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Voznjakovskaja K. A.

ECONOMIC AND LEGAL NORMS OF ECONOMY UNSHADOWING AS A MEANS OF PREVENTION LEGALIZATION (LAUNDERING) OF INCOMES RECEIVED BY WAY OF CRIME

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The article analyzes basic premises of origin and spread of such a phenomenon as "shadow economy", with the emphasis on the issues of fight against legalization of proceeds of crime. Highlighted the prospects of improvement of economic legislation in this area. In the article is determined the relevance and necessity of application the enumerated in normative legal acts means of combating laundering money received by way of crime.

Keywords: legalization, shadow economy, capital market, income, money laundering, countering, methods of control, taxation, monitoring, assets, economic and legal means, FATF, offence.

The problems of shadow economy are closely intertwined with the problems legalization of "dirty" money. Legalization of "dirty" money is bordered by the shadow turnover, as a number of tax offenses intersect with crimes in the part of money laundering. This circumstance was clearly pointed by the Ukrainian Supreme Court in Plenary Session Decree No.5 from 15.04.2005. In particular,

the funds or other property that a person has got (received) not by the way of crime, but which it has illegally keep, hidden away, not transferred to the State in the presence of obligation to do this cannot be considered as obtained as a result of the commission of a predicate action, namely: the funds that are unpaid as taxes, fees and other compulsory payments; hidden revenue in foreign currency from the sale of export goods (works, services) or hidden goods, other material assets derived from such gains, as in such cases there is no direct getting of assets or other property by the way of crime, but illegal (criminal) disposal these assets (if the right of their ownership was acquired illegally). Also, assets (regardless of size), received as subsidies, subventions, grants or loans, as a result of providing false information by entities mentioned in the disposition of part 1 of article 222 of the Criminal Code of Ukraine, are not the subject of legalization.

Relationship of other crimes with legalization of "dirty" money, as well as implementation another actions in the economic sphere, which are administrative misconduct in connection with their low public danger, characterizes shadow economy as a predecessor or companion of the legalization of "dirty" money.

To date, no one denies the presence of the shadow economy in Ukraine. According to various sources, the share of the shadow economy is about 30-45% of the official level of gross domestic product of the country. In the shadow business involved a lot of the economically active population, what indicates that there are significant problems in the economy of our country.

The phenomenon of shadow economy can be detected not only in Ukraine. It takes place in all countries. According to estimates of Austrian economist Friedrich Schneider, the highest values of parameters of the informal sector are registered in the countries that are developing and in countries with transition economies, the lowest – in developed countries [1, 14].

So, U. P. Zubakov notes that "legalization (laundering) of proceeds from illegal way – a powerful economic factor for the growth of organized crime in the most dangerous forms (drug trafficking, arms trafficking, smuggling, etc.). This phenomenon threatens national security of countries and undermine the prospects for trends development of the free movement of capital" [5, 13].

Legalization of illegally acquired income is closely related to such negative phenomena as terrorism and transnational organized crime, international drug trafficking, arms trafficking, etc. As a rule, exactly the incomes of criminal activity connected with these phenomena are the basis for the process of legalization criminal capital. In turn, criminal capital having passed through all the stages

of legalization becomes the source for committing many types of economic crimes. Thus, we have a whole system – a closed circuit of criminal elements, which are a serious threat to economic security of both individual nations and the world community as a whole.

As rightly noted by A. S. Benitsky, social danger of the process of money laundering is in the following: "uncontrolled influx to legitimate economy of shadow capital increases inflation processes; turnover of illegal funds in the economic sector introduces distortions in the use of legal mechanisms of implementation economic activities, encroaching on the normal functioning of the economy; undermines the legitimate order of entrepreneurial and other economic activities, as well as the principle of equality of participants in economic relations, which leads to restriction of fair competition" [2, 8].

Experts attribute the sources of obtaining criminal proceeds, which require further legalization (laundering), to two groups:

- drug trafficking, illicit manufacturing and trafficking of arms, prostitution management, trafficking in human beings (material gain from the exercise of such frauds is usually sent to "shadow". According to experts, these operations constitute more than 50% of the total illicit turnover);

- crimes in the sphere of economic activity and high technologies; the misappropriation of money (including budgetary), or other property by way of stealing, fraud, fraudulent bankruptcy, forgery of payment documents, smuggling (material gain from their implementation is accompanied by some share of non-cash turnover and is about 25%) [11, 44].

The world community has recognized that the legalization of proceeds from criminal activities has become a global threat to the economic security and political stability of any state.

That threat manifests itself in the following negative consequences:

- inability of the state and society to combat money laundering facilitates the enrichment of groups of people through crime, thereby making the very criminal activity more attractive and economically convenient;

- use of legalized "dirty" money, not only for continuation of criminal activity, but also for investment in the most perspective types of economic activities;

- expansion and strengthening of the economic and technological base of organized crime;

- reduction in the turnover of taxes and allocation of funds for state public spending due to concealment of income lists threatens the financial system of the country as a whole, leads to the disruption of the national economy;

- use of “dirty” money to bribe employees of state power, the penetration of criminal elements in the political institutes and, in some cases, for the organization and financing of terrorism, what leads to disruption of democratic system and national security, makes a real threat of losing by Government the control over the state and its usurpation by criminal elements.

Legalization of illegal incomes in developed countries in recent decades remains a serious problem – international experts estimate the size of capital that is laundered in the world ranging from 100 to 500 billion dollars per year [7, 12].

On March 09, 2011 was issued the order of the Cabinet of Ministers of Ukraine “On approval of the Development Strategy of the system for prevention and counteraction to legalization (laundering) of proceeds from crime and financing of terrorism up to 2015”.

Such documents are developed by all the leading countries of the world, usually for one year. The main goal of the Strategy – is determining measures of a legislative, organizational and institutional nature aimed at ensuring stable and efficient functioning of the national system for the prevention and counteraction to legalization (laundering) of proceeds from crime and terrorist financing.

The strategy consists of the following parts:

a) general part, which determines the need to address the problems of the relatively rapid development of laundering of “dirty” money.

b) analysis of the situation and current trends in the field of combating money laundering and terrorist financing in Ukraine. This part includes an assessment of the role of the Financial Intelligence (State Financial Monitoring Service), law enforcement agencies, Prosecutor’s Office, courts in this process, analysis of the level of coordination of departments, participation in international cooperation.

c) the other two blocks of the concept can be named basic ones – they are the priority objectives of Ukraine in the field of combating money laundering and financing of terrorism for the next few years, and longer-term objectives, mechanisms and means to implement the goals and objectives proposed in the previous block of the concept. This is a legislative ensuring, law enforcement activity, prosecutors and the courts activity, oversight activities, coordination of departments, participation in international cooperation.

d) in the last block are the expected results [9].

In this context, we can identify the strategic objectives of economic and legal regulation in this area: the formation of such a block of economic legislation, which prevents the legalization of “dirty” money, facilitates fixing offenses and counteracts its effects.

Among the relevant tactical tasks can be distinguished those with economic and legal nature and represent at least one third of all the other tasks identified in the relevant Strategy, in particular:

- to ensure approval of Ukraine's status as a reliable partner of the international community by "increasing the investment attractiveness of Ukraine's economy for foreign investors" and "overcome barriers to the recognition it as a state with market economy";

- to take measures to prevent the development of prerequisites for laundering the proceeds of crime or financing of terrorism through: "improvement of means to monitoring of financial flows and combating illegal withdrawal of capital from Ukraine", "improve the efficiency of analysis of methods and financial schemes to legalization (laundering) proceeds obtained by way of crime or terrorist financing and the development of relevant typologies", "analysis of foreign economic operations that are carried out by business entities through offshore zones", "introduction classification of clients of nonbank financial institutions and exercising by such institutions appropriate events in respect of customers, the activity of which evidences the increased risk of their financial transactions", "ensuring regulation of activity in the organization and conduct of lotteries and gambling in Ukraine";

- minimizing the risks of using Ukrainian financial system to launder the proceeds of crime or financing of terrorism through: "strengthening informational transparency of the financial system", "increase the share of non-cash payments and reducing the use of cash", "introduction of a mechanism for collecting by reporting entities information on the activities of foreign financial institutions, with which have been established correspondent relations";

- improvement of the mechanism of regulation and supervision over reporting entities through: "analyzing the effectiveness of events, operation of the financial monitoring system in the state", "improving the efficiency of regulating and supervision over reporting entities ...", "establishing a procedure for the use of measures to prevent forming the charter capital of relevant reporting entities at the expense of money, the source of which cannot be confirmed", "determination and application of a clear mechanism for checking impeccable business reputation of persons who manage and control reporting entities";

- organization of effective international cooperation through continuation participation of Ukraine in international events in the field of prevention and counteraction to legalization (laundering) of proceeds from crime and financing of terrorism, which are carried out within the framework of the activities of the Financial Action Task Force on Money Laundering (FATF), the European Union, the Council

of Europe, the World Bank, the International Monetary Fund, the Egmont group, the Eurasian Group on combating money laundering and terrorist financing, and other international organizations (although this is a common problem, but given the current orientation of international organizations to the complex, including the economic and legal impact on legalization of "dirty" money, it cannot fail to be noted here).

