the Republic of Kazakhstan on the Combating against Crime for 1997-1998 and the Main Directions of Law Enforcement Activity until 2000" [2] and the issued for the execution of this decree Prime Minister order No.263-R of August 6, 1997 "On approval of a Plan of Events for Implementation the Presidential Decree No.3558 of June 20" [9]. By these acts has been developed the State Programme of the Republic of Kazakhstan on the Combating against Crime for 1997-1998 and the Main Directions of Law Enforcement Activity until 2000. The State program included a package of measures aimed at improving the normative and legal base to combat crime, including in the field of international legal co-operation [13, 92].

For the first time was adopted such a widespread document, providing a range of measures to combat crime, including economic crimes and corruption, orienting to the close interaction with law enforcement agencies in other countries.

The emerging in the late 90s of last century crime situation forced the country's leadership to adopt new measures aimed at strengthening national security, optimization the structure of law enforcement bodies and special services of the state, strengthening the fight against organized crime and corruption, which was embodied in the Decree of the President of the Republic of Kazakhstan No. 3731 of November 05,1997 "On Measures to Strengthen National Security, Further Strengthening the Combating against Organized Crime and Corruption" [3].

This Presidential Decree provided for the development and submission of bills providing for:

- empowering the bodies of national security and internal affairs with the right of inquiry and preliminary investigation on cases assigned to their jurisdiction in accordance with paragraph 3 of the Decree;

- recognition legally void and invalid acts, decisions and transactions related to corruption;

- establishing control over the expenditure of money of public officials and taking other measures of financial control in order to prevent the legalization (laundering) of criminally derived money and other property;

- necessity of conducting the special audit of public servants when their certification and deciding about promotion.

It should be recognized that the legal acts taken by the President and the Government which aimed at combating corruption offenses do not fully reflect the needs of society in settlement this activity: it was necessary to create a full-fledged legal framework. Resolving this issue was facilitated by the adoption laws of RK "On National Security" from June 26, 1998 (today operates the new law – the Law of the Republic of Kazakhstan No. 527-IV dated January 06, 2012 "On the National Security of the Republic of Kazakhstan" (amended from 27/04/2012), and "On Combating Corruption" of July 02, 1998 [1], which were aimed at protecting the national security of Kazakhstan from the risks arising from corrupt manifestations, the sustainable functioning of state institutions.

Implementation the provisions of the Law "On Combating Corruption" included the extension of democratic principles, transparency and control in government, strengthening public confidence to the state and its structures, creating the conditions for entry into the civil service competent and incorruptible officials. Taking into account the realities in the field of public administration, as well as state of combating corruption criminality, in order to implement the Letter to the People of Kazakhstan from August 30, 1998, on November 12 1998 the President of RK adopts the Decree No. 4113 "On the State Commission Against Corruption" which provided for the establishment of a specialized body - the State Commission, directly subordinate and reporting to the President. The Commission used to specialize on cases involving corruption in public bodies.

In order to improve coordination among the activity of law enforcement bodies, to improve the system of combating crime by the resolution of Government of the Republic of Kazakhstan No. 764 from June 07, 2001 was established an interdepartmental commission on combating crime under the Government of the RK, led directly by the Prime Minister. It must be admitted that the Commission has done some work in this direction and has made a contribution as a consultative and deliberative body under the Government of the Republic of Kazakhstan.

Order of the President of RK No. 201 of February 02, 2001 on approving the "Concept of Combating Crime in the Economic Sphere" [8] and the Presidential Decree No. 949 of September 20, 2002 on approving the "Concept of Legal Policy of the RK" [4] show decisiveness in matters of combating crimes in different areas, including corruption.

The analysis shows that the current anti-corruption legislation of the Republic is so far away from the desired model. As disadvantages may be called some

white space in international cooperation, conducting anti-corruption examination, unclearness and nebulosity of definitions. Hence, different understanding and interpretation of anti-corruption legislation by theorists and practitioners. As an example can be given the protest of the General Prosecutor of RK of February 22, 2002 against the normative judgment of the Supreme Court "On the Practice of Courts' Considerations of Criminal Cases on Crimes Related to Corruption" [10]. Corruption, with a high degree of adaptability, using any gap in the existing legislation is constantly changing, which can not be said of our legislation. Hence, there are some difficulties in revealing corruption and combating with it. Besides, a scale of corruption in the country at the beginning of the third millennium has acquired threatening proportions.

In the circumstances the President in the Letter to the People of Kazakhstan "On the Way of Acceleration the Economic, Social and Political Modernization" offered a specific program to accelerate further changes in the country until 2010, which provides for the reform in various areas: executive, legislative, judicial, administrative, and others. Clause 4.3 of the Letter includes the reform of the executive power, aimed at further decentralization of government, streamlining and improving the efficiency of public governance, and transparency of the executive power activity should be a norm. Resolving these tasks should help to reduce corruption [12, 32].

The next logical step in the fight against corruption offenses in the Republic was the adoption by the President on April 14, 2005 Decree No. 1550 "On Measures to Strengthen the Combating Corruption, Strengthening Discipline and Order in the Activities of State Bodies and Officials" [5]. The adoption of this Decree was intended to further improvement of measures to combat corruption, the implementation of events aimed at combating corruption, and increasing responsibility of public officials for compliance with the legislation on combating corruption. Realization of the mentioned goals assumed activities in several directions:

- improvement of existing anti-corruption legislation, that requires audits of existing subordinate legislation with a view to introducing to them norms that exclude the conditions for corruption offenses and crimes;

- improvement of public authorities activity, strengthening in them discipline and order, increasing the responsibility of state bodies and officials for violations of anti-corruption legislation. A special role is played by the disciplinary boards of the Agency of RK for civil service affairs in regions, cities of Astana and Almaty;

- involvement in the fight against corruption offenses and crimes of the public forces, wide coverage in the media of the results of this struggle.

In pursuance of the Decree of the President of the RK the Government and the Agency for Fighting Economic Crime and Corruption had developed and put into effect on December 23, 2005 National Anti-Corruption Program for 2006-2010, and in February 2006 was adopted the Resolution of the Government of the Republic of Kazakhstan on the plan of measures for the implementation of this strategic document.

The results of previously implemented State anti-corruption programs have shown the feasibility and need for further implementation of a coherent system work of a whole state and society for establishment effective measures to prevent further development of corruption.

In order to develop a complex of interrelated measures aimed at combating corruption, which will be implemented by both government bodies and civil society, was developed a Sectoral Program to combat corruption in the Republic of Kazakhstan for 2011-2015 [7].

The Program aims at achieving the main objectives of the strategic development plan of the Republic of Kazakhstan till 2020, approved by Decree of the President of the Republic of Kazakhstan No 922 from February 01, 2010 [6].

In order to achieve the objectives of the Program assumes the resolving of following tasks:

1. Expansion of international cooperation and improvement of national legislation on combating corruption.
2. Improving the performance of state bodies on reducing the risks of corruption.
3. Improving anti-corruption outlook.
4. Decreasing the level of shadow economy [7].

Analyzing the anti-corruption legislation of the republic, it should be noted that was conducted a certain work. If there is political will the state and society are able to respond adequately to the threat of corrupt activity, and reduce it to a level safe for society and the state. The fight must be waged together with compulsory civic engagement. Untill the society is not aware of the importance and becoming bound of fight against this evil, we should not expect success. We have to fight, because we have set the goal to become one of the 50 most developed countries of the world. Progress in the economy can be linked only to the principle of strengthening the rule of law – one of the basic principles of a constitutional state functioning, and without its realization, we can not talk about the establishment of a constitutional state in the Republic of Kazakhstan.

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Kizilov V. V.

GAPS IN NORMATIVE REGULATION OF SUBMISSION OF REVISED TAX DECLARATIONS

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Considers problems associated with the emergence of rights and duties on the clarification of tax declarations, as well as the application of tax penalties for noncompliance the obligation of filing a revised tax declaration. Attention is drawn to the possibility of emergence of tax liabilities in connection with the elimination of errors of accounting, making changes in the accounting, which do not relate to the mistakes of drawing up a tax declaration.

Keywords: tax declaration, revised tax declaration, mistakes of declaration filling in.

In accordance with part 1 of Article 81 of the Tax Code of the Russian Federation, taxpayer must make the necessary amendments in a tax return and submit to the tax authority revised tax return only in the case when the taxpayer discovered in the tax return not reflected or incomplete information as well as errors leading to an underestimation of the amount of tax payable.

Discovery by the taxpayer in the submitted by him tax declaration of false information, as well as errors that do not lead to an underestimation of the amount of tax payable, the legislator does not associate with the emergence of responsibilities of a taxpayer to submit a revised declaration, and gives the taxpayer the right to make necessary changes in his tax return and submit to the tax authorities revised tax declaration. At the same time the submission after the filing deadline of revised tax declaration at realization the right (paragraph 2 part 1 of Article 81 of the Tax Code of the RF), rather than at the performance of the statutory duties (paragraph

1 part 1 Article 81 of the Tax Code of the RF), is not considered as non-compliance with deadlines, if initial declaration was submitted on time. [4] A different interpretation of the norms of Article 81 of the Tax Code of the RF would lead to unpunished increasing refining of tax returns by a taxpayer beyond the deadline of submission if there is a fact of understatement of tax responsibilities.

Every fact of submission a revised declaration, entailing an increase of tax obligations of the taxpayer, outside the deadline is the fact of a tax offense under part 1 of article 119 of the Tax Code of the RF:

"1. A failure by a taxpayer to submit a tax declaration within the time limit established by legislation on taxes and fees to the tax authority where the taxpayer is registered

shall result in the exaction of a fine equal to 5 per cent of the unpaid amount of tax which is payable (additionally payable) on the basis of that declaration for each full or not full month from the day established as the deadline for its submission, but not more than 30 per cent of that amount and not less than 1,000 RUR." [1]

Moreover, the actual payment by a taxpayer of discovered by himself amounts of lowering taxes does not save the taxpayer from applying to him sanctions under part 1 article 119 of the Tax Code of the RF. Rigidity and justification for the use of tax penalties has been confirmed in the information letter of the Presidium of the Higher Arbitration Court of the Russian Federation No. 71 of March 17, 2003 " Review of Practical Experience of the Resolving by Arbitration Courts of Cases Associated With the Application of Particular Provisions of Part One of the Tax Code of the Russian Federation":

"13. Payment of the amount of the calculated tax in the prescribed by legislation on taxes and fees time limit itself does not relieve the taxpayer from responsibility for late submission of a tax declaration, under article 119 of the Tax Code of the RF.

Tax authority appealed to the arbitration court with an application to exaction from a joint-stock company a fine under paragraph 1 of article 119 of the Tax Code of the RF, for failure to submit within the prescribed time tax return for income tax.

Defendant did not recognize the claim on the grounds that the amount of the calculated tax was completely paid by him to the budget, and the tax authority did not reveal arrears.

The court upheld the arguments of the taxpayer and refused to satisfy the application on the following grounds.