From all appearances, the given tasks can be realized only within the development of relevant regulators in the economic and legal legislation, forcing economic agents, in particular, entities of financial monitoring to perform the programmed by the state events for combating legalization of "dirty" money.

Formation of a national strategy for combating money laundering and terrorist financing is a targeted process, which is based on the conceptual and strategic forecasting, accounting wide range of objective economic, political and social conditions, trends and factors.

Quality of financial strategy depends largely on the efficiency of institutes of ensuring national interests. Thus, when considering the issues of countering money laundering the most important is the institutional sphere.

The main subject of countering the threat of economic security related to laundering proceeds of crime is the state, which operates through a set of bodies, through law-making and law-enforcement activities [10, 99].

Regulatory aspect of the state activity in the combat against money laundering and countering the growth of the informal sector is manifested primarily in such functions as sanitation and promotion of business activity of entrepreneurship, business competitiveness, acting within the framework of legal environment. Particularly important this provision seems in relation to the spread of crime growth, in a situation where business activity within the framework of current legislation is more often unprofitable and non-remunerative.

In turn, the smaller the shadow economy, the easier it will be to identify operations aimed at laundering of "dirty" money, because the flow of funds from the informal sector to legal one will be an exception, but not a common phenomenon, which it is today.

It is in this context, to the number of threats to the economic security of Ukraine on the part of the shadow economy can be referred massive tax evasion. Tax crimes and tax offences inflict enormous harm to Ukraine's budgetary system. Statistics cited by the State Tax Service shows, that over 90% of the enterprises of Ukraine violate tax legislation. A large proportion of these violations is related to imperfect legislation, limited skills of participants of relationships in tax sphere,

with an ambiguous understanding of laws, with constant amendments in them. All this is illustrated by the following data:

- mass production of products that do not meet sanitary, technical and other requirements, what distorts fair competition and threatens the health of citizens;
- massive copyright infringement, as well as infringement the rights of inventions, samples and useful models;
- unlawful export of capital abroad;
- clandestine manufacture of prohibited and restricted for civilian purposes goods, the spread of which could harm the health of population;
- providing lawful nature of possession, use and disposal of funds obtained by illegal means;
- wide turnover of unaccounted cash and so on.

Specified circumstances require the state to take the decisive measures regarding reducing the scale of the shadow economy, first of all the scale of the "dark" economy. Measures aimed at combating the legalization of proceeds from crime should be become the most important in this direction.

For economic entities, moving into the shade is closely connected with significant operating expenses in lawful activity. Events to reduce these expenses, which can be initiated by the state, are the following: creation of a stable legislation, reducing macroeconomic instability, reduction of administrative barriers, creating an effective tax system, improvement of labor legislation, elimination of the shadow economy, and increase in the legal economy [3, 100].

Development of similar processes in the field of economic relations is promoted by a different understanding of financial agreements, when individual jurists deny economic-law norms [4, 184], what makes it possible to use, for example, foreign currency as the currency of debt [8, 67]. It is possible to mark such causes as disorderliness, corruption, and, after all, inefficiency of the state financial control, at least, due to the fact that there is a large shadow economy in Ukraine, which, according to the calculations of specialists, already exceeds 39%, and in the case of not applying urgent measures will reach 70% of GDP before 2015 [6, 110].

Summarizing the above, we can conclude that the objective of economic and legal measures against legalization (laundering) of proceeds from crime reduces to two main processes: to lay in the mechanism of exercising economic activities such levers that would made unprofitable any shadow operations and the use of funds received by way of crime; revealing, documented recording of the fact of an suspicious transaction or agreement, and transfer this information to the public authority responsible for combating money laundering and terrorist financing.

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METHODS OF PUBLIC EMPLOYEES' RIGHTS PROTECTION AT APPLYING MEASURES OF PROMOTION

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Promotion and reward of public employees are important elements in the incentive scheme as they evidence of appreciation of the work done by public employees. The article describes the importance and types of incentives in the activities of public employees, methods and features of public employees' right protection at applying measures of promotion.

Keywords: rights protection, methods of protection, public employees, measures of promotion/incentives, applying measures of promotion.

Regulator of protecting public servants is the norms of law, which are adopted, influence, change, and are cancel under the influence of circumstances objectively influencing the whole legal system. The legal framework of protection of public servants is characterized by all the features typical for law. Tasks and functions of the legal institution of protecting public servants are the signs. Tasks and functions are closely related, define each other. Any function cannot be determined without the task. From another point of view, without providing the functions, the task cannot be performed. Among the common people of the country public servants are not the poorest group, for example, on the base of analyzing the average monthly salary. The level of protection of public servants cannot be assessed by usual measures. Representatives of the State in the implementation of labor activity are public servants. Therefore, for them there are special requirements both for admission to public service and in the process of its implementation.

The work of public servants is regulated in a specific order, by a special legislation. It refers to a special kind of work. Field of activity and working conditions are factors, which characterize the specificity of labor for public servants.

Legal status reflects the specific of activity of public servants. Legislatively established limitations on certain rights and freedoms of public servants justified from the point of view of the world practice in building and functioning of the public service, however, adversely affect its social prestige. We can conclude that their own specificity have objectives and functions of social protection of public servants. This view finds support in the special literature. Social protection of public servants as a system exercises such major functions as economic, social, political, spiritual, ideological and demographic one [1, 3, 6]. It should be noted, acknowledging reasonableness of the above functions, that if the functions under consideration are major, what functions are secondary ones? It is unpractical to divide the protection functions into the main and another, since by itself the scope of protection is extremely important for both society as a whole and for its individual members.

Promotion is an important means of educating and motivating the service activities of public civil servants, as well as of strengthening the rule of law and discipline in its system. Among the legal means to increase the performance of public servants a system of measures for their promotion takes an independent place.

Legal personality of the employer includes the right to promote employees. Promotion is a fairly effective means to increase labor productivity, and work discipline. Practice shows that sometimes the promotion is more effective in stimulating workers to conscientious work than penalties. An employer should seek a combination of measures of moral and material incentives of workers for the faithful performance of the duties under an employment contract.

High efficiency of incentives is only possible at complying with the established requirements for their use by public civil servants. D. M. Ovsyanko notes, "the most important requirement is complying with the rule of law, the validity for applying any of the incentives. They can be applied only by those bodies and leaders who have been granted such a right. However, they must apply only the incentives, which are provided for by relevant normative legal acts, within the limits of the power granted to them and in a prescribed manner" [7].

Article 191 of the Labor Code of the RF provides for, that an employer stimulates the employees diligently performing their work duties (thanks them officially, pays them a merit bonus, awards them with valuable presents, certificates of honor,

puts them forward for the title "Best in Profession"). For their outstanding achievements employees are to be awarded orders, medals, lapel badges and honorary titles.

In the system of incentives to encourage public servants promotion and rewarding for public servants are important elements as they evidence of appreciation of the work done by the public servants. Encouraging or rewarding helps to stimulate other public employees to conscientious performing their duties.

Promotion as the method of management disciplinary relations is a recognition of an employee among the team by providing it with privileges, advantages, public provision of honor, increasing its prestige. Each person has a need for recognition (material values). Promotion is aimed to the realization of this need. Unfair application of promotion can put the whole team at loggerheads. Therefore, at the application of incentives it would be appropriate to take into account the following rules of effectiveness of encouraging:

1) promotion should be applied at every manifestation of labor activity of a worker with a positive result;

2) encouragement should be meaningful and increase the prestige of good faith work. All the advantages and benefits of socio-cultural, housing and public services should be made available to bona fide employees. This is the only way to raise the prestige of faithful labor;

3) promotion must be transparent;

4) when applying the promotion you must use rituals, customs, traditions;

5) negative tradition must be pushed out only by positive traditions, but not by an order;

6) the closer the date of receipt of a reward, the more active a person works;

7) promotion availability. As practice shows, it is advisable to set rates at which the employee receives the legal right to promotion. Thus, there are formed clear, accessible additional objectives in labor for each employee, and these goals are another effective measure for management of labor and discipline in the team.

Considering the issues of encouraging for work and penalties for disciplinary offenses, first of all we should note the following difference:

- promotion for work is presented in article 191 of the Labor Code of the RF in the expanded list, and not limited only to it. In accordance with the provisions of article 191 of the LC RF, an employer encourages employees performing work in good faith. As the types of rewards the LC RF provides:

- expression of gratitude;

- grant award;

- awarding them with valuable presents;
- awarding them certificates of honor;
- introduction to the rank “Best in Profession”;

and also contains a clause that “other rewards for work are defined by a collective agreement or the internal regulations, as well as statutes and regulations on discipline. For special labor merits to the community and the state employees may be introduced to state awards”. So, whatever kind of promotion is applied by an employer, even if the promotion is not provided for by the labor legislation (LC RF and other laws), this promotion will be valid and applicable.

The types of disciplinary penalties are strictly limited by strict listing provided for by the LC RF, federal laws and other normative acts, the output beyond which is impermissible. Application by an employer of disciplinary punishment not provided in LC RF entails the invalidity due to its illegality.