According to paragraph 1 article 119 of the Code a failure by a taxpayer to submit a tax declaration within the time limit established by legislation on taxes

and fees to the tax authority where the taxpayer is registered shall result in the exaction of a fine equal to 5 per cent of the unpaid amount of tax which is payable (additionally payable) on the basis of that declaration for each full or not full month from the day established as the deadline for its submission, but not more than 30 per cent of that amount and not less than 1,000 RUR.

Offense described in the above norm has a material composition because committing of appropriate acts is associated with the emergence of the taxpayer debts to the budget on a specific tax.

As can be seen from the case materials, the defendant has paid income tax in full by the due date. Failure to submit a tax return on the mentioned tax has not led to the emergence of debt to the budget and did not cause adverse effects to it.

In the light of the foregoing, there are no reasons for bringing the company to liability under paragraph 1 article 119 of the Tax Code of the RF.

The Court of appeal instance cancelled the decision of the Court of first instance and satisfied the application, drawing attention to the following.

The obligation of a taxpayer to pay the legally established taxes is stipulated in subparagraph 1 of paragraph 1 article 23 of the Tax Code RF, and the responsibility for failure to perform it – in article 122 of the Code. Since in the present case, the defendant had timely paid the income tax, he was not brought to this responsibility.

Article 119 of the Code establishes liability for a failure to fulfill other obligation – to submit in appropriate cases tax return. This obligation is enshrined in subparagraph 4 of paragraph 1 article 23 of the Tax Code of the RF.

So far as the claim was made for the exaction of fine for failure to submit the tax return, references of the defendant on timely performing his other obligations (to pay tax) have no legal significance to decide on the substantiation of this claim.

The fact of failure to submit a tax return for income tax is confirmed by the case materials and is not disputed by the defendant, and therefore the requirement of the tax authority to exact a fine under paragraph 1 article 119 of the Tax Code of the RF, is substantiated "[9].

It is generally recognized that the tax sanction is a measure of responsibility for a tax offense, i.e. that is a guilty, illegal (in violation of the legislation on taxes and fees) deed (action or inaction) of the taxpayer for which the Tax Code of the RF establishes responsibility. However, the Tax Code contains an open list of circumstances precluding guilt of committing a tax offense, and mitigating liability for its commission (articles 111 and 112 of the Tax Code of the RF). These circumstances are established by the court or tax authority, considering a specific case, and taken into account when applying tax sanctions. Therefore, in recognition of requirements

of justice and ratability, differentiation of responsibility depending on the severity of the offense, the size and nature of the damage inflicted, it is possible to reduce tax sanctions under part 1 of article 119 of the Tax Code of the RF. And precisely on this should focus a taxpayer who is at fault, to evade responsibility in full will not be possible.

If the taxpayer fails to submit a revised declaration, ignoring the obligation provided in part 1 article 81 of the Tax Code of the RF, then upon detection by a tax authority the fact of understatement of tax liabilities the taxpayer expects additional sanctions provided for by part 3 article 120 and parts 1 and 3 article 122 of the Tax Code of the RF (depending on classification of a tax offense).

It should be noted that the submission of the revised tax return, reducing the tax liability of a taxpayer, does not lead to exaction of fine, since under the terms of paragraph 1 article 119 of the Tax Code of the RF, there is no basis for its calculation. Therefore deadlines of submission revised declarations which do not lead to an increase in tax liability of a taxpayer, are not regulated by part 1 article 81 of the Tax Code of the RF.

Tax sanctions of part 1 article 119 of the Tax Code of the RF are applied only in respect of offenses related to late filing of declaration [3], but in recognition of the provisions of part 3 and 4 of article 81 of the Tax Code of the RF. At its core, the provisions of part 3 and 4 of article 81 of the Tax Code of the RF define exclusions of bringing to responsibility for tax offenses under Article 119 of the Tax Code of the RF. That is, the sanctions of article 119 of the Tax Code of the RF are not applied to a taxpayer if:

- revised tax return has been submitted to the tax authorities before the taxpayer learned about the discovery by tax authority the fact of not reflecting or incomplete reporting information in the tax return, as well as errors, which lead to an underestimation of the amount of tax payable, or about the appointment of Field Tax Audit;

- before the submission of a revised tax return the taxpayer has paid the remaining amount of tax and corresponding penalties (for the cases of the declaration submission after the deadline for payment of tax);

- revised tax declaration has been submitted after the Field Tax Audit for the relevant tax period, the results of which did not reveal not reflected data or incomplete reporting of information in the tax return, and the mistakes that lead to an underestimation of the amount of tax payable.

In cases where the taxpayer within the tax (reporting) period submits revised calculation in violation of the time terms of the Tax Code of the RF, in our

opinion, there may emerge responsibility under part 1 article 126 of the Tax Code of the RF:

"1. Failure by a taxpayer (payer of fee, tax agent) to submit to the tax authorities within the prescribed time limit documents and (or) other information as is envisaged by this Code and other acts of tax and fee legislation

shall result in the exaction of a fine in the amount of 200 RUR for each document which is not submitted" [1].

This is indicated by the authors of the commentary to the Tax Code of the RF, placed in the reference and legal system "Garant" in 2010. [7]

Seemingly everything concerning the revised declarations is simple and clear. However, in our opinion, the wording of paragraph 1 article 81 of the Tax Code of the RF contains some problems. So, the obligation to submit revised declarations is associated with the fact of *not reflecting in a declaration or incomplete reporting information, as well as the presence of errors, which lead to an underestimation of the amount of tax payable.* As can be seen from the conditions of emergence taxpayer obligations legislator distinguishes errors and not reflection (partial reflection) of information. Although, at first glance, the notion of error could absorb the situations of the second notion. As we see it, expression worded in such a way is not accidental in provision of law. Under a mistake in filling out a declaration should be understood a clerical error (typo) made unconsciously. For example, during filling out can be confused boxes, randomly mixed up numbers in numeric values, erroneously written comma (delimiter). We must distinguish error in declarations from errors in accounting and tax accounting. [8] The errors referred to in paragraph 1 article 81 of the Tax Code of the RF are applied only to a declaration! Error of a person completing a tax return, characterizes the guilt of this deed, as a committed through negligence. Not reflection or incomplete reflection of information in a declaration may indicate the manifestation of both forms of guilt – negligence and intent, but more often of intent.

In our opinion, it is referred to not reflection or incomplete reporting of information in the declaration when without error correction in the accounting and tax accounting of a taxpayer, a tax authority during the audit (or auditor) on the basis of the same accounting policy of the taxpayer would form a tax return different from the submitted one by the taxpayer.

Analysis of the provisions of article 81 of the Tax Code of the RF with a view to literal interpretation leads to the fact that the norms of the article do not regulate the situation when the change in tax obligations of a taxpayer derives from correcting mistakes in accounting and/or tax accounting, or as a result of events

occurring after the reporting date. Errors in accounting or tax accounting are not identical to mistakes of filling in a tax return.

The concept of a tax return is enshrined in part 1 article 80 of the Tax Code of the RF: "A tax declaration shall be a written statement of a taxpayer, or a statement of a taxpayer prepared in electronic form and transmitted via telecommunications channels with the use of an electronic digital signature, concerning objects of taxation, income received and expenses incurred, sources of income, the tax base, tax exemptions, the calculated amount of tax and (or) other data which serve as a basis for the calculation and payment of tax". The tax return cannot be equated to the primary accounting documents and accounting registers, mistakes correction of which implies the change of the declaration submitted to the tax authority.

Absence of any restrictions concerning submission revised tax returns in our opinion is not justified. Preclusive term to perform this action (three years) does not sufficiently protect tax authorities from the abuse of a taxpayer in the continuous refinement of tax returns. It is quite possible for a taxpayer to use provided for by the Tax Code mechanism of revising tax returns for the actual implementation of installment payment of taxes (without compliance with the procedure for changing the tax payment term). If correctly plan tax payments, terms of submission revised declarations, the taxpayer evading fine sanctions under article 119 of the Tax Code, shall pay over tax only penalties, which are always less than the interest on loans at banks and credit institutions.

As we see it, the change of tax liabilities due to correcting errors in accounting, the corrections procedure of which is provided under the Provision on accounting "Correcting Errors in the Accounting and Reporting" [6], is quite possible to reflect in the current tax period specifying in accounting statement the cause of emergence of a tax obligation, its amount and the value of calculated penalties for late payment of tax, without submission of a revised tax return.

In particular, the Provision on accounting provides for the correction of errors caused by:

- incorrect use of the legislation of the Russian Federation on accounting and (or) normative legal acts on accountancy;
- misapplication of accounting policy of an organization;
- inaccuracies in calculations;
- incorrect classification or assessment of the facts of economic activity;
- incorrect use of the information available at the date of the accounting reporting signing;
- bad faith actions of organizations' officials.

Besides, inaccuracies or omissions in the reflection the facts of economic activity in the accounting and (or) accounting reporting of an organization identified as a result of obtaining new information, which has not been available to the organization at the time of reflection (not reflection) of such facts of economic activity are not considered to be mistakes. [6]

Tax liabilities for previously submitted declarations may change not only due to correction of errors in accounting, but also as a result of occurrence certain events after the accounting date. For example, after taking inventory of property of a taxpayer that is implemented due to:

- transfer of property to rent, purchase, sale, and also at the transformation of state or municipal unitary enterprise;
- change of materially responsible persons;
- detecting the facts of theft, misuse or damage of property;
- natural disaster, fire, or other emergency situations caused by extreme conditions;
- reorganization or liquidation of an organization;
- occurrence of other cases stipulated by the legislation of the Russian Federation [2].

The taxpayer's tax liability may be influenced by events occurred after the accounting date. These events, their enumeration and reflection in the balance are stipulated by the Provision on accounting "Subsequent Events" PBU 7/98 (PBU – Polozhenija Buhgalterskogo Ucheta, in Russian) [5], which, in our opinion, cannot be attributed to errors in the accounting and all the more to mistakes of filling in a tax return.

Approximate list of economic activity facts, which can be recognized as events after the accounting date is set out in the annex to the PBU 7/98. In particular, it takes into account those events that prove economic conditions existed at the accounting date, in which the organization conducted its activities:

- announcement in the prescribed procedure an organization's debtor as a bankrupt, if on accounting date in respect of the debtor has already been conducted bankruptcy proceeding;

- valuation of the assets made after the accounting date, the results of which indicate a steady and significant decline in their value as determined of the accounting date;

- obtaining information about the financial condition and results of activities of a subsidiary or dependent company (or partnership), whose securities are listed on stock exchanges, which proves steady and substantial impairment of long-term investments of an organization;

- sale of inventories after the reporting date, showing that the calculation of possible realizable value of inventories of the accounting date was unjustified;

- declaration dividends by subsidiary and dependent companies for the periods prior to the reporting date;

- discovery after reporting date the fact that the percentage of the construction object readiness used to determine the financial results as of the reporting date by method "Income according to the cost of work as it become completed" was unfounded;

- getting from an insurance company materials to clarify the amount of the indemnity in respect of which as of the reporting date were being conducted negotiations;

- discovery after reporting date a substantial error in accounting or violations of legislation at the implementation of the organization's activities, which lead to a distortion of the accounting reporting for a reporting period.