Kinds of rewards and awards for excellent and efficient civil service:

1) expression of gratitude with the payment of a one-time reward;

2) awarding of certificate of honor of a state body with payment of a lump sum encouraging or award of a valuable gift;

3) another types of promotion and awarding by a public body;

4) lump sum reward in connection with retirement on a State pension for years of service;

5) encouragement of the Government of the Russian Federation;

6) encouragement of the President of the Russian Federation;

7) conferment of honor rank of the Russian federation;

8) awarding a merit badge of the Russian federation;

9) awarding orders and medals of the Russian federation.

Externally-organizational or administrative-legal encouragement associated with the provision of a simplified (privileged) procedure of implementation specific activities, such as reducing the number of verification actions at entry a freelancer for service; absolute material rewards (giving a monetary award, awarding valuable gift, preferential loans, etc.). Unformalized measures of moral stimulating impact (praise, direction to the prestigious business trip, dissemination of best practices of service with reference to authorship, and so on).

Measures of moral incentive impact are not accompanied by procedural drawing up and adoption of official acts. Measures of organizational incentive are accompanied by adoption of an administrative act, but not always procedurally formalized as an encouragement, because there is no a formal enshrining of these measures as an encouragement in normative legal acts.

In this case, at the center is put exactly organizational stimulation of activity of public servants (promotion, assignment of another skill category, and so on), but not only the increase in the amount of remuneration, although the latter is certainly important, because unlikely anyone wish to bear additional duties without financial compensation and incentives. The federal one includes mandatory feature of remuneration, so that the existence of organizational and material incentive measures can be considered in dialectical unity.

At the same time the status' nature encouraging is accompanied by an increase in salaries and benefits of a material nature on a regular basis, but the providing only the last ones is allowed either one-time for individual achievement in public service activity, or on a permanent basis for their devotion and fidelity to a particular system of public service.

The system of Russian law comprises individual branches, which in their totality and interactions form a complex social phenomenon, designed to streamline the most important public relations. Every law branch has its own logically deterministic structure consisting of separate norms of law, which are grouped by generic indicator into separate legal institutes. The latter ones can be both of branch and interbranch nature. One of such legal institutes of interbranch significance is the Institute of Incentive.

The legislation does not establish a sequence in the application of incentives. An employer may simultaneously apply several rewards (e.g., to declare thanks and give a bonus).

The right to promote an employee is a subjective right of an employer, which he may use or not on the basis of its own assessment of the achievements and merits of the employee. The legislation does not bind promotion of an employee to any objectified circumstances (for example, the achievement of age or length of service of certain duration).

Promotions on behalf of an employer are used by its officers. The competence of officials of an employer (the head of an organization, his deputies, heads of departments, etc.) is enshrined in the rules of the internal labor schedule. The employer shall issue an order or decree on the application of incentives that are expedient to publish in any way possible.

Protection of rights and interests, which is implemented in the form of provided to public employees possibilities to protect their labor rights, freedoms and legitimate interests by all non-prohibited by law methods is the goal of labor legislation. The LC RF provides a wide range of ways to protect labor rights and legitimate interests of public servants. Public servants have the possibility

of collective (trade union) protection of not only rights, but also interests by filing claim with a labor dispute to the commission that acts directly in the organization for resolution of unsettled disputes with the employer (chapter 60 of the LC RF); entering into a collective labor dispute and announcements of strikes; monitoring compliance with labor law and representing the interests of workers in another cases.

For the first time the norms of the labor legislation provide for self-protection of the rights of public employees, which is the ability to refuse to perform work not specified in a service contract, or work directly threatening the life and health of a public servant. In addition, public servants have the right to suspend work in the event of wage delay for more than 15 days (article 379 and 142 of the Labor Code of the RF). However, paramount importance in the protection of public employees at the application of incentives is given to judicial protection, as well as state control and supervision implemented, in particular, by the Federal Labor Inspectorate.

State supervision over the accurate and uniform observance of the Labor Code and other legal acts, containing labor regulations is implemented by the Attorney-General of the Russian Federation and by attorneys, subordinate to him in accordance with the Federal Law (article 353 LC RF).

Along with other rights of public employees in the application of incentives they have the right to compensation for damage caused in connection with the performance of their job duties, and compensation for moral damages under article 237 of the Labor Code of the RF.

Public servant has the right to compensation for the material damage caused by the unlawful deprivation of opportunities to work (article 234 LC RF), inflicted to the property of the employee (article 235 LC RF), as well as by delay of wages (article 236 LC RF).

Thus, the main ways to protect labor rights and freedoms of public servants in the application of incentives are:

- self-protection of labor rights;
- collective protection of labor rights and legitimate interests;
- state supervision and control over compliance with labor legislation and another normative legal act containing the norms of labor law;
- judicial protection.

Ways to protect public servants in the application of encouragement measures are simultaneously the guarantees of legitimacy in the field of labor and labor legal order.

Specific level (normal, high, low) of labor legal order and legitimacy in the field of labor in every public organization reflects the state of public life in the social sector in the state of law. At each organization all the subjects of labor law must strive to a high level of labor legal order and legitimacy in the field of labor as to the result of the legal regulation of labor.

Employer, its representatives have no right to prevent employees in the implementation all the forms of self-protection of their labor rights (and not just under article 379 LC RF). And article 380 LC RF prohibits prosecution of employees for their use the methods of self-protection of labor rights permitted by law. For violation of the ban they incur liability, established by Labor Code, Code on Administrative Offences, and even Criminal Code, as for the violation of labor legislation.

Responsibility for violation of labor legislation and labor protection both disciplinary and administrative (penalty) and material and, in appropriate cases, criminal one, shall bear guilty officials of administration, employer.

Thus, can be highlighted the following directions to increase the opportunities of protection the rights of public employees in the application of incentives.

First, it is necessary to align legislative acts of the Russian Federation and its subjects vertically regarding public servants in order to improve the legislative protection of the latter.

Secondly, the development of criteria for assessing the performance of public servants' activity will avoid arbitrariness against public employees by their managers, and make it possible to resolve many conflicts on the issues of promotion.

Thirdly, there will be a need for an educational program in order to create the legal and labor culture, since at the destruction of the key moral qualities of public servants to some extent their professional training loses its significance.

Fourthly, we would like not forget the professional development of public servants, as only an educated workers can both protect themselves from illegal actions, and subsequently prevent similar situations.

Finally, it is necessary to bind the training of public servants with their elevation in office, since career aspirations take an important place among the work's incentives of public servants.

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Kositsin I. A.

RETURNING TO THE ISSUE OF THE CONCEPT OF STATE PROTECTION

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The content of the article notes multilevel issues' regulation of state protection of objects. Attention is focused on the multiplicity of subjects of state protection guided in their activities by departmental acts. Here is expressed an idea of a settlement at legislative federal level the issues of state protection, with normative enshrining of protected facilities of public authority, life support facilities, high-risk facilities and emergency facilities. The author gives his own definition of the concept of "state protection".

Keywords: state protection, state protection facilities, ensuring security, subjects of state protection.

The term of "state protection" is widely used in the current Russian legislation and juridical literature. However, the legislator does not give its definition in general meaning. The only normative definition of state protection is contained in the Federal law No. 57-FZ from May 27, 1996 "On State Protection" [1], and is applied only in it. Named Federal law regulates the safety of only a particular group of objects to be protected by authorized government agencies. Object of state protection are individuals whose safety is in the interest of the state. This category includes the President of the RF, members of his family, a number of persons occupying public offices of the RF and foreign heads of state and government and other persons subject to state protection in accordance with the said Federal Law. In order to ensure the safety of the mentioned objects of state protection, to protected objects were attributed buildings and constructions that hosting the federal bodies of State power and the surrounding territory. Buildings occupied by federal bodies of State protection are also recognized as protected objects.

Article 5 of the Law on State Protection defines as a body authorized to carry out the function of the state protection the Federal Protection Service of the Russian Federation, the provision on which was approved by the Decree of the President of the Russian Federation [3]. To ensure the safety of state protection objects and protection of protected sites within their powers may be involved bodies of Federal Security Service, Internal Affairs, interior troops of the RF MIA, foreign intelligence bodies of the Russian Federation, the Russian Armed Forces and other government agencies of security assurance

Thus, the law enshrines a provision defining the state protection as a function of the Federal Protection Service of the RF to ensure the safety of state protection objects. Authors, using in the titles of their scientific works the term of "state protection" are also talking about the activities of the Federal Protection Service of the RF [6, 8].

Along with this, the legislation of the Russian Federation, still attributes to the objects subject to state protection buildings (premises), structures, facilities, adjacent land and water areas of the federal bodies of legislative and executive power, the legislative (representative) and executive authorities of the subjects of the Russian Federation, other state bodies of the Russian Federation, local self-government bodies, as well as other objects, the list of which has been approved by the Government of the Russian Federation [4]. Initially, the list of such objects included objects subject to state protection that could not be called as "particularly important", for example, cash offices of state enterprises, institutions and organizations. In due time, these provisions were criticized by the author of this article [7] and were subsequently amended.

Another important issue that should be legally resolved, in our opinion, is an uncertainty of the range of entities that perform the functions of state protection. This protection is implemented by various executive bodies. This conclusion can be drawn based even on the analysis of the two main, in our view, subjects of this activity – the Federal Security Service of the RF and the Ministry of Internal Affairs of the RF.