As events, indicating economic conditions emerged after the reporting date in which the organization conducted its activities, are listed:

- making a decision on reorganization of an Organization;
- acquisition of an enterprise as a property complex;
- reconstruction or planned reconstruction;
- making a decision on emission of shares and other securities;
- big transaction, connected with the acquisition and retirement of fixed assets and financial investments;
- fire, accident, natural disaster or other emergency situation, which destroyed a large part of the Organization assets;
- termination of substantial part of the Organization core activities, if it could not be foreseen as of the reporting date;
- significant reduction in the cost of fixed assets, if this decline occurred after the reporting date;
- unpredictable changes in foreign currency rates after the reporting date;
- actions of public authorities (nationalization, etc.).

Lawful actions of a taxpayer may change tax obligations on a previously submitted declaration in connection with the change of transaction terms, as a result of which there is a change in the rights and obligations (obligations of parties) from the date, before making a decision about the change. Normatively this possibility is stipulated by articles 421 (Freedom of contract), 425 (Operation of contract), 453 (Effect of amendment and termination of a contract) of the Civil Code of the RF. So, part 2 article 425 of the Civil Code of the RF establishes that parties are free to determine that the conditions of concluded by them contract are applied to their relations that have arose before the signing the contract. Part 3 article 453 of the Civil Code of the RF provides for the possibility of changing the obligations of parties, not only from the date of signing the parties' agreement on modifying their contract, but also from the date specified in the contract, although the parties have not the right to demand the return of what was done by them under the obligation up to the moment of the change or termination of the contract, unless otherwise is provided by law or by the agreement of the parties.

Considering the above said and in order to impute taxpayer's obligation of submitting revised declarations in all cases leading to change in accounting and tax accounting of the taxpayer and, as a consequence, entailing an increase in tax liability of the taxpayer in the accounting period, the norm of the first paragraph of part 1 Article 81 of the Tax Code of the RF should be adjusted by setting out its new edition:

"1. In the event that a taxpayer discovers that information has not been disclosed or has not been fully disclosed in a tax declaration which he has submitted to a tax authority, or discovers errors which result in an understatement of the amount of tax payable, the taxpayer will be obliged to make necessary amendments to the tax return and to submit a revised tax return to the tax authority in accordance with the procedure established by this Article. Rules for submitting a revised tax return apply to cases of increase of tax liability as a result of corrections made by the taxpayer in the accounting, in connection with the identification of errors or occurrence of events after the reporting date".

As we see it, part 3 and part 4 of article 81 of the Tax Code of the RF is more appropriate in article 119 of the Tax Code of the RF, which establishes responsibility for the appropriate tax offence. In connection with this we should exclude them from Article 81 of the Tax Code of the RF (in fact, they are the conditions for exemption from liability for tax offenses) and enter them to article 119 of the Tax Code of the RF, as clause 3 and 4 unchanged.

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APPLICATION OF SECURITY MEASURES ON THE STAGE OF CRIMINAL PROCEEDING INSTITUTION: FOREIGN EXPERIENCE AND DEVELOPMENT OF THE KYRGYZ LEGISLATION

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Justifies the necessity of application of the state protection measures on the stage of institution of criminal proceeding with respect to the complainant, witnesses and the victim, the victim of a crime or other persons contributing to the prevention or detection of a crime. In the article attention is drawn to the gaps of criminal procedural legislation in the normative regulation of procedures involving the complainant and the eyewitness. Here are explored options of the application of security measures provided for in criminal legislations of European countries.

Keywords: institution of criminal proceeding, witness protection, protection of the applicant who has claimed on a criminal offence, safety in criminal proceedings.

The range of persons involved in criminal proceedings and the amount of subjective rights and obligations, including the right to ensure their safety, in our opinion, depend on several factors: the time period that defines the boundary of this stage of pretrial procedure; the specific tasks inherent directly to the stage of institution of criminal case or conduction the investigation on the case; the ways of solving these tasks. For example, at the stage of institution a criminal case is firstly necessary to correctly determine: whether is an information from the source about the committed or upcoming crime legal ground for instituting criminal proceedings (Article 150 and 156 of the Criminal and Procedural Code of Kyrgyz Republic [2]), is seen or not in the deed the signs of a crime and by what article of the Criminal Code, it may be qualified (Articles 158, 159 of the Criminal and Procedural Code of Kyrgyz Republic), which measures should be taken to enshrine and preserve the traces of a crime. In addition, analysis of the criminal procedure

legislation provisions allows to assert that at the stage of institution of a criminal case implements the process of proof by the production of certain investigative or other procedural actions: view of place of occurrence and appointment of legal expertise (article 165 of the Criminal and Procedural Code of Kyrgyz Republic), directing requirements orders and requests (article 157, parts 3,4 article 91 of the Criminal and Procedural Code of Kyrgyz Republic).

At this stage of institution a criminal case emerges a special complex of relations between bodies of inquest, investigator, prosecutor, complainant, victim, witnesses and other persons contributing to the prevention, solution and investigation of a crime. These relations are realized in the activities of the mentioned subjects of the process, including in addition to acceptance, verification and authorization of incoming applications and information about crimes committed or planned (Article 158 of the Criminal and Procedural Code of Kyrgyz Republic), also activities to ensure the safety of these persons (article 12 of the Criminal and Procedural Code of Kyrgyz Republic, article 2 of the Kyrgyz Republic Law "On Protection the Rights of Witnesses, Victims and other Participants in Criminal Proceedings" [1, 14-29], hereinafter referred to as the KR Law "On protection ...").

Victims of a crime and potential witnesses are at risk of dangerous exposure, not only in the course of investigation, but long before it, since, by influencing to those persons assisting law enforcement agencies, offenders have the opportunity not only to mitigate the punishment, but also to avoid criminal liability [6, 39]]. Therefore, measures of state protection may also be applied to the applicant, witnesses and the victim, victim of a crime or other persons contributing to the prevention or detection of crime before institution of criminal proceedings (part 2 of article 2, article 6 of the Law KR "On protection ..."). However, the legal status of victims of a crime, as well as persons who have information relevant for the investigation of a case, at this stage of the criminal process is not regulated.

The Criminal and Procedural Code of Kyrgyzstan do not explain the meaning of the terms "applicant" and "witness", using them only in exceptional cases, for example, indicating that the application on crime must be signed by the applicant (part 1 article 151), the protocol of an oral statements should contain information about the applicant, his place of residence and work (part 2 article 151), the applicant warned about criminal liability for Knowingly false denunciation what is noticed in the protocol, which is certified by the signature of the applicant (Part 3. 151). Procedural status of an applicant or a victim (in cases where he directly reports to law enforcement agencies about the crime

committed in respect of him) is partially regulated by the CPC or departmental normative acts, which establish that upon receipt of an application or information on a crime directly from the applicant a competent official shall immediately issue a notification card (part 1 article 155 of the Criminal and Procedural Code of Kyrgyz Republic; clause 2.4 Instructions on unified registration of crimes). One of the reasons for the detention of a person suspected of committing a crime is an indication of the witnesses, including the victim, on that this person is a perpetrator of the crime (part 3 article 94 of the Criminal and Procedural Code of Kyrgyz Republic).

Referring to the experience of the CIS countries, we can say that the problem in some of the countries has already been solved. Criminal and Procedural Code of Ukraine and Belarus include protection of an applicant from exposure in connection to the application on crime. Legislators in these countries, stressing special importance of proper protection of the applicant placed the norms directly to the article, which regulates the submission of the application. Thus, in accordance with article 97 ("Obligatoriness of Accepting Applications and Information on Crime and the Procedure for their Consideration") of the Criminal and Procedural Code of Ukraine, which states that, with appropriate grounds proving a real threat to life and health of the person reporting the crime, should be taken necessary measures to ensure the safety of the applicant as well as his family members and close relatives.

Besides, the Criminal and Procedural Code of Belarus and Ukraine provide for the legal norms regulating the reasons for the taking decision on the application of security measures, the procedure of applying security, responsibility for disclosing information about security measures, and Belarusian law – also establishes responsibility for breach of duty on the application of security measures and other norms regulating the application of security measures.

Without going into more detail in the issues of implementation and ensuring security measures applied to an applicant and provided for by the Criminal and Procedural Code of Belarus and Ukraine, it should be noted that in the CPC of Ukraine, the Russian Federation and Kyrgyzstan there is no concept of "applicant" and its procedural status is not determined.

At the same time, in paragraph 20 article 7 of the Criminal and Procedural Code of Kazakhstan and paragraph 10 article 6 of the Criminal and Procedural Code of Belarus stated that an applicant is any person who has addressed a court or prosecuting agency for the protection in the order of criminal proceedings of his (someone else's) actual or alleged right.

So, at the stage of institution of criminal proceedings, criminal and procedural relations involve a wide range of persons, which have to be divided into two groups:

1. Persons interested in final resolution of the information about the crime (complainant, victim of a crime, self-reported criminal);

2. Persons involved into the criminal proceedings in connection with the proceedings on the case (witness, expert, witness, interpreter).

It seems that in the CPC of the Kyrgyz Republic, firstly, should be clearly defined procedural status of such participants of process as "applicant", "witness", and secondly, should be envisaged the opportunity of applying for them and others, who are involved into criminal procedural legal relations in connection with the proceedings on the case, effective safety measures.

At the considered stage of pretrial proceedings on case in respect of such persons shall be subject to the application, first of all, the measures defined by us as urgent ones: protection of home and property; personal protection; giving of special personal protection equipment; communications and warning of danger; temporary placement in a safe place; confidentiality of information about the protected person.

The use of these security measures in each case is individual. The issue on the possibility (admissibility) of application protective measures within a given stage (stages) must be decided depending on the conformity of the content of this or that security measure to the general conditions of the particular stage. Due to the specifics of protective measures to prevent post crime impact or its immediate restriction, their implementation already at the stage of institution of a criminal case creates the conditions for further participation of the protected person in the investigation and proceedings.

In many cases, for targeted impact on witnesses, victims and other persons assisting in administration of Justice the perpetrators of a crime (the criminals or their accomplices) need to access to certain information, primarily to personal data, information about kinship and other relations, information on the composition of family, place of residence, work or study. The main source of such information is the primary materials and materials of check. It is this factor determines the choice of specific measures of state protection and means of ensuring security at the stage of institution of a criminal case.

Failure to specify in the applications on a crime, in the explanations in the stage of institution of a criminal case, in the records of investigation demographic

data of protected persons [5] is partly provided for in the Criminal and Procedural Code of the Kyrgyz Republic (part 8 article 170) and in the Law of the KR "On Protection of Witnesses, Victims and other Participants of Criminal Proceedings" (article 2 and 6). This measure in the stage of institution of a criminal case is widely used in China, Denmark.

The application of this measure provides for the making by an investigator a decision, in which "are set out the reasons for the taken decision to maintain the confidentiality of the identity of the investigative action participant, indicated an alias and a sample signature, which he will use for the protocols of investigative actions with his participation". This decision is placed in a sealed envelope, the content of which, in addition to the investigator may be consulted by a supervising prosecutor, and during court proceedings – a judge.

By the Decision of the European Court of Human Rights acknowledged that "the use of information provided by anonymous witnesses as evidences during the stage of institution of a criminal pre-trial proceedings on a case, is in keeping with the provisions of the European Convention" [3, 57], whose influence on the legislative and law-enforcement activity of European countries in the field of criminal proceedings grows more and more [4, 9]. Returning to the security measure set out in paragraph 3 article 6 of the KR Law "On protection...", it should be noted that the current Criminal and Procedural Law of the KR (article 170) allows to restrict with the indication in the record of the investigation action of the participant's surname, name and patronymic, and the address is indicated only when necessary. According to the requirements of article 9 of this law, by a decision of the body conducting the security measures may be imposed a ban on the giving of information about the protected person from the state and other information and reference data-bases, and also may be changed the phone numbers and vehicle registration marks of his vehicles.

Application of the specified security measure in respect of witnesses, victims and persons assisting in the administration of justice, in our opinion, is possible at the stage of institution of a criminal pre-trial proceeding on a criminal case. At the same time should be taken into account the provisions of one of the last acts of the Council of Europe – Recommendations No. 9 (2005) "On the Protection of Witnesses and Persons Cooperating with Justice" based on the precedents of the European Court of Human Rights. In paragraphs 19, 20 of the Appendix to this Recommendation is formulated the conditions of participation of citizens in proceedings under the pseudonyms: such participation shall be the exclusive measure of security and applied in the event of a serious threat to life or freedom of a credible person

having significant probative information. Also, the verdict should not be based solely or largely on the testimony of anonymous witnesses (paragraph 21 annex to the Recommendation). As for the recommendation of establishing for the parties the opportunity to contest the legality of the application of this security measure, this is provided both in the Criminal and Procedural Code of the KR (articles 125, 131), and in the KR Law "On Protection of Witnesses, Victims and other Participants of Criminal Proceedings" (article 19).

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ADMINISTRATIVE RESPONSIBILITY IN THE FIELD OF PROTECTION OF THE RUSSIAN FEDERATION STATE BORDERS: PROBLEMS OF QUALIFICATION BY ARTICLES FALLING WITHIN THE COMPETENCE OF INTERNAL AFFAIRS BODIES

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Here is considered the collision of legal norms allowing during the bringing to administrative responsibility to choose under which article the committed illicit deed should be qualified. Analyzes the structures of considered offences and determines differences underlying the qualification of offences under related structures. Attention is drawn to the bodies of administrative jurisdiction which carry out proceedings on administrative offences in the area of protection the state border of the Russian Federation.

Keywords: administrative responsibility, protection of state borders, boundary regime, administrative offences in the area of protection of state borders.

Protection of state borders in accordance with paragraph «n» article 71 of the Constitution of the Russian Federation refers to the exclusive jurisdiction of the Russian Federation, which limits the range of administrative offences to only those of them, for which responsibility is provided by federal legislation. Thus, a complete list of offenses in the field of protection the state border of the Russian Federation is contained in the Code on Administrative Offences of the Russian Federation (hereinafter – CAO) and constitute a part of chapter 18.

Since in this chapter also lists administrative offences in the field of enforcement the regime of stay of foreign citizens or stateless persons on the territory of the Russian Federation, let's immediately determine that only Articles 18.1-18.8 and

18.14 of the CAO on the content of regulated relations can be attributed to the considered by us area.

The main functions and tasks to ensure the protection of state borders the current legislation imposes on the border guard agencies of the Federal Security Service, in connection with which they on the grounds of paragraph 1 article 28.1 and article 23.10 of the CAO institute and consider the main array of cases on administrative offences in the given field.

However, in accordance with paragraph 1 part 2 article 28.3 of the CAO the protocols on administrative offenses provided in articles 18.2, 18.3, 18.4, 18.8 and 18.14 of the CAO can be also drawn up by bodies of internal affairs.

Considering of cases under articles 18.1-18.7, 18.14 of the CAO is attributed to the competence of the border guard agencies of the Federal Security Service (Article 23.10 of the CAO) and under article 18.8 – of the Federal Migration Service (Article 23.67 of the CAO).

However, both consideration of a case, and drawing up a protocol involve conducting classification of a committed action and determination by an authorized official of the CAO article, which provides for punishment for a wrongful act (part 2 of article 28.2 of the CAO).

In this regard, let's consider the main problems in qualifying offences in the field of the state border protection provided for by articles of the CAO, under which the internal affairs bodies have the right to initiate proceedings on an administrative offence.

When qualification a deed under part 1 article 18.2 ("Violation of the Border Regime in the Border Zone"), the greatest complexity represents the need to distinguish the corpus delicti in addition provided in article 18.1 of the CAO "Violation the Regime of the State Border of the Russian Federation" and 322 of the Criminal Code of the Russian Federation (hereinafter - CC) "Illegal Crossing the State Border of the Russian Federation".

In respect of external manifestations the objective side of a deed, at first glance, can absolutely do not differ. A person caught up in the border zone without permission, at the time of detention just announces of his intention to stay within a particular inhabited locality of the Russian Federation, although it is located in the border zone.

In our view, in this situation is seen only a violation of the border regime, expressed in unconfirmed by relevant consent document "entry (pass), temporary stay, the movement of persons and vehicles in the border zone" [1]. Law "On the State Border of the Russian Federation" establishes the border zone within

the territory of settlements and inter-settlement territories adjacent to the state border on land, the coast of the Russian Federation, Russian banks of border rivers, lakes and other water objects, and within the territories of islands on the mentioned water objects. To the border zone on the proposals of local self-governments of settlements may not include some residential areas of settlements and sanatoria, holiday homes and other sanitary institutions, institutions (objects) of culture, as well as places of public recreation, active water use, devotion and other places of the traditional mass stay of citizens. At the entrance to the border zone installs warning signs [1] (On the rules of the border regime, see subchapter – Order of the FSS of Russia No. 458 from September 10, 2007 "On Approval the Rules of Border Regime" // RG [Russian Newspaper]. November 24, 2007).

However, a person may be in the border zone and in other cases. For example, after crossing the state border from contiguous territory or, conversely, only intending to cross the border.

In the first case, there is an offense under part 1 or 2 article 18.1 of the CAO or an offense under article 322 of the CC. In the second case we are talking about the attempt to commit a crime (article 322 of the CC, and part 3 article 30 of the CC).

The main qualifying feature in determining the corpus delicti is a fact of crossing the Russian border, for which is necessary to establish (and, accordingly, should be clearly stipulated in the protocol and case materials) the exact passage of boundaries, the place of detention of persons called to account, the existence of a valid document giving the right to cross the border. In addition, it is also necessary to determine whether the person has a permit for its crossing.

The disposition of article 322 of the Criminal Code provides for a mandatory component of the objective side of a crime the lack of "valid documents for entering the Russian Federation and exit from the Russian Federation, or without proper authorization obtained in accordance with the laws of the Russian Federation".

If the first part of the disposition is considered by everybody in one vein, the notion of "proper authorization" various representatives of state bodies understand in different ways.

So in March 2008 the Prosecutor's Office of Kaliningrad region terminated proceedings on the criminal case against a citizen of Palestine, who had crossed the state border of the Russian Federation beyond established checkpoints. Rationale for this decision was the correlation of "proper authorization" with availability of a visa.

Federal legislation understands a visa as an "issued by the authorized government body permission to enter the Russian Federation and transit through

the territory of the Russian Federation on the actual document certifying an identity of a foreign citizen or stateless person, and accepted in this meaning by the Russian Federation" [2, article 25.1].

Nevertheless, in our opinion, the authorization essentially consists of two important parts. First, this is a volitional act of the host country – in a certain sense, the state of de jure. Second, mandatory importance obtains the formalization of this right, confirming it in any material way – transfer into a state of de facto. Besides the implementation of the provided right will be almost impossible without the second part

Even when a visa is not required to cross the border of the State (on the basis of an international treaty), the passport of a citizen of the country with which was signed the contract of visa-free travel becomes the material confirmation of this right.

Measures to ensure national security in respect of foreign citizens and stateless persons begin from the time they apply to the missions of Russia abroad. In this context, the getting and availability of a visa will be evidence of conduct primary verification activities in respect of a particular person.

With that, the system of protection of national borders of Russia is traditionally being built in echeloned way. The second "cordon" in the process of resistance existing threat of penetration illegal migrants, as well as those whose stay in Russia recognized undesirable [2, paragraph 7, article 27] is a permission obtained from the border control authorities when crossing the state border. Not by chance this is reflected in the legislation, which established that the intersection "is implemented through the lines of the international rail, highways or other places determined by the international treaties of the Russian Federation or the decisions of the Government of the Russian Federation" [1, article 9].

Obtaining such permission from the border guard agencies, first of all, is preconditioned by the need to carry out checks on various real-time accounting.

And here we would like to refer to the opinion of the General Prosecutor's Office, expressed in a joint letter, revealing the state of lawfulness in the field of migration legal relations: "Ministry of Internal Affairs of Russia jointly with the Russian Federal Security Service and other interested federal executive bodies within their competence need to analyze the efficiency of work on issuance and registration visa invitations for foreign citizens at the request of legal entities and the subsequent monitoring of compliance their activities on the territory of the country with the stated aims of visiting Russia "[5].

Thus, it is recognized that the activity of missions abroad should be strengthened, and by implementing internal control measures.

In this context, it seems that the statement on the consideration of visa as the only formal sign of the presence of a permission for crossing the border is not well-founded.

However, in the analyzed case with the Palestinian arguments about the need to taking in consideration this norm of the Russian Federation Law "On State Border of the Russian Federation" and consideration as a formal sign of "proper authorization" the availability of date-stamp in the passport of a foreign citizen, has not been taken into account by the prosecution office. The committed deed was classified only as a violation of the *rules* of crossing the state border, and the person was brought to administrative responsibility under part 2 of article 18.1 of the CAO.

Thus, we summarize: valid documents for crossing the border at a specific place; visa, if it is required for a particular person to cross the Russian border; the documents entitling to stay in the border zone and the lack of evidence of a person's crossing the state border, under terms of conducted delimitation – allow to conclude that the presence of a detainee in the border zone is legitimate and does not come within the purview of considered articles of the CAO and CC.

At detection evidence of a crime provided for in article 322 of the Criminal Code or an offense under part 1 or 2 article 18.1 of the CAO institutes a criminal case or the case materials are to be transferred to the jurisdiction of the respective subject of administrative jurisdiction.

At qualification of a deed under part 2 article 18.2 of the CAO, in addition to the signs, specified by us as necessary for qualification under part 1 of this article, it is important to determine the type of activity, as well as existence of permit, compliance with established rules and place of its implementation.