The main tasks for the Russian Federal Protection Service, is to ensure safety of the objects of state protection, which are understood as high-ranking officials of the state; forecasting and revealing of threats to the vital interests of state protection objects, implementation of measures to prevent this threat; prevention, detection and suppression of unlawful encroachments on objects of state protection and protected sites; prevention, detection and suppression of crimes and other offenses in protected sites, in places of permanent and temporary stay of state protection objects and on their travel routes; etc.

In order to fulfill statutory functions the Russian Federal Protection Service provides protected persons personal protection, special communications and transportation, as well as information about the threat to their security. Where necessary for ensuring safety it uses its powers to implement operational-search activities. Conducts guarding activities and the maintenance of public order in places of permanent and temporary stay of state protection objects, provides access mode to the protected sites.

The Russian Ministry of Internal Affairs is of an important role in resolving national objectives for the protection of the vital interests of individuals, society and the state. In its system operate at least three main subjects of state protection, with their tasks to protect important sites, state property, public order and public safety.

Thus, the Russian Interior Ministry troops are involved in the protection of public order, ensuring public safety and state of emergency, escorting prisoners and persons in custody, are involved in the territorial defense of the Russian Federation. They protect important state facilities, and special loads [2], and also assist border authorities of the Federal Security Service in the protection of the state border of the Russian Federation.

A special place among these entities takes the police, which is obliged to protect the facilities and property of owners under contracts, as well as objects that must be compulsorily protected by police in accordance with the list approved by the Government of the Russian Federation; to ensure, in cooperation with the Federal Security Service in the manner prescribed by the Government of the RF, the protection of diplomatic missions, consular institutions and other official representative offices of foreign countries, representative offices of international organizations, if such protection is provided for by international treaties of the RF.

Organization of the activities of these protection entities cannot be considered in detail in public media, since the functioning of facilities, the protection of which they perform, involves state secrets. These facilities merge to categories of “objects of state protection”, “important state facilities”, and “sensitive sites”. Accordingly, entities exercising the considered activity in performing their duties are guided by legal acts of varying degrees of secrecy, and the lists of protected by them specific objects are determined by the Government of the RF.

Recognizing the priority of ensuring security of especially important facilities, we believe that a reliable protection is needed not only for important government and sensitive sites that should be protected by Federal Protection Service of Russia, Russian Interior Ministry Troops and police departments. Also “ordinary” objects

as museums, libraries, archives and other objects that store cultural values, which is state owned, should be protected from unlawful acts. The need for their protection is obvious, it is reflected in the list of objects subject to state protection, approved by the Government of the Russian Federation provision No. 587 from August 14, 1992 "Issues of private detective and security activity" [4]. The above list does not include objects whose protection is under the jurisdiction of the Federal Protection Service of Russia, Interior Ministry Troops of Russia. They are not included in the list of objects subject to mandatory protection by the police [5]. Protection of most of these objects is performed by specialized police service – extra-departmental guards at internal affairs bodies.

Currently, extra-departmental guards play an important role in the field of federal measures on the protection of all forms of ownership. Extra-departmental guards, by participating in ensuring public security, suppressing and preventing offenses on the routes of patrol, by combating theft, make a significant contribution to solving major tasks facing the internal affairs bodies. The introduction of the latest means of the security alarm system has significantly altered the structure and organization of the work of private security that existed previously.

We consider it necessary to define at the legislative level the concept of *state protection*, reflecting its contents; *objects of state protection; range of subjects of state protection* – the list of state bodies authorized to carry out this activity. Moreover, the list of subjects must to be clear and comprehensive, and for objects have to be developed and unified criteria for classification them as subject to state protection. In view of the above, we propose the following concept of state protection. ***State protection –*** *is a based on the law and exercised in the established order activity of the authorized state bodies to protect the vital interests of an individual, society and the state from criminal and other unlawful acts.*

Based on the above, we offer to develop and adopt a federal law "On State Protection in the Russian Federation", which should give a definition of state protection, establish an exhaustive list of entities that perform the functions of state protection, contain the rules of creating the legislative framework on critical areas of protection activity. According to the directions must be adopted the following federal laws "On State Protection of State Power Objects", "On State Protection of Critical Infrastructure", "On State Protection of High-risk Facilities", "On State Protection of Defense Facilities". In this case, the departmental regulation of considered relations should be reduced to a minimum.

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Stas' E. P.

ABOUT SOME PROBLEMS OF STATE AND LEGAL IMPACT ON THE SPHERE OF INSURANCE OF ENTREPRENEURIAL RISKS (THE CASE OF UKRAINE)

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Substantiates the necessity of state management in the sphere of insurance of entrepreneurial risks, aimed at stimulating the parties of business relationships – the genesis of entrepreneurial relations, as well as ensuring the balance between private and public interests in this area. Here are analyzed the conditions of manifestation of insurable interest in business and other economic activities: existence of a real commercial risk, which consists in having place actual economic and legal uncertainty in respect of the results and the prospects for a certain type of entrepreneurial activity. Are considered some issues of the insurance sphere related to entry of Ukraine to the WTO.

Keywords: insurance of entrepreneurial risks, State and legal impact on the insurance market, insurable interest, offences in the field of insurance.

Insurance as a form of economic relations is intended to protect the holders of property interests from the adverse events of personal, financial or another nature, performing, among other things, the role of the most important instrument for promoting entrepreneurial activity. Because, being at risk, entrepreneurial activity objectively needs compensatory mechanisms reducing the risking to the level of normal business planning and investment forecasting. That is exactly why the creation of conditions for the spread of business risks insurance should

be the necessary direction of state economic policy and of the legal measures that ensure it.

Addressing these issues is relevant to all countries of the former USSR, including Ukraine. Here is important to focus on attracting investment and increasing the profitability of business activity in the territory of countries that transform their economy to a path of market economy, not saying about the fact that attraction of financial resources in the form of insurance premiums from insurance companies leads to the formation of insurance funds, which are used for investment in the economy and expanding of its potential, works as a major contribution to fiscal revenues.

As correctly noted in the literature, due to the specifics of market relations business risk insurance becomes a means of protecting businessmen from adverse changes in economic conjuncture. In this case insurance helps to streamline financial and legal interrelations between various market participants [1, 3]. And therefore a proper ordering of these relations is an important task of a modern state.

The issues of business risks insurance have been discussed in a number of works of jurists, including D. I. Meyer, A. I. Khudyakov, V. Yu. Abramova, D. A. Barykina and others. But these issues were considered by them succinctly, mostly from private-law (civil-law) positions, which do not allow detecting the link between self-regulation and state regulation of this type of insurance.

The aim of this work is to study the basic objectives and tasks that face the government in the formation of state policy in the regulation of insurance of entrepreneurial risks.

According to many scientists, the problem of development of the economy today is based on the fact that business entities of all forms of property are in condition of "total risk conditioned by a conceptually irresponsible course of economic reform, loss of economic management with the transition from a state economy to a mixed one with the market mechanism of its self-organization in conjunction with the state regulation" [2, 133].

In this connection we cannot help but support the opinion of D. D. Samigullin, who notes that insurance "is an important legal guarantee of interests' protection of the insurance relations participants. However, the insurance as a way of accumulation and subsequent use of huge funds in itself is a kind of business activity in financial sector" [3, 185].

Thus, the first and immediate goal of legal regulation of relations on business risks insurance must be promotion of the parties of economic relations to

the conclusion of relevant agreements. This promotion can be done in different ways: through the formation of organizational and legal conditions enabling in a formally simple way quickly and easy in the context of economic burden to conclude insurance contracts by creating a favorable tax regime of insurance, through providing state control over timeliness and proportionality of the implementation of insurance indemnities and so on.

At the same time legal impact on relations of business risks insurance must take into account not only the need for the development of the insurance market in general, but also resolving specific tasks facing the state in this special, but necessary for the economic development insurance industry.

Tasks and objectives of the state-legal regulation of business risks insurance must take into account the real aspirations that set business entities – insurance companies and insured persons – at the provision and receiving services, on the one hand, and the state as the representative of public interest, on the other. Harmonization of these interests in economic regulation is called in the literature as the basis of economic and legal methodology and the main issue that has to be decided in the legal regulation of economic relations [4, 349].

Insurable interest is presented in this context as a main private-law insurance element.

Development of modern society necessarily associates with the genesis of business relations. In turn, the constructive support of the development dynamics requires stimulation those factors of entrepreneurial activities that increase the motivation of entrepreneurs, energize them to innovations, investments, development of market infrastructure. Corresponding motivation and interest of entrepreneurs certainly connected with the desire to secure and protect their assets from loss and other unexpected results of activity, misconducts of others that could prevent the implementation of business plans. Search for the sense of these aspirations certainly comes up against an insurable interest as a prerequisite for insurance.

In the insurance literature has long been recognized that there is no insurance without interest [5, 371].

Due to the limited scope of this work and the lack in Ukraine of a normative definition of the concept of "insurable interest", should be indicated only the individual opinions of scientists on this concept, which affect the particularity of the state authoritative impact on the field of business risks insurance.

The concept of interest in the economic and legal literature in general is debatable. As noted by O. M. Winnick, under the interest should be understood a due to the public nature need to use a specific social boon [6, 3].