Problematic issues may arise in delimitation of deeds responsibility for which is provided by article 18.3 "Violation of the Border Regime in the Territorial Sea and Inland Marine Waters of the Russian Federation" and part 3 article 18.1 of the CAO.

The main qualifying sign in this case becomes the place of an offense. Despite the fact that in all cases will be violated a specific rule, the content of this rule and place where an offense was committed determines the possibility of holding liable under the relevant article of the CAO and CC.

Detention of a person near the state border is possible only by border authorities, this limits the range of officials instituting cases under part 3 article 18.1. In this case, determination the limits of the border zone shall be based on the orders of FSS of Russia on the specific subject of the Russian Federation. Location of the offense predetermines the qualifications of a deed under a specific norm of the CAO.

We have in mind part 3 article 18.1 of the CAO – in relation to economic activity falling within the wording "at the state border of the Russian Federation, or close to it." In article 18.2 of the CAO as the place of an offense is determined the border zone on land, quarantine territory within the border zone (except in the cases related to article 18.1). In article 18.3 of the CAO the place of an offense – the territorial sea, internal waters of the Russian Federation, the Russian part of the waters of border rivers, lakes and other water bodies, stationing sites of small-sized Russian self-propelled and not self-propelled (surface and submarine) ships (vessels) or ice vehicles.

Thus, the official must reflect in the protocol the nature of the activities carried out by the detained person and existence a permit for its implementation. And due to the fact that articles 18.1, 18.2, 18.3 of the CAO assume the punishment for conducting "fishing and other activities," must be mentioned the place of its implementation, which also allows us to delimitate the content of those articles.

Article 18.4 provides for responsibility for the regime violation at the checkpoints across the state border of the Russian Federation. Protocols under this article, as a rule, are drawn up by border authorities' officials of the federal security service.

At the same time, not excluding the possibility of theoretical realization by the internal affairs bodies of their powers, we note that special attention should be paid to the fact that the violation of the regime at checkpoints across the Russian state border and the violation of border regime by the same deed of a person usually are mutually exclusive.

Of course, at the presence in the border zone of a checkpoint may be a violation of articles 18.2 and 18.4 of the CAO, but to do this a person without appropriate permits or documents should enter the border zone and then get into the checkpoint, again, with no legitimate reason for this.

Regime at the checkpoints across the state border of the Russian Federation consists of the "rules of entry to these checkpoints, stay and departure from them individuals, vehicles, import, stay and export of cargo, goods and animals, which have been established exclusively in the interest of creating the necessary conditions for the implementation of border and customs control, and in cases stipulated by international treaties of the Russian Federation and federal laws, and for other types of control" [1, article 22].

Violation of the regime at crossing checkpoints [4] can be:

- entry to crossing checkpoints and exit from them of persons and vehicles, as well as import and export of cargo, goods and animals outside spe-

cifically designated for such purposes places and without the appropriate permits;

- entry (pass) to crossing checkpoints of Russian citizens, foreign citizens and stateless persons coming through the border of the Russian Federation in violation of the Federal Law No. 114-FL of August 15, 1996 «On Procedure of Exit from the Russian Federation and Entry to the Russian Federation «;
- entry (pass) to crossing checkpoints by the documents, certifying (confirming) the identity and official status of persons holding public posts of the Russian Federation, provided for by the Decree of President of the RF No. 32 from January 11, 1995 «On the Public Posts of the Russian Federation»;
- the absence of official documents and assignments (orders, travel documents, diplomatic cards) of employees of diplomatic missions and consular institutions of foreign states in the Russian Federation, of law enforcement officials, Russian Border Services Agency and its territorial bodies and jurisdictional institution, of the federal bodies of executive power exercising control in a crossing checkpoint;
- absence of documents certifying identity and (or) the post of members of fire and rescue teams, rescue teams, services of search and rescue support, ambulance teams which arrive to suppress fires, mitigate accidents and other emergency situations of natural and man-made nature, as well as evacuation of injured and seriously ill;
- presence in a checkpoint animals used in the implementation border, customs and other specified types of control is allowed without the presence of the special marks in personal pass of employees of state supervising bodies;
- non-compliance with regulations regarding the place and duration of parking at checkpoints vehicles of foreign transit, official vehicles of state supervising bodies' units, administration of the checkpoint, as well as access to them persons, compliance with routes traffic rules of this transport.

Part of the rules that constitute the regime at crossing checkpoints of the state border in their violation can form corpus delicti, qualified under article 18.2 of the CAO. The basis for differentiation from article 18.4 of the CAO is a place of a wrongful deed.

In accordance with paragraph 4 of the crossing rules of the Russian Federation state border pass can only be done at a checkpoint, the regime rules of which are approved by the order of its administration head in consultation with the heads of the border, customs bodies' units and administration of an airport (airfield), sea, river (lake) ports, railways and road stations. In addition, these rules must define spatial and time limits of their action, as well as the place and premises where is directly carried out border and customs control, and in cases stipulated by international treaties of the Russian Federation and federal laws, other forms of control.

As is the case with article 18.2 of the CAO, in the qualifications of an administrative offense is important to consider the possibility of bringing to responsibility a person detained at a checkpoint under part 1 or 2 article 18.1 of the CAO, or under article 322 and part 3 article 30 of the CC.

At the entry to the territory of Russia the fact of crossing the state border is present at all times. This leads to the fact that the qualification of a wrongful act identified in the checkpoint (e.g., staying a person without valid identity documents), is usually carried out under part 1 or 2 article 18.1 of the CAO, or under article 322 of the CC.

Mainly, the problems of qualification of the wrongful deed occur when leaving Russia. So, the arrival at the checkpoint indirectly evidences of the intention to cross the border, that in presence of additional facts evidencing of the advance preparation and desire to violate established rules may be qualified under article 322 and part 3 article 30 of the CC.

Note that the rules of crossing the state border officials [1, p. 9] include:

CAO, as we know, does not provide for responsibility for attempting to commit an administrative offense. In this regard, arrival to a checkpoint without valid documents for crossing the state border, yet does not form an offense structure under part 1 or 2 article 18.1 of the CAO, because you cannot be punished for breaking the rules of crossing the border, if the fact of the crossing has not took place.

It should be noted that the rules of crossing the state border by persons [1, article 9] include:

- crossing the state border on land only through the ways of the International railway, road transport or in other places determined by the international treaties of the Russian Federation or the decisions of the Government of the Russian Federation;
- time of crossing the state border;

- the order of moving from the state border to border crossing checkpoints and in the opposite direction;
- impossibility of alighting man, unloading cargo, goods, animals and taking them on vehicles;
- a temporary restriction or termination of the crossing of the state border on its separate parts to ensure the security of the Russian Federation;
- defined by international treaties of the Russian Federation, the acts of the Government of the Russian Federation procedure of the state border crossing by rescue, emergency and recovery groups (forces) for localization and liquidation of accidents of natural and man-made nature.

Thus, from the above list is seen that the indication of the presence of valid documents as a mandatory rule of crossing the state border is missing. This allows us to state that an illegal appearance of a person in checkpoint for going abroad must be qualified under article 18.4 of the CAO or under article 322 and part 3 article 30 of the CC.

Article 18.8 provides for responsibility for violation by a foreign citizen or stateless person the rules of entry into the Russian Federation or the regime of stay (residence) in the Russian Federation.

To the field of protection the state border refers not the whole disposition of the article, but only those provisions of part 1 as violation by a foreign citizen or stateless person the rules of entry into the Russian Federation, expressed in violation of the established rules of entry into the Russian Federation and transit through the territory of the Russian Federation.

The problem of differentiation of the norms of article 18.8 from part 2 article 18.1 of the CAO did not emerge immediately. In the original version it was impossible to bring to responsibility under this article for violating the "rules of entry into the Russian Federation". "Transit through the territory of the Russian Federation" at the same time was included only as an indicator of violation the "regime of stay in the Russian Federation", which implied the possibility of institution of a case only in the territory of the Russian Federation (after crossing the state border) and automatically excluded this article from the field of protection the state border.

However, after making amendments in 2006 [3] namely mentioned provisions of article 18.8 of the CAO may cause issues in qualifying.

Rules of entry into the Russian Federation [2] include also the order of crossing the state border of the Russian Federation, the violation of which entails

administrative responsibility under article 18.1 of the CAO. In general, it allows bringing to responsibility persons for their violation under any of these norms.

Thus, there is a conflict of legal norms, allowing in the course of bringing to responsibility to choose under what article to qualify a particular deed. The only difference is that the organs which institute it and consider it are different (except for the Court in the case of administrative banishment). In particular, article 18.1 of the CAO – border authorities of the Federal Security Service, but article 18.8 of the CAO –bodies of the Federal Migration Service. In addition, as we have noted, under article 18.8 of the CAO a protocol can be drawn up by Police officers.

Both articles provide for sanctions as an "imposition of an administrative fine in the amount of from two thousand to five thousand rubles with an administrative deportation from the Russian Federation or without it". In this regard, we can say that this conflict may play a role only in determining the amount of administrative fine in view of the recurrence of the committed deed (paragraph 2, part 1 Article 4.3. of the CAO). It is about that, in spite of committing a wrongful act relating to one generic object (homogeneity of legal relations in the framework of the chapter 18 of the CAO) its fixation occurs in different state structures, that usually does not allow to take into account the primacy or replication as a mitigating or aggravating sign, respectively.

Having reviewed some features of qualification unlawful deeds, which threaten the interests of an individual, society and the state in the field of protecting the state border of the Russian Federation, it should be noted that the principle of unavoidability of punishment can be implemented only in the light of mentioned by us differences of corpus delicti of administrative offences and crimes, in the course of proper record-keeping and adequate assessment by public officials the objective side of what has occurred.

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PROBLEMS OF DEADLINE OF JUSTICE ADMINISTRATION IN CASES ARISING FROM ADMINISTRATIVE AND OTHER PUBLIC LEGAL RELATIONS

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Examining the issues of length of time which is used to resolve in an arbitration court cases arising from administrative and other public legal relations, and on the ground of the practice of resolving tax disputes, the author offers the concept of procedural legislation reform, aimed at providing reasonable time limits of arbitration proceedings. There is need for reasonable time limits of proceedings for the resolution of questions of distribution court costs. Offers norms that can provide reasonable time limits of arbitration proceedings.

Keywords: proceedings time limits, timing of administration of justice, reasonable duration of arbitration proceedings, procedural terms in public law disputes.

Personal experience in protecting the interests of subjects of entrepreneurial activity in disputes with public authorities of monitoring and supervision leads to unfavorable conclusions about the timeliness of administration of justice by courts of arbitration [10]. Duration of consideration each of the cases, taking into account the time spent on resolving the issue of distribution of judicial costs, amounted to more than one year. The absolute record holder in time-bound is a case A57-3530/2008, which has been being in proceeding by Arbitration courts already for more than four years.

As a result of analysis of cases arising from administrative and other public legal relations, in arbitration courts has been identified the following reasons for delaying the terms of consideration:

- satisfaction by arbitration judges unreasonable petitions of representatives of public authorities of monitoring and supervision to postpone consideration of cases in mind of unreadiness of a representative for a case (the participation of a representative instead of another specialist, who possessed the essence of the dispute under consideration; the lack in the process of a competent specialist; lack of time to become familiar with the case materials; tax authority applies for postponing the hearing to prepare a written objection [4], etc.);
- provision of the opportunity to form other evidentiary base which has not been taken into account when giving the contested decision to public authorities of monitoring and supervision, whose decision is appealed by the applicant;
- postponing the moment of giving the judicial act not in favor of public authorities of monitoring and supervision (especially when considering the exaction of judicial costs), besides, reluctance to make a judicial act in favor of the applicant is masked by the need to submit more evidence – «having examined the case materials, having heard trial participants the court finds that the trial should be postponed under article 65, 158 of the Arbitration and Procedural Code of the Russian Federation, for the submission of additional evidence on the case»[5].

We believe that the current normative regulation of terms of consideration cases in courts of arbitration (articles 152, 267, 285, 299, 303 APC RF [1]) and the statutory right to compensation for the delay the time terms of administration of justice [2] does not solve the problem of resolution of the administrative legal disputes in a reasonable time limits (article 6.1. and articles of chapter 27.1. APC RF). Listed articles contain valuation concepts and norms, which give discretionary powers to judges, what in reality leads to a imbalance between the interests of individuals seeking protection of their interests in court and representatives of the authority.

The concept of reasonable time limit is not given in the legislation, but under it is possible to understand the length of proceedings or execution of a judicial act, which guarantee real protection of rights or legitimate interest of an interested person [9].

The presence in article 152 of the APC RF provisions: on an extension of the proceedings term at first instance (part 2 of this article) and the deletion from the time limit of suspension time and time of postponing consideration of the case (part 3 of this article) almost contributes delaying the administration of justice in cases

arising from administrative and other public legal relations. In addition, in the reality the settlement of a case does not absolutely comply with fixed in part 3 of article 189 of the APC RF responsibility of public persons to prove the circumstances giving rise to the adoption of the contested act, and the legitimacy of committed decisions and actions (inaction).

In most cases, a party whose application is subject to arbitration has no formal grounds for the applying to the arbitration court with an application for compensation for violation of right to trial within a reasonable time limit, so much so that a reasonable period is specified by such conditions as three-year and preliminary appeal with the application on the acceleration of the proceedings in accordance with the APC RF [1].

Period of three years or more, in our opinion, is absolutely unacceptable in cases arising from administrative and other public relations, at least, because for such a long period of public figures replicate their tortious behavior (action and inaction), as well as take more than one dozens of illegal decisions thereby keep busy the arbitration by the similar administrative-legal and tax disputes.

To the objection of opponents defending the currently in force normative regulating of terms of administration of justice in arbitration courts in cases arising from administrative and other public relations, we give an example of the Republic of Kazakhstan legislation. In article 167 of the Civil Procedural Code of the Republic of Kazakhstan is established the time frame for preparing a case for proceedings:

"Preparing of civil cases for court proceedings shall be held not later than in seven days from the date of application, unless otherwise stipulated by legislative acts. In exceptional cases, for particularly complex cases, except for cases on exaction of alimony, on compensation for damage caused by injury or other harm to health, as well as on the case of loss of the breadwinner, and on claims arising from employment legal relations, this period may be extended up to one month by a reasoned ruling of a judge "[3].

Article 174 of the Civil Procedural Code of the RK regulates terms for consideration and resolution of civil cases (in Kazakhstan, there is no system of arbitration courts, their function is performed by a special chambers of the civil courts):

"1. Civil cases are considered and resolved within two months from the date of finalization of preparing the case for a court proceeding. The cases on reinstatement of employment, on exaction of alimony and on the contesting the decisions, actions (inaction) of state bodies, local self-government bodies, officials, state employees are considered and resolved within one month "[3].

Thus, the applications of business entities contesting the decisions, actions (inaction) of public persons in Kazakhstan, are considered by the court within

a month. We believe that the subjective characteristics of the persons involved in a dispute and resolving cases in court that in Kazakhstan and in Russia are the same. It is unlikely that judges in Kazakhstan possess supernatural abilities that in order to justify the Russian justice that is administrated in arbitration it would be possible to speak of national features. In our opinion, low load of Kazakhstani judges in comparison with their Russian colleague is hardly probable.

Simply enough in Kazakhstan resolved the issue of compensation for actual loss of time in court proceedings. Article 112 of the Civil Procedural Code of the RK stipulates that "on the part of the party which unfairly had stated clearly unfounded claim or dispute against a claim or systematically resisting the correct and rapid consideration and resolution of a case the court may collect compensation for actual loss of time in favor of other party. The amount of compensation is determined by the court, taking into account the specific circumstances, based on the relevant standards of payment of labor in this region "[3].

In our opinion, the Russian legislator, having created "greenhouse conditions" for the judicial system in no way contributes to the rapid administration of justice.

It seems to us, that in respect of category of cases arising from administrative and other public legal relations, the Russian legislator should introduce special rules regulating the number of admissible by the court postponing of case consideration, announcements of breaks, as well as setting deadlines for such postponing.

Additionally we should support the norm of part 3 of article 189 APC RF:

"3. The burden of proving the circumstances which served as grounds for the adoption of the disputed act, the legality of the disputed decisions and actions (failures to act) on the part of state bodies, local government bodies, state officials or other bodies and organizations, vested by federal law with certain state or other public powers, is imposed upon the bodies and persons who adopted the disputed act or decision, or performed the disputed actions (failed to act)".

with the relevant procedural norms that limit the abuse of rights by public persons in the use of the period of judicial proceedings on public and legal dispute to obtain evidence in support of the contested decision (action or inaction), which did not have legal grounds at the time of its adoption.

The most frequently the tactic of subsequent collection of evidence to support the legality of the issued decision is used by tax authorities. For example, conducting handwriting examination of invoices is conducted during the court proceeding, even though such examination should be carried out before making a decision on

results of the tax audit of a taxpayer. There have been cases of request of documents from the taxpayer's counterparty already during a tax dispute, despite the fact that the power to request such documents are provided for in the Tax Code of the RF as a tax control measures and it is supported by the norms with the corresponding liability to a fine. Possible such a course of action of public persons in the arbitration proceedings when the persons, with the help of court, check the reliability of the evidence, which formed the basis for the taken decision.

The most complete list of possible illegal actions of tax authorities is considered by V. V. Kizilov in the monograph "Illegal Actions of Tax Authority Officials" [7].

To stop the mentioned practice of arbitration court in cases arising from administrative and other public relations is possible, in our opinion, through the introduction of the following norms to article 189 APC RF:

1. The actual data submitted by bodies and individuals who took the disputed act, decision, committed disputed actions (inactions) should be recognized by the Court inadmissible as evidence, if they had been obtained in violation of the law by deprivation or suppression of guaranteed by law legal rights of persons involved in the case, or in violation of other rules of the arbitration proceeding in preparing the case for proceeding or during proceedings on the case, which had affected or could affect the reliability of the obtained actual data, including:

1) using violence, threats, deception, as well as other illegal actions;

2) with use of delusion of a person participating in a case, with respect to his/her rights and obligations, arising out of not explaining, incomplete or incorrect explanation to that person;

3) in connection with the conducting procedural actions by a person not entitled to implement the proceedings on the case;

4) in connection with participation in the procedural action of a person subject to challenge (disqualification);

5) in connection with a breach of the procedure of the procedural action proceeding;

6) from an unknown source or from a source that cannot be installed in a court session;

7) with use during proving the methods which are contrary to current scientific knowledge.

2. Inadmissibility of the use actual data as evidence, as well as the possibility of its limited use in the proceeding on the case is set by the court on its own initiative or at the request of parties to a case.

3. Evidence obtained in violation of the law shall be deemed null and void and may not be the basis for a court's judgment, and also used in proving any fact relevant to the case.

4. Actual data obtained with violations which are mentioned in the 1st part of this article may be used as evidence of the fact of the relevant violations and culpability of individuals who has committed them [3].

5) Evidences of circumstances that were not laid down to the basis of disputed decisions and actions (inaction) in a case on disputing the legality of decisions and actions (inaction) of state bodies, local self-government bodies and other bodies, organizations, empowered by the federal law with certain state or other public powers are inadmissible.

In our opinion, it is necessary and topical to introduce to Chapter 22 APC RF the following norms on time terms of court proceedings and postponement case consideration:

Article 189.1. Terms of consideration and resolution of cases

1. *Cases arising from administrative and other public legal relations are to be considered and resolved within one month from the date of completion of preparing the case for trial.*
2. *For certain categories of cases arising from administrative and other public legal relations, the law may establish other terms.*
3. *Term of postponement of consideration cases arising from administrative and other public legal relations, cannot exceed ten working days plus postage time on sending written evidence, if any, of the person who is in a different city than the party obliged to provide evidence.*

Note. Total number of the postponements at first instance of the arbitral tribunal on the petition of one party of the proceedings should not exceed three times.

Special attention requires the situation taking place in practice which regards to the time for resolution of the issue of court costs distribution between the parties involved in a case arising from administrative and other public legal relations. Representatives of public persons, who have lost the case in arbitration, as a rule, take all possible measures to postpone the time of resolution by arbitration the issue of court costs distribution. Practice of exaction judicial costs from the tax authorities shows that in such cases judges of the first two instances of arbitration courts of Russia happen to be "supportive" to tax authorities and the procedure of exaction judicial costs takes six months or more. [8] Therefore, we believe it is necessary to introduce a norm in article 112 APC RF, by updating it with the following part:

4. *Resolution of issues on the distribution of court costs in cases arising from administrative and other public legal relations is to be done within a period not exceeding two months, including the terms of postponement of case consideration.*

Appropriate, in our view, in article 112 APC RF would be a norm, developing the provisions of article 48 APC RF, on procedural succession when considering an issue of court costs distribution. Without the presence of the norm on the possibility of initiating proceedings in arbitration court regarding the allocation of court costs by successor of the prevailing party, arbitration courts have some difficulties with law-enforcement of the general provisions on procedural legal succession and qualification of assignment of a claim, the subject of which are court costs incurred by a party. [6]

Rigidity of offered by us terms of administration of justice in cases arising from administrative and other public legal relations, is justified. Cancellation by legislator "greenhouse conditions" of arbitration courts will increase the responsibility of representatives of the parties involved in the arbitration proceedings when resolving public law disputes. Arbitration courts' judges should not be liable for negligence of public persons' representatives who do not provide the adequate representation of their interests in court proceedings.

The arbitration court shall make a judicial act on those case materials, which will be presented to the court in the manner and time limits prescribed by law but not just apply the principles of parties' equality and competition, urging during court sessions the representative of a public person to provide additional (or even any) evidence in support of the legal position of a public person in a dispute.