There are many opinions in respect of insurable interest, the central one of which can be considered the opinion of Yu. M. Zhuravlev, who under the insurable interest understands "the measure of a material interest in insurance" [7, 130]. In this case, an insurable interest is not a detached from the diversity of economic relations phenomenon. Because, for example, in the absence of insurance companies providing related insurance services, that is, without insurance offer, insurable interest is an abstract, non-legal phenomenon, bordering with wish or hope.

D. O. Barykin notes that the most important conditions for the existence of an insurable interest in insurance of entrepreneur risks include:

- the existence of an insurable interest is associated with a particular person, namely, an entrepreneur;

- insurable interest is related to specific circumstances, in which the employer is, namely, to implementing business activities;

- insurable interest can exist only when in the course of business activities emerges the possibility of occurrence of events that inflict damage to the entrepreneur [1, 6].

We cannot completely agree with this characteristic of insurable interest in insurance of business risks, because it does not account for the variety of business activities as a form of economic activity, as well as just partially reproduces the event in the appropriate interest.

First, business risk can exist not only among entrepreneurs. It arises for a business entity that performs a non-profit economic activity as a major, but resorts to certain activities with signs of business activity. In particular, non-profit organizations may resort to certain revenue transactions, such as lease of personal property, and to that part of activity are applied the provisions relating in general to business activity. Not by chance article 86 of the Civil Code of Ukraine states that non-profit organization (consumer cooperatives, associations of citizens, etc.) and institutions can, along with its main activity, carry out a business activity, unless otherwise is provided by law, and if this activity meets the goal for which they were created and contributes to its achievement. Similar provisions are also enshrined in the tax legislation.

So, it would be more correct to associate insurable interest in business risk insurance not with the identity of an entrepreneur, but an entity carrying out business activities.

Second, insurable interest exists not only when in the course of business activity emerges the possibility of occurrence of events that are harmful to an entrepreneur.

In legal sense it directs to the aspect of an offence and obviously reduces the amount of negative threats faced by an entrepreneur in the exercise of business activities, in particular stock market and inflationary fluctuations, the risk of conclusion of a contract or non-receipt of specific permissions, etc.

In the economic literature, the idea of insurance is completely based on the interest with respect to any real object (or life), and this interest must have money equivalent. Such a material interest makes a person to treat things and health more carefully and attentively, and causes it to look for ways to protect the things or persons close to him from accidental adverse events. The power of the interest depends on how profitable is the material aspect of the subject; if the subject does not have a particular benefit, it does not pose any interest [8, 12-13]. It follows that an insurable interest in the activities of the entrepreneur goes to the achievement of economic performance, what ensures the profitability and prospects of its development. Such an interest has a material nature by definition. At this the risk and the interest in this case coincide as ever. Because, entrepreneurship is a risky activity by definition.

Therefore, a special condition for an insurable interest in business and other economic activities is the presence of a real business risk that lies in the presence of actual economic and legal uncertainty in respect to the results and the prospects for a certain type of entrepreneurial activity.

In turn, this means that an insurable interest in entrepreneurial activity is an objectively inherent in its nature desire to eliminate fluctuations in profitability of business and to prevent unexpected economic losses, on the basis of the nature of business as initiative and risky activity.

At the same time, insurable interest of an entrepreneur decreases with a decrease in the riskiness of any entrepreneurial operations, under certain conditions, can lead to the disappearance of the insurable interest. These findings, among others, must be taken into account in the tax accounting of a company, for preventing sham transactions. In particular, the approach of the legislator to determination regular prices in the Tax Code of Ukraine should be so developed regarding the notion of common insurable interest as a basis for attributing to the cost of production of a particular insurance product. This will serve as the basis for the elimination of fictitious transactions in the insurance market and prevent tax evasion, through linking insurance with the real needs of an economic entity to use insurance services in accordance with normal business practice and comparable business environment.

But the interest of business entities as an orienting point for state incentives does not end there. Economic factors urging entities to apply the insurance

instruments should be taken into account. In particular, state compensation of the part of insurance payments in the priority areas of economy should be recognized positive.

Until 2009, when the resolutions of the Cabinet of Ministers of Ukraine on the procedure for the use of funds provided for in the state budget to reduce the costs of insurance premiums (payments) actually paid by subjects of agrarian market were in force, all interested agricultural producers at the conclusion contracts of insurance of agricultural risks could benefit from the Law of Ukraine No. 1877-IV from 24.06.2004 "On State Support of Agriculture of Ukraine" for further receiving from the state compensation of insurance payment equal to 50% of the insurance rate, but not more than 5%. Besides, the list of risks set forth above was required under article 10.2.1. of the Law of Ukraine "On State Support of Agriculture of Ukraine". Without such incentives is difficult to reckon upon the prevalence of insurance in the agricultural sector.

Among the primary objectives here also should be considered forming of a sustainable mechanism of interrelations between entrepreneurial entities to repay payments in general, and to repay insurance compensations subject to payment, in particular.

Today, non-payments by individual insurance companies are common. The State, in fact, pulled away from these problems. It is no accident the information society is full of tips on how to make an insurance company to pay, appear the informal lists of companies delaying payments, and so on. [9] This is unacceptable.

In particular, in the case of misconduct on the part of insurance companies their clients: enterprises and citizens – non-economic units may apply to the relevant authorities of National Financial Service of Ukraine, or in the case of compulsory insurance of civil-law liability of owners of vehicles – to the Motor Transport Insurance Bureau of Ukraine. Unfortunately, the laws of Ukraine "On Insurance" and "On Financial Services and State Regulation of Financial Services" do not enshrine such an offense as systematic non-payment of insurance indemnity, do not define administrative penalty for the violation. As a result, at the presence of such facts, to unscrupulous insurance companies can be applied sanctions on the basis of general criteria, mainly in the presence of corruption and legal ambiguity, leading to the withdrawal of insurance companies from responsibility. In addition, National Financial Service should conduct appropriate checks of insurance companies, but it is a time delay and additional questions concerning the subjective discretion of the inspectors. The use the decisions of courts on disputes between business entities and insurance companies as a prejudicing fact would be effective.

Therefore, the state represented by National Financial Service should be vested with the right to suspend the license of a relevant insurance company if in court has been proven the fact of repeated late payment of funds on insurance contracts on the part of insurance companies, exact from an insurance company administrative penalty in the amount of 20% from the amount of each late payment confirmed by a court's judgment, enter insurance companies that delay payment of compensations in a special register, which is open to the public access.

Introduction of compulsory types of insurance, which have been mentioned above, corresponds to the objectives of state insurance incentive. In essence, there are applied the means of coercion, but not of incentive for the development of relevant relations, in this case. But it is so say a secondary goal. The main purpose of the relevant regulation: to create the conditions for a stable functioning of the business entities, the risky nature of activity of which can harm the stability of the social and economic relations.

Unfortunately, it is quite difficult to talk about the consistency of relevant provisions of article 7 of the Law of Ukraine "On Insurance". First, goals and criteria for determination compulsory insurance types remained unexplained until the end. At the same time, the motives of the relevant implementation should be based on the general goal of the state regulation of insurance, and provide for a balance between private and public interests in this area.

Additional tasks on the normalization of relations in the field of business risks insurance (for more than the rest of the insurance system) arising from the liberalization of the insurance market after Ukraine accession to WTO. Despite the obvious need to spread freedom in the field of insurance related processes, still, do not have to worsen the state of the national economy.

Ukrainian insurance market since May 16, 2008 – from the moment of assigning Ukraine a full membership in the World Trade Organization (WTO) – is subjected to drastic changes that could change the balance of the whole infrastructure of the Ukraine economy. It can be concluded after summarizing the changes in insurance sphere, which were issued due to Ukraine's accession to the specified organization.

In particular, for a long time – up to April 2011 Ukrainian insurance companies could not enter into reinsurance contracts with Russian insurance and reinsurance companies as well as with companies registered in countries that are not members of the WTO.

According to the Law of Ukraine "On Amendments to the Law "On Insurance" adopted May 31, 2007 and the order of National Financial Service No. 8197

from November 01, 2007, Ukrainian insurers were able to reinsure risks only in companies registered in countries-participants of the WTO.

This is despite the fact that in 2007, Russia ranked 2nd place on reinsurance risks of Ukrainian companies. It accounted for 20% of all reinsured risks of non-residents. Besides, this innovation meant higher insurance prices for business entities, because "depending on a risk portfolio the cost of reinsurance in Russia may be 20-80% lower than in Germany or Italy" [10].

It is gratifying that the Law of Ukraine "On Amendments to the Article 2 of the Law of Ukraine "On Insurance" dated 15.03.2011 has canceled the relevant restriction for countries – not members of the WTO, but the experience of the relevant introduction should be taken into account in the future.

Namely, despite the declared consequences of WTO accession – reducing trade and economic barriers, in fact the opposite is happening. This fact shows that the Western governments, forcing Ukraine such restrictions, actually care about their own monopoly in the insurance market, trying to prevent a more flexible relations with the elements of the economy of regional insurance services.

The second, and not the last, manifestation of the negative consequences for the insurance market of Ukraine in connection with the entry into the WTO is the liberalization of the insurance market, when foreign insurance companies got a chance to provide such services on the territory of Ukraine.

In fact, given that insurance is implemented through the formation of funds of available resources received from insured persons that can work on the state economy, and foreign insurance companies, of course, will not keep these funds in such an unstable country as Ukraine, it turns out that available resources of funds of insurance companies will support the economy of foreign countries.