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EMERGENCE AND DEVELOPMENT OF ADMINISTRATIVE AND TORT LEGISLATION IN STATES-PARTICIPANTS OF THE COMMONWEALTH OF INDEPENDENT STATES

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Considering the national legislation development of the states-participants of the Commonwealth of Independent States, the authors point out common patterns of administrative and tort legislation: the presence of a basic codified Act, reflection in its rules of deep-seated changes in the life of post-Soviet society of these countries, the introduction of numerous local amendments and additions to the adopted Codes. Asserted the readiness of society to the implementation of the next phase of the reform of the administrative and tort legislation – to the division of it into the material and procedural Codes.

Keywords: administrative and tort legislation, the Code on Administrative Responsibility, Administrative and Procedural Code, reform of administrative and tort legislation.

Global social and economic transformations which began after the Soviet Union collapse in December 1991 in the former Soviet republics, which later joined the Commonwealth of Independent States, demanded legal stability of just emerged new social relations, radical renewal and improvement of the current, but becoming obsolete before our eyes legislation of the era of developed socialism, including tort legislation [27, 32].

This situation required the system changes of the content of a new national law in the countries of the CIS, the cardinal updating of entire array of the previous legislation, the awareness of the new role of legal phenomena in human, personality and society life as a whole [21, 25]. Agreement on the establishment of the Commonwealth of Independent States (December 1991) drew a line in the history of the Soviet Union, at the same time being the starting point in the development of new national legislation of independent states newly formed in the post-Soviet space.

Today, twenty years after the collapse of the USSR can be summed up some results of cardinal improvement of the national administrative and tort legislations of states that were included in the CIS.

Our study of the law making activity of the CIS countries' Parliaments since the mid-90›s of the last century, allows us to state that in the basis for the forming of new codified acts on administrative responsibility in Uzbekistan, Kyrgyzstan, Azerbaijan, Kazakhstan and Russia was laid down the principle of joint codification of substantive and procedural norms of national administrative and tort law. In these countries the law making work on the implementation the second codification of administrative and tort legislation to the middle of the first decade of the new century as a whole has already been completed.

Currently the further improvement of the adopted codes is being implemented. Sometimes it happens with "help" of dozens of new laws, making amendments and additions, as to a substantive part of the Codes, and to procedural and executive parts. For example, to the Code on Administrative Offences of the Russian Federation within ten years since its adoption lawmakers of five convocations of the State Duma of the Federal Assembly of the Russian Federation have made to the CAO of the RF a significant number of amendments and additions in all its five sections, taking more than 200 federal laws.

In other countries of the Commonwealth (Armenia, Moldova, Tadzhikistan and Ukraine), this legislative work to mid-tens of the new century had still not been completed. In addition, as strange as it sounds, in some operating until almost the end of the first decade of this century Codes of the First Codification (Tajikistan, Moldova) were presented legal norms, in which was used terminology of Soviet socialist law period (for example, Soviet law and order, socialist legality, socialist property, Ministry of Defense of the USSR, Ministry of Internal Affairs of the USSR, etc.).

By the way, the period of the first codification of administrative responsibility norms also had been marked by a number of features which subsequently had a significant influence on the systematization procedure of the Soviet and Republican

administrative and tort legislation. Firstly, it should be noted that the basis of the Codes of the Union Republics on administrative offences consisted of administrative and tortuous norms of the Union legislation, and, above all, of the Foundations of the USSR and the Union Republics on Administrative Offences (October 1980), that caused them to be of the same type as for the structure and content [44]. Secondly, along with the Codes the acts of local Councils of people's deputies and their Executive Committees also were the legal sources of administrative responsibility that, ultimately, did not give a possibility for the Codes to become the only legislative act of the Union Republic and govern the issues of administrative responsibility. Thirdly, was carried out so-called "mixed" codification of the substantive, competent and procedural norms on administrative offences. However, once again, we underline that it is difficult to overemphasize the value of the first Codes on Administrative Offences of Union republics [29].

As has been noted above, the first codification of the norms on administrative responsibility was implemented in two stages. At the first stage, in October 1980, for the first time in the USSR were adopted Foundations of the Legislation of the USSR and the Union Republics on administrative offenses, and later in 1984-1985, that is, at the second phase on the legal basis of the above Foundations, for the first time in the Soviet Union were adopted Codes of Union republics on Administrative Offenses. The adoption of the first Codes of the Union republics on Administrative Offences in the mid-80s of the last century meant not only the creation in each Union republic a single systematic legislative act on administrative responsibility, replacing dozens or even hundreds of separate acts of various significance levels, but also, what is more significant, this event meant the completion of forming the new independent branch of law – administrative and tort law [30]. For the first time was harmonized normative regulation of combating with one of the most common types of offenses – administrative offenses (misconducts), determined the basics and measures of administrative responsibility, fixed the system of administrative jurisdiction's subjects, regulated administrative-jurisdictional process and procedure of execution decisions issued on a case.

As for conceptually new administrative and tort codified acts of the CIS countries, we believe that they also have a number of features which advantageously distinguish them from the Republic Codes on Administrative Offences of the Soviet codification period.

Here are some of them: 1) the basic principal legal provisions included in the new codified acts on administrative responsibility of the CIS countries, today they meet new Constitutions of the CIS countries and have been brought into conformity

with the generally recognized rules of international law; 2) the national legislators of the CIS countries in the development the major institutions of administrative and tort law abandoned outdated norms of Soviet socialist law; 3) a certain part of innovations included in the general, competent and procedural parts of the new codes, "saw the light" thanks to modern achievements in the theory of national tort law of the CIS countries (criminal and civil); 4) at the same time, the developers of these codified acts found it possible to retain in the new Codes the norms which had positively recommend themself in law enforcement activities of the bodies of administrative jurisdiction; 5) when structuring the content of chapters of Especial (Special) part of the new codes, the parliamentarians from the CIS countries took into account the overriding priority – the priority of the constitutional protection of the rights and freedoms of an individual in the first place, and then the society and the state.

Development and adoption in the CIS countries of the new codified acts on administrative responsibility was due to the profound changes in the lives of post-Soviet society in these countries, which were reflected in the new constitutions, adopted in all CIS countries by the mid 90's of the last century.

The new Constitutions of the Commonwealth countries for the first time in their history proclaimed the priority of the rights and freedoms of man and citizen as the highest social value. The stage of an initial cardinal reform of national legislation in the Commonwealth countries was characterized by carrying out a significant amount of the codification work [7, 10]. For example, in the Republic of Belarus this work had already been begun in accordance with the decision of the Presidium of the Supreme Soviet of the Republic of Belarus No. 3777-XII from May 30, 1995 "On the Organization of Temporary Creative Team for Drafting the Project of Civil, Civil Procedural, Criminal, Criminal Procedural, Administrative Procedural Code and Code on Administrative Offences" [6].

In Russia, the issue of drafting the projects of two separate codified administrative and tort acts, in which would be separately systematized substantive and procedural norms, unfortunately, was removed at the initial stage of development the project of conceptually new Code on Administrative Offences of the Russian Federation [9, 11; 24, 28, 31].

In contrast, in some CIS countries in the late 90's at the national level, it was decided to start the development of a new national administrative legislation. So in particular, in Turkmenistan had been developed and adopted the Program of legislative support for reforms and transformations suggested by the first President of Turkmenistan Saparmurat Turkmenbashi. This program included "scientifically

reasoned ideas and practical recommendations of the Head of the state on issues of state-building, rule of law and legality, development of economic and social sphere, further strengthening the high authority that is enjoyed by independent neutral Turkmenistan in the international political arena".

In the second section of that program was included part 2, called "Forming the legal basis for court proceedings. Codification of criminal executive legislation. Development of the new administrative legislation". It is here was fixed a historic decision to establish conceptually new national administrative and tort legislation of independent Turkmenistan, "which will be formed on a fundamentally new legal scheme, involving the preparation of two separate and at the same time related laws – the Code on Administrative Responsibility and Administrative Procedural Code". Next in the Program of legislative support of reforms and transformations of Turkmenistan was noted that "in contrast to the current Code on Administrative Offences, which includes both the norms of substantive and procedural law, the new system of administrative legislation would allow more specifically and fully enshrine structures of administrative offences , determine the penalties commensurate with the nature of illegal actions, and provide for in a separate law clear administrative legal procedures and order for execution the decisions of competent state bodies and officials". [7] But for the sake of Justice it should be noted that in Turkmenistan have not yet been adopted conceptually new administrative and tort codified acts which were planned in the above mentioned program. We hope that this legislative work is ongoing.

By the way, in 2009, in the Republic of Kazakhstan has been decided to prepare drafts of two codified acts of the same names. However, the work of Kazakh legislators so far also has not yet been completed. We believe this is due to the cardinal reformation of valid from the late 90's of the last century new national criminal, criminal procedural and criminal executive legislation of independent Kazakhstan.

Formation of a constitutional state, a new socio-economic structure, which has been enshrined in the constitutions of the CIS countries, determined the need to find ways of effective protection by administrative and legal means of new "market" public relations, which began to emerge in the second half of the 90's of the last century.

Our investigation of this issue allows us to summarize the basic prerequisites of need for implementation the second codification of administrative and tort legislation as follows. Firstly, there is no doubt that the administrative and jurisdictional protection must be adequate to the existing new realities of modern life. Over the period of the first CAO of Union republics (sample of the mid 80's of the last

century), many theirs norms became irrevocably obsolete and "fell into oblivion". Secondly, nearly 20 years of administrative-jurisdictional experience of application "old" CAO of Union republics revealed the existing conflicts and gaps of the above mentioned legislation. We remind here that for the time of action of the Code on Administrative Offences of the RSFSR in a varying degree were changed more than two hundred of its articles. When this, only in the second half of the 90s of the last century were introduced more than 120 new structures of administrative offences, many of which are clearly disharmonized with the "old" norms of Soviet socialist law.

However, attempts to introduce numerous local changes and additions to the Code on Administrative Offences of the RSFSR (sample, 1984) by the end of 90's of the last century completely exhausted and, what is more, compromised themselves. Such legal situation took (and in somewhere and still has) a place in a number of CIS countries [45, 46, 47]. Modern society that had begun to form democratic constitutional state in the CIS countries needed a doctrinal and conceptually new codified act regulating the issues of administrative responsibility. Thirdly, the existing normative legal base based on the legislation of the Union center (Foundations of the Legislation of the USSR and the Union Republics on Administrative Offenses (1980), decrees of the Presidium of the Supreme Soviet of the USSR, the USSR Government provisions), which helped in the fight with administrative offenses, came in a clear and irrevocable conflict with the provisions of the new constitutions of the CIS countries [3, 4].