It should also be noted that in case of an uncontrollable by National Financial Service circumstances of insolvency of foreign insurers in the processes of insolvency will be also drawn domestic insurers.

Thus, today we have to raise the question of the adjustment the provisions of the legislation on insurance, which allow uncontrolled by the state rendering services by non-residents. Including, we need to enter full responsibility for the results of non-resident companies' activities, and not just on the territory of the state-recipient of their insurance services. By additional measure should be recognized the obligation of such companies to keep available resources of insurance funds only in authorized banks of the state-recipient.

Only in this case, it is possible to bring order in rendering insurance services by foreign companies, through eliminating discrimination of domestic insurers,

providing economic security of the state and guarantees of protection the property rights of business entities.

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IMPERFECTION OF CIVIL LEGAL REGULATION OF SEIZURE THE LAND PLOT THAT IS NOT USED OR IMPROPERLY USED IN ACCORDANCE WITH THE INTENDED PURPOSE

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In the article is argued that the lack of adequate state control over land resources condition, the decline of the land, agrochemical, phytosanitary and other services have led to alarming degradation of soil cover, which attributes it to the category of the most important socio-economic and environmental problems that threaten the national security of Russia. It is noted that the civil and land legislation do not provide for forced termination of land ownership without a court decision.

The author suggests a thought that bringing to administrative responsibility for violations in the sphere of land legal relations is a necessary condition for the deprivation of landowners or land users their rights for a land plot.

Presents the experience of solving the problem of non-use agricultural land plots in the legislations of CIS countries.

Keywords: land legislation, land plot, seizure of a land plot, agricultural land transactions, State control over land plots use and protection, administrative responsibility for violation of the land legislation.

In consideration of the critical importance of such an object of civil law as land plot, our legislation proceeds from the target-oriented nature of land use and the need to use it really [13].

Because of the special social significance of agricultural land plots the right to private ownership of them undergoes a number of legal restrictions in the public interest [12]. The amount and composition of such sites are objectively limited by the obvious natural causes, and their use always, one way or another, affects the interests of society as a whole [12].

Justly observes academician I. N. Buzdalov, that main function of the state in land and agrarian relations is "to ensure that every piece of land is in the hands of a skilled, "natural-born" owner. Way to achieve this is an effective, economic, i.e., market regulation of these relations, without violating the rights of property and by adding the market mechanism direct legislative regulation in the issues of environment, sanitation, targeted use of land, etc." [11, 14].

Obligation of land owners and non-owners, on the use of land in accordance with its targeted purpose, is established by article 42 of the Land Code of the Russian Federation.

In accordance with article 44 of the Land Code of the RF ownership to a land plot ceases upon transfer of the owner of the land to other persons, owner's refusing of the ownership to the land, due to forced seizure from the owner of the land in accordance with civil legislation.

According to V. A. Ershov a land plot can be seized from its owner by force [14, 65].

Article 284 of the Civil Code of the RF stipulates that a land plot may be withdrawn from the owner in the cases, when it is purposed for agricultural production or for housing or other kind of construction, but is not used for the corresponding purpose in the course of three years, unless a longer term has been stipulated by the law. Within this period shall not be included the time, which is necessary for the development of the land plot, as well as the time, during which the land plot could not have been put to its purported use because of the natural calamities or of the other circumstances, precluding such use.

Thus, the Civil Code of the RF defines the following terms of forced withdrawal of a land plot:

- a site is designed for agricultural production;
- a land plot is not used for this purpose in the course of three years, with the exception of land reclaiming, failure to use due to certain circumstances precluding such use.

Provisions of article 284 of the Civil Code of the RF, which specificate part 3 of article 35 of the Constitution of the Russian Federation about the possibility of eminent domain, provide for possibility of withdrawing a land for agricultural purposes from its owner, as one of the grounds for termination of the right of property, and do not assume arbitrary seizure of land, but require investigation of the factual circumstances and the proof for the necessity of such a withdrawal.

Given the above, the rules of article 284 of the Civil Code of the RF itself cannot be considered as violating any rights of citizens [6].

In accordance with paragraph 3 of article 6 of the Federal Law No. 101-FL from 24.07.2002 "On Agricultural Land Transactions" [2] a land plot of agricultural lands can be forcibly withdrawn from its owner through the court in the event if the land is used in violation of the land legislation requirements on efficient land use, which resulted in a substantial loss of productivity of agricultural lands or significant environmental degradation. Criteria of significant reduction in the fertility of agricultural lands, and the criteria of significant environmental degradation are determined by the Russian Government (in edition of the Federal Law No. 435-FL from 29.12.2010).

According to the Land Code of the RF, control over protection and use of agricultural lands includes state, municipal, public and production control.

According to paragraph 1 and 2 of the Decree of the Government of the Russian Federation No. 689 from November 15, 2006 state land control is performed by the following authorized agencies:

1. Federal Immovable Property Cadastre Agency and its regional bodies.

2. Federal Service for Supervision in the Sphere of Natural Resource Use and its regional bodies.

3. Federal Veterinary and Phytosanitary Monitoring Service and its regional bodies.

This decree stipulates that called authorities at the state land control interact in a prescribed manner with federal executive bodies and their territorial bodies, with the executive bodies of the constituent entities of the Russian Federation, local self-government bodies, law enforcement agencies, organizations and citizens.

Control functions of these bodies separated so that each of them is responsible only for their areas of supervision. However, the order of interaction and exchange of information between the Rosnedvizhimost' (Federal Immovable Property Cadastre Agency), Rosprirodnadzor (Federal Service for Supervision of Natural Resource Usage) and Rosselkhoznadzor (Federal Veterinary And Phytosanitary

Monitoring Service) is not defined, which adversely affects the conduct of state land control in general.

According to the Decree of the Government of the Russian Federation No. 846 from November 28, 2002 state land monitoring in the Russian Federation is part of the state environmental monitoring. However, the order of interaction between the specially authorized bodies to monitoring of lands is not defined.

It should be noted that there is usually one government body that that is fully responsible for the management of land resources in most countries. Only one control body can be neutral, and impartially and in a balanced manner simultaneously take into account the interests of the state and all parties in interest. Allocation the issues of state land management, keeping of state land cadaster, agricultural regulation and state control over the use and protection of land between many ministries and departments adversely affects the use and protection of land in the country, leads to uncontrolled land degradation, inhibits the transition to the system of environmentally sound land tenure and land use, creates significant obstacles in achieving food security in the country [10, 5].

Thus, one of the causes of the present problem of non-use or improper use of agricultural lands is the lack of proper control and supervising over land use and effective measures to preclude inefficient use.

Non-use of agricultural lands by intended purpose leads to reduction of arable land and is part of the problem of inefficient use of land resources in general.

Currently, the use of land and resource potential of Russia, particularly arable land, is in crisis. With 10% of the productive land in the world, Russia's share in agricultural production is only about 2%. Russian land resources have become to be redistributed; this process looks peacefully in form, but it is aggressive in essence.

The lack of adequate state control over land resources condition, the decline of the land, agrochemical, phytosanitary and other services, extensive nature of economy management have led to alarming degradation of soil cover, which attributes it to the category of the most important socio-economic and environmental problems that threaten the national security of Russia.

According to expert estimates, the total annual crop production shortfall due to the deterioration of the land use is not less than 120 million tons in grain equivalent, or about 350 (and now even more) billion rubles per year [10, 5].

System's analysis of the norms of the Civil Code and Land Code of the RF and the Law "On Agricultural Land Transactions" shows that common in the legal regulation of forced seizure of an agricultural land plot is the fact that neither

the land nor the civil legislation provides for the possibility of forced termination of land ownership without a court decision.

So in one case the Supreme Court of the Republic of Komi gave a ruling that since the contested decree by the head of the Administration of municipal formation "City of Syktyvkar" to terminate the rights to a land plot had been taken in the absence of an appropriate court decision, without prior notification of "N." about elimination the violation of proper land plot use and taking administrative measures, such a decree cannot be recognized lawful [9].

The Law "On Agricultural Land Transactions" introduces an additional, in comparison to the Civil Code of the RF, ground for the termination of the right of ownership to a land plot – the use of a land plot in violation of the land legislation requirements for efficient land use, which has resulted in a substantial reduction in the fertility of agricultural lands or significant deterioration of ecological situation. Criteria of significant reduction in the fertility of agricultural lands, and the criteria of significant environmental degradation are clearly determined by the Decree of the Russian Government No. 612 from 22.07.2011 [4] and No. 736 from 19.07.2012 [5].

With respect to the right of permanent (unlimited) use, the right of lifetime inheritable possession and the right of gratuitous use in article 54 of the Land Code of the RF there is an indication of the fact, that the forced termination of these rights to a land plot in the case of its improper use is carried out on the grounds provided for in paragraph 2 of article 45 of the Land Code of the RF.

Paragraph 2 of article 45 of the Land Code of the RF provides for a list of cases of termination of the right of permanent (unlimited) use of land and the right of lifetime inheritable possession of a land plot.

This list includes not only an indication of the specific types of offenses that can result in termination of the right to a land plot, but contains independent grounds for termination of the right such as: requisition, confiscation of land for state and municipal needs, etc. In this regard, the unreserved applying of this list to determine the grounds for involuntary termination of ownership to an agricultural land plot by the rules of article 284 of the Civil Code of the RF and article 6 of the Law "On Agricultural Land Transactions" is not possible. Moreover, applying the ground provided for by subparagraph "d" of paragraph 2 of article 45 of the Land Code of the RF "Systematic failure to pay land tax", as a ground for involuntary termination of ownership to a land plot, is unacceptable and disproportionate to this tax violation. In this case, should be used procedural measures to collect the amount of tax arrears through the court, and only if tax authorities cannot get

satisfaction from the owner's property it may be possible to seizure the land plot. However, in this case, the ownership of an agricultural land plot must be ceased by a standalone ground – seizure of the debtor's property for its obligations.

According to article 286 of the Civil Code of the RF a state power body or a local self-government body, authorized to take decisions on the withdrawal of land plots on the grounds, stipulated by article 284 of the Civil Code of the RF, as well as the procedure for an obligatory advance warning of the land plot owners on the violations, committed by them, shall be defined by the land legislation [7]. This rule finds its way also in paragraph 6 of article 6 of the Law "On Agricultural Land Transactions", which provides for, that forced withdrawal of a land plot from agricultural lands from its owner on the grounds provided for in this article may be carried out upon the condition of non-removal specified in paragraphs 3 and 4 of this article evidences of improper use of the land plot after the imposition of an administrative penalty.

Today, the responsibility for the use of lands in violation of the rules of article 42 of the Land Code of the RF and the Law "On Agricultural Land Transactions" is enshrined in article 8.8 of the Code on Administrative Offences of the Russian Federation [1]. Committing of an administrative offense of this kind is possible when the right to a land plot is duly completed; there are land title documents that contain information about the date of assignation.

Bringing to administrative responsibility, so, is a necessary condition for the deprivation of a landowner or a land user the right to a land plot. In addition, this person shall be cautioned about the possibility of forced termination of the right to a land plot in the event of failure to eliminate of a land offense.

Legislator establishes different legal regime on the grounds, procedure of forced land seizure, depending on the powers of a person performing the use or non-use of agricultural lands in relation to a land plot (the owner or tenant of land or another user) [8].

It can be stated that the norms of articles 44, 49-51 of the Land Code of the RF determining grounds for termination of the right of ownership to a land plot do not provide for termination of the right of ownership to a land plot as a sanction for a land offense. Rules of article 54 of the Land Code of the RF, which provide for the procedure of forced termination the right of lifetime inheritable possession, the right of permanent (unlimited) use and gratuitous fixed-term use of a plot of land because of its improper use, are aimed at protecting the rights of a land owner and against not owners. Provided for in this norm rules cannot be applied to a land owner.

It should be noted that the lack in the Law "On Agricultural Land Transactions" of mechanism of forced land plot seizure, which used to be criticized earlier, has been corrected by the legislator. Federal law No. 435-FL from 29.12.2010 [3] introduced paragraphs containing such a mechanism to article 6 of the mentioned law. With all the positivity of the Law, in our view, there are some negative points, which we shall discuss below.

Paragraphs 4-11 of the article establish, that the land plot from agricultural lands can be forcibly withdrawn from its owner in court, if for three or more consecutive years from the date of the owner's right of ownership to the land plot it has not been used for agricultural production, or performing other activity related to agricultural production. Signs of non-use of lands in accordance with the features of agricultural production, or performance other activities related to agricultural production in the subjects of the Russian Federation are determined by the Russian Federation Government.

In the period specified in paragraph 4 of this article shall not be included the period, during which the land could not be used as intended due to natural disasters or due to other circumstances precluding such use, as well as the period of land development. Term of development a land plot from agricultural land cannot be more than two years.

In the case of failure to eliminate the offenses mentioned in paragraphs 3 and 4 of this article, within the period prescribed by a warning issued simultaneously with the imposition of an administrative penalty, authorized executive body of state power to implement the State Land Supervision, which has issued the warning, sends the materials on this case to the body of executive power of the subject of the Russian Federation.

Executive authority of a subject of the Russian Federation by the results of the review of materials specified in paragraph 7 of this article, may apply to the court for the seizure of a land plot and selling it at a public auction due to its improper use under one of the grounds provided for in paragraphs 3 and 4 of this article.

Within six months from the date of entry into legal force of the court's judgment to withdraw a land plot and sale it at public auction due to its inappropriate use under one of the grounds provided for in paragraphs 3 and 4 of this article, an executive authority of the subject of the Russian Federation with respect to such land plot ensures, if necessary, conducting of cadastral works and holds public auction for selling it in accordance with the civil legislation.

If a public auction for the sale of a land plot are declared void, such land can

be purchased to state or municipal ownership at the initial price of the auction, within two months from the date of recognizing of trades as failed

The proceeds from the sale of a land plot at public auction or purchase a land plot to the state or municipal property are paid to the former owner of the land, less expenses of preparing and holding the public auction.

While the systemic analysis of this norm of the law may be concluded that at present there is still a gap in the legal regulation of the procedure of the forced termination of ownership to agricultural land plots.

In this context, the experience of solution to the problem of non-use agricultural land plots in the legislation of CIS countries is of interest.

Code of the Republic of Belarus on Land No. 226-Z from January 04, 1999 contains a separate article 52, which defines the grounds and procedure for forced termination of the right of ownership to a land plot. According to paragraph 2 of article 52 of the Code of the Republic of Belarus on Land forced seizure of land plots owned by individuals and legal entities is exercised by the decision of court in the cases:

1) systematic non-payment of land tax within deadlines

2) when using a land plot not for the intended purpose

3) when not using a land plot intended for private farming for its intended purpose within one year, and within two years – in other cases

4) when fail to fulfill the requirements of environmental protection regime of land use

5) when using a land plot in ways which lead to a decrease in soil fertility, soil chemical and radioactive pollution, environmental degradation

6) upon termination by legal entities their activities, for which a land plot was acquired in the property.

The decision on forced withdrawal a land plot for violation of land legislation is made based on the evidence of the fact that after receiving a written warning from the authorized person a land plot owner within the prescribed period has not taken steps to eliminate the violations.

Under Kazakh legislation, in accordance with article 92 of the Land Code of the Republic of Kazakhstan, in the cases, where a land plot intended for agricultural production or housing or other construction is not used for appropriate purposes for two years (unless a longer period is provided for by the laws of the Republic of Kazakhstan), such land is subject to forced withdrawal from the owner and the land user. This period does not include the time required for the development of such land and the time during which a given plot could not be used for its intended

purpose due to natural disasters or due to other circumstances precluding such use. Conditions and terms of the development of land plots are determined in the order defined by the Government of the Republic of Kazakhstan.

As seen Kazakh and Belarusian legislation provides for an abridged in comparison to Russian law time terms of non-use a land plot for intended purposes.

This position deserves support for the following reasons.

A key principle of the land legislation, enshrined by article 1 of the Land Code of the RF, is the principle of priority of protection of land as the most important component of the environment and the mean of production in agriculture and forestry to the use of land as real estate, under which the possession, use and disposal of land is implemented by a land owner freely, if it is not detrimental to environment.

In some regions of the Russian Federation and especially in the Krasnodar territory we have a situation where agricultural lands become the property of persons, who do not use these lands for agricultural production. These persons, acquiring land plots, hold them for resale, expecting a rise in prices, or for subsequent transfer to the settlement land for construction.

It seems that in order to prevent the reduction of the area of agricultural land, its use not in accordance with the intended purpose, it would be appropriate to establish in article 284 of the Civil Code of the RF, as well as in article 6 of the Law “On Agricultural Land Transactions” the reduced period of non-use a land plot intended for agricultural production, which is necessary for termination of ownership right, in comparison with land designated for housing or other construction, through reducing this period from three or more years to two years. Here also should be changed paragraphs 4 and 5 of this article of the Law, through removing of them reference to the fact that the period of development of a land plot is included in the term during which the land can be forcibly withdrawn from the owner, if it is not used for agricultural production or performing other related to agricultural production activities. Otherwise it means that the inception of the forced withdrawal may be delayed up to five years or more.

In our opinion, to the rules of article 284 of the Civil Code and article 6 of the Law “On Agricultural Land Transactions” it is also necessary to add the norms governing the procedure of the forced termination of ownership to agricultural land plots.

These rules must comply with the following essential requirements:

First, it is necessary to specify rules for the sale of a land plot by auction. According to paragraph 2 of article 286 of the Civil Code of the RF, an authorized body

applies to the court for the sale of seized land. The norms on the termination of the right of ownership to land plots belonging to individuals on the right of permanent (unlimited) use and lifetime inheritable possession (article 45 of the Land Code of the RF) provide for termination of the right of ownership on the basis of a court decision. Paragraph 3 of article 45 of the Land Code of the RF provides for that the decision to terminate the rights of ownership to land plots in cases provided for in paragraph 2 of this article is taken by court in accordance with article 54 of the Land Code of the RF. At the same time, the norms of article 286 of the Civil Code of the RF talk not about the termination of the right of ownership on the basis of a court decision, but about the possible adoption of a court decision on the sale a land plot by auction. Thus, the right of ownership of a land plot will cease from the date of occurrence of such right of the successful bidder. Paragraph 9 of article 6 of the Law "On Agricultural Land Transactions" stipulates that, within six months from the date of entry into legal force of the court decision to withdraw and sale a land plot at public auction due to its inappropriate use an executive body of a subject of the Russian Federation in respect of such land plot ensures, when needed, conducting of cadastral works and holds public auction to sell it in accordance with civil legislation. Article 448 of the Civil Code of the RF establishes organizations and procedure of an auction, but the legislator does not provide for the grounds on which the auction may be declared as void. We believe that such grounds should be prescribed.

Not excluded cases where, for whatever reasons, the auction may not take place and a land plot cannot be realized at auction. In such situations paragraph 10 of article 6 of the Law "On Agricultural Land Transactions" establishes the rule that such land plot may be acquired to state or municipal property. The term of "may be", in our opinion, is not comprehensive, since it is not clear about the fate of a plot at a situation where neither the state nor a municipal formation wants to exercise their right. We believe that it is appropriate to include in the paragraph of the Law and article 286 of the Civil Code of the RF the rule that such land plot must be purchased by the state or a municipal formation.

In this connection, is proposed to add to norms of article 286 of the Civil Code of the RF the rules on determining the redemption price of a land plot, seized on the grounds stipulated by article 284 and 285 of the Civil Code of the RF. These rules must provide for that in the case when bidding for the sale of a seized land plot has failed three times within six months, then in relation to the said articles of the Civil Code of the RF, as well as to article 6 of the Law "On Agricultural Land transactions" in the price of the land plot should be included its market value and

the market value of the immovable property located on the plot, minus any losses caused by the owner to the seized land plot.

At the withdrawal of an agricultural land plot under the rules of article 286 of the Civil Code of the RF shall not apply norms of article 80 of the Land Code of the RF, which provides for forming the fund of redistribution of land through land plots from agricultural lands coming to the fund at forced withdrawal of a land plot. In combination with article 44 the Land Code of the RF and article 6 of the Law "On Agricultural Land Transactions" the norms of article 80 the Land Code of the RF would mean that the land plot as a result of withdrawal is not put up for auction, and immediately transferred to the land redistribution fund, that is contrary to article 286 of the Civil Code of the RF.

Second, these norms of the law should include rules governing the content of a document – warning of an agricultural land owner about forthcoming withdrawal of the land plot.

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TO THE QUESTION OF PUBLIC-LAW DISPUTES (ADMINISTRATIVE AND LAW ASPECT)

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In the article are examined signs public-law disputes, their difference from administrative cases considered before the court. Here is proposed to separate, through combining by a single term "public court proceedings", independent court proceedings: "administrative cases considered in a judicial procedure" (cases of bringing to administrative responsibility) and "public-law disputes" (for example, disputes about the legality of administrative acts or disputes about the appeal of a decision on bringing to administrative responsibility).

Keywords: public-law dispute; cases arising from administrative and legal relations; executive body.

For a long time the science had not been recognizing the category of public-law disputes, as the very possibility of their existence was not accepted. Meanwhile, all the disagreements, which make entities to apply to court, become disputes, because prior to the court these disagreements have not been resolved. Whether it is a civil law dispute on the division of property, on the ownership of a land plot, or labor dispute for reinstatement of employment – all these unresolved disagreements, when reference to the court, acquire the status of a legal dispute. Depending on the type each dispute has its own name. So, along with civil-law, family, labor, housing, land and other disputes that are covered by the term "private-law disputes", there

is a special category of public-law disputes, the presence of which takes place in the resolution of disputes arising from public legal relations. The last category of disputes is recognized not only by scientists, but also by jurisprudence in 2003.

N. G. Salishcheva, N. Yu. Hamaneva identify the following features of public-law disputes: easier access to justice (reduced terms, features of procedure of preparing a case for court proceedings); assistance for a citizen in the preparation of a petition to court; determination of the active role of court; assigning burden of proof on a public authority; ensuring a fair resolution of a dispute and operational execution of a judgment.

This raises the question of the correlation between the concepts of "administrative case", "public-law dispute" and "administrative-law dispute". It must be said that legal scholars give a different meaning to the term "administrative-law dispute". Generally, administrative-law dispute (broad sense) is considered as a dispute between the parties of managerial legal relations that promotes the identification of administrative cases in executive bodies and administrative cases in courts, such as bringing to administrative responsibility by the court.

From these positions, in order to exclude scientific "confusion", in the literature instead a broad understanding of administrative dispute is suggested to use the terms of "administrative case", "administrative-law conflict", thus, distinguish administrative cases and administrative disputes.

Both representatives of the science of administrative law and representatives of the science of civil procedural law determine administrative-law dispute through legal conflict. In the first case by administrative-law dispute understand a special type of administrative legal relations in the presence of the controversies caused by the conflict of interests in the field of public administration. In the second case by administrative court dispute understand a legal conflict arising between the subjects of public-law and other administrative legal relations on the legality of acts, actions and decisions of public authorities in relation to a citizen or another subject of administrative legal relations.

It seems that in this situation it is not entirely correct to use the word "conflict" (juridical conflict), as the term is used to denote an irreconcilable collision, serious disagreements. Under this interpretation of an administrative dispute settled by the court, it appears that it is such a "collision" of an executive body and, for example, a citizen, that it is impossible to resolve it.

Meanwhile, dispute – this is a mutual bickering, verbal contest, in which each party defends its opinion. That is why we believe that a term of "disagreement" is more appropriate for defining this type of dispute. In connection with this

conclusion, the most successful should be recognized the definition of administrative-law dispute proposed by A. B. Zelentsov. He believes that administrative-law dispute is a disagreement between "the subjects of administrative-law relations in respect of variously understood mutual rights and obligations, and (or) the legality of administrative acts arising in connection with the exercising, applying, violation or establishing of legal norms in the field of public administration and resolved within a certain legal procedure". As signs, the scholar has highlighted such signs as subjects of a dispute, the essence of a dispute – disagreement, the subject-matter in a dispute – public rights and obligations of the participants of a disputable administrative-law relation and legality of administrative acts, a certain legal procedure of resolution of disputes. Types of administrative-law disputes dependent on the subject-matter in a dispute: disputes over an objective right (on the legality of an administrative acts) and disputes over legal rights (for example, a dispute on the legality of administrative-law actions). The main sign and feature of an administrative-law dispute is its subject.

Supporting the position of A. B. Zelentsov, we find controversial the restriction of administrative-law disputes only by disagreements in respect of the legality of administrative acts. Such restriction actually narrows the subject of judicial control up to the check of the legality of only administrative acts, while the subject-matter also includes the conclusion of administrative agreements, the check of the legality of administrative-law actions, etc. Moreover, a dispute shall be recognized administrative-law, even if it has property claims, but they arise from administrative-law relations. Thus, a contesting the legality of an administrative act and claim for damages; a dispute on the legality of an administrative act and return of illegally exacted money – are administrative-law disputes.

We note that for administrative justice is typical attributing to its competence administrative-law disputes related to the protection of the rights and legitimate interests of both individuals and legal entities. In other words, administrative justice is a form of considering an administrative-law dispute.

Based on the definition of A. B. Zelentsov in respect to administrative-law dispute and its types, we delimit the concepts of "administrative case" and "administrative-law dispute", besides, the first covers the second. Administrative case is a case considered by an administrative body, including on a complaint on illegality of a decree on bringing to administrative responsibility. In this regard, we agree with the opinion of scientists, who notes that this is a part of managerial activity. However, in this situation, there is no an administrative dispute; and there is only an administrative-law disagreement, which is settled through an administrative

appeal procedure (by superior body or official). And if this administrative case, in procedure of resolving of which are implemented intraorganizational relations of "power-subordination", is resolved in the pretrial order, then an administrative-law dispute does not arise. These disagreements will be resolved before going to court. In other words, administrative-law dispute arises only in case of appeal to the court with a complaint on unlawfulness of management actions (or inaction) of administrative authorities.

Thus, an administrative-law dispute – is a not settled out prior to court disagreement between an individual or legal entity, on the one hand, and an administrative body or person to whom have been given powers of authority, on the other hand, regarding the implementation by the last one of management actions (or inaction), which is transferred to consideration and resolving in court. Resolving of an administrative-law dispute is implemented in court in the event of public-law relations. Features of this procedure are formed on the basis of the subject-matter of an administrative-law dispute, i.e., on the grounds of the nature of the rights and obligations of its parties or the legality of an administrative act. Subject-matter of a dispute must come from the powers of authority of an administrative body or person to who have been delegated such powers. Otherwise is excluded not only the presence of an administrative-law dispute, but accordingly there is also no subject of judicial control.

Administrative-law dispute is not just of a public-law nature, it is one of the forms of public-law disputes. Other types of public-law disputes include disagreements, for example, between an individual and body of legislative power over the contesting of normative legal act or a disagreement between a person and a local self-government body in connection with the appeal of actions of an municipal employee, etc. From these positions we cannot agree with the opinion of the scientists that administrative-law disputes are disputes arising from administrative-law and other public-law relations. Vice Versa, public-law disputes include administrative-law and other types of disputes arising from public-law relations.

It means that there is an administrative-law dispute in the case of judicial consideration of, for example, applications about contesting administrative acts, decisions and actions (inaction) of administrative bodies, implementation of an administrative contract. It turns out, that public-law disputes correlate