Codes adopted in the mid-80's of the last century, to the mid-90's stopped to fit into a new constitutional space of the CIS countries. This tendency applies both to the level of legal regulation in this area, and real guarantees to ensure the legitimate rights and freedoms of participants of administrative and tort procedure, above all, of a delinquent and victim. The problem of proper securing the rights and freedoms of people in field of law enforcement activity has become even more relevant in connection with the ratification by the participant states of the Commonwealth of Independent States the Convention on the Protection of Human Rights and Fundamental Freedoms [1, 12, 13, and 14]. Fourth, administrative sanctions began to protect the norms of various branches of the new national law of the CIS countries (including customs, land, environment, water, etc.), but their (sanctions') efficiency dropped significantly, and they were not able to fully meet their protection functions.

Recall also that the parliamentarians of the CIS countries, when developing conceptually new criminal codes in their countries, although abandoned structures

with administrative prejudice, decriminalizing a number of socially dangerous deeds, but included in the Special Part of the Criminal Code a significant number of crimes related to the relevant administrative offences [15, 16, 17, 18, 19, and 20]. It also should be reminded to the reader that the development of new criminal legislation in the CIS countries was not implemented "from scratch" [34, 41-48]. Significant role in developing new Criminal Codes played tight integration of legal scholars, legal practitioners and members of parliament of the CIS countries in the early 90's of the last century. As a result of this joint law making work was adopted the model Criminal Code for CIS countries [33, 36]. For the sake of Justice it should be noted that in the same 1996 at the seventh Plenary session of the Interparliamentary Assembly of Participant States of the Commonwealth of Independent States was also adopted the Civil Code, which was also a recommendatory legislative act for the Commonwealth of Independent States. It happened on February 17, 1996, [2]. A year earlier – on February 10, 1995 by the decision of the Council of Heads of Participant States of the CIS were taken the Bases for the customs legislation of Participant States of the Commonwealth of Independent States [5].

Certain legislative work was being conducted also at interregional level of CIS countries. For example, on June 7, 1997 at the Inter-Parliamentary Committee of four countries – Belarus, Kazakhstan, Kyrgyz Republic and the Russian Federation was approved the developed Provision on the model and other law making acts of Inter-Parliamentary Committee [37]. Therefore, in our opinion, the second codification of national administrative and tort legislation of CIS countries was intended not only to streamline the administrative and tort legal relations, but also significantly strengthen the within-system connections in the structure of a new national tort legislation of the CIS countries [22].

Finally, fifthly, for the second codification was created a relevant scientific base. In particular, scientists-jurists of Russia, Belarus, Kazakhstan and other CIS countries took not only attempts to justify the concepts of national administrative and tort law and procedure [39, 48, 49, 53], but also investigated their basic institutions [38, 52], developed a new doctrine of administrative and tort procedure [35], suggested author's versions of drafts of administrative and tort codes or their individual sections, chapters, and articles [40, 41, 43]. These remarks can be fully attributed to the development of administrative and tort legislation also in other CIS countries, including Kazakhstan, Kyrgyzstan, Azerbaijan and Uzbekistan [23, 26, and 42]. The presence of these and other prerequisites created favorable conditions for the development in the CIS countries new legislative acts on administrative responsibility.

Keeping mainly the structure of previously existing Codes on Administrative Offences of the first period of codification, the new codes of the CIS countries incorporated a significant number of legal novation. This, first of all, regards to bringing the legislation on administrative responsibility in accordance with the current constitution of the CIS countries and being updated national legislation of these countries. Secondly, the codes' drafts of CIS countries were developed on the base of consideration the requirements of international legal acts that have enshrined the priorities of protecting the rights and freedoms of man and citizen, idea of a democratic constitutional state, mixed economy and protection of socially new relations of period of the transition to a market economy. Thirdly, virtually all conceptually new codes of the CIS countries envisaged the introduction of a new subject of administrative responsibility – legal entity. Today, as we have noted above, only the Code on Administrative Responsibility of Uzbekistan still does not envisage administrative liability of legal persons. Fourthly, in the new codes of the CIS countries in more detail, in accordance with international legal standards was developed a procedure of administrative and tort process (e.g. were accepted novation regulating the holding in cases of necessity an administrative investigation on a case, was established a more specific procedure of application the measures of ensuring an administrative process, including the possibility to appeal their application, updated procedural order of execution of a taken decision on the case, etc.). Fifthly, in comparison with the Code on Administrative Offences of the Soviet period, in the new codes of the CIS countries (except for the adopted in 2006 Procedural-Executive Code of the Republic of Belarus) greatly was extended the list of subjects of administrative jurisdiction, authorized to consider cases on administrative offenses. In some codes this list reaches 40 - 60 subjects and has a tendency to increase. In the Code on Administrative Offences of the RF, for example, as at December 01, 2011 in the 23rd chapter the number of articles, in which is determined a list of administrative jurisdictions bodies, reached 70 dozen. This occurs even though the fact that the new codes give judges the right to consider a much larger number of cases than before.

It should also be noted that the general liberalization of tort legislation at that time almost did not affected some principal provisions of the new codified acts. For example, the codes of the CIS countries essentially reproduced the system of administrative penalties previously operating in the Soviet Union. Moreover, as a result of adopting some legal novation the level of administrative and legal repression of the codes was even increased.

The new national administrative and tort legislation of the CIS countries had an important role in ensuring the implementation of the planned policy of social and economic reforms and an appropriate level of ensuring public order and public security in the country. It had to ensure guarantees for the proper observance of human and citizen rights, not on paper (as it often happened in previous years), but in real life. It is this result without doubt sincerely tried to reach legislators of all the Commonwealth of Independent States countries, doing cardinal reforms of the given legislation.

Thus, we express solidarity with the opinion of the former Chairman of the Majilis of the Parliament of the Republic of Kazakhstan Zh. A Tujakbaj, who in the beginning of the new century has rightly noted that "growing out of an array of legal system of the former Soviet Union, feeding by its legal concepts, institutions and norms, the legislation of the former Union republics, and now sovereign states united in the CIS, bears the traces of the past and the sprouts of new" [50, 43-47, 51, 45-47]. This judgment, in our view, has not lost its relevance in the twentieth anniversary year of the Commonwealth of Independent States. Since by this formula even in the future will be resolved the issues of combination of legal continuity and legal innovations in conducting large-scale political, economic and social reforms in the CIS countries. And since the legislative work in CIS countries actively continues in this direction, we hope that in the near future in legislative "baggage" of the CIS countries will appear a conceptually new codified acts, in which, finally, following the example of the Republic of Belarus, the substantive and procedural administrative-tort norms would not only "be located in their apartments", but, what is more important, will undergo further significant changes aimed at ensuring the constitutional protection of rights and freedoms of both citizens and legal entities involved in an administrative and tort procedure.

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REVIEW OF THE MANUSCRIPT OF KIZILOV V. V. "INSTITUTE OF ADMINISTRATIVE RESPONSIBILITY ON THE PART OF PUBLIC CIVIL SERVANTS IN RUSSIA" (SARATOV, 2012)

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Reviewed scientific work of the author is timely, and the author's invoke to the theme of liability of executive authorities' representatives corresponds to the realities of Russian society. On the pages of the print media, television and other broadcast sources with constant frequency appear materials about various abuses of state bodies' officials, violations by them the rights of citizens and legal entities, illegal actions that are harmful to the civil and the public interest. It would seem that the publications in mass media themselves should be sufficient grounds for the appropriate response of law enforcement and other jurisdictional agencies. However, in fair author's opinion of the reviewed scientific research, this is not happening because of the imperfection of the Russian tort legislation.

The author considers a large army of public civil servants as separate subjects of administrative responsibility, and rightly justifies his position through the system of subjects of administrative law and the subjects of administrative and legal relations.

Disparate norms of the Code on Administrative Offences of the Russian Federation, relating to various elements of administrative responsibility of public civil servants who do not allow in practice to apply the full force of administrative responsibility in respect of delinquents – civil servants. In this connection in his monograph he carries out not only a critical analysis of norms of the current legislation in considered matters, but also offers his own views on the modernization of the Russian legislation to implement the institute of administrative responsibility of civil servants in the legislation of the Russian Federation.

The analysis of used by the author of the monograph literature, normative acts and researches of legal scholars shows that the work of V. V. Kizilov has been

written with taking into account the most recent amendments in the legislation of the Russian Federation and of those new legal scholars beliefs that are relevant to institutions of administrative responsibility and public service.

The greatest interest in the monograph represents the author's proposal of an alternative institution of cases on administrative offences committed by officials of the public civil service enshrined in the legislation. The quite logical conclusion of the author is to institute proceedings on administrative offences of public civil servants in some cases judges without drawing up a protocol on administrative offense and without prosecutor's decisions to institute cases on administrative offences, when the signs of an administrative offense are established in the administrative and legal disputes which are resolved in court.

As we see it, monographic study of V. V. Kizilov is one of the first among studies of legal scholars carried out on this theme during the modern development of the administrative law science, which comprehensively researches administrative responsibility as a measure of government response to the torts of management side of legal relation committed in public law relations.

The monograph is of great practical value in connection with the proposed in it the completed conceptual apparatus of the institute of administrative responsibility of public civil servants, covering definitions of administrative responsibility, administrative offense, administrative misconduct, official, etc. With the definitions of basic concepts which have been proposed as the doctrinal ones you can argue or disagree, criticize, or on their basis to develop other definitions, but it is their interrelation makes available the understanding of the author's scientific position on the issue of administrative responsibility of public civil servants.

The monograph contains a sufficient number of statistical expositions, convincing its readers of the need for the earliest introducing to the Code on Administrative Offences of the RF structures of administrative offences, the subject of responsibility of which is a public civil service official. The author offers his own structures of such offences based on personal experience and analysis of the current administrative and tort legislation of countries of the near abroad. But this does not mean that in a practical application of the results of the author's work legislators cannot form other structures or made clarifications to the proposed by the author structures of administrative offenses. Author's suggestions, in our opinion, will lay the foundation as for a new process of rethinking the place and role of administrative responsibility, and for this institute in applying to public civil servants.

In our opinion, the manuscript "Institute of Administrative Responsibility of Public Civil Servants of the Russian Federation" is a logical continuation of the previous author's work "Unlawful Actions of Tax Authority officials", the transition of the author from the considering sectorial specificity of torts to consideration of general issues of administrative delinquency in the civil service.

If to judge the work as a whole, the manuscript is a result of a serious study of the author, both theoretical and practical aspects of administrative offences of civil service officials in the field of public administration and civil service. We believe it is possible and necessary to use the work of V. V. Kizilov in teaching law students, in applying by higher school teachers, researchers, legal practitioners specializing in the protection of rights of citizens and legal entities, judges of arbitration courts and courts of general jurisdiction, prosecutors, law enforcement bodies' employees as well as by those interested in the issues of administrative responsibility's institute of public civil servants.

Authors' works, like the reviewed manuscript, in our view, should have a resonance in lawmaking, as they bring legislators closer to the practical problems of legal regulation requiring resolving at the legislative level.

General conclusion: the manuscript of Kizilov V. V. "Institute of Administrative Responsibility of Public Civil Servants of the Russian Federation" on its scientific level and practical orientation deserves high appreciation and can be recommended for publication as a monograph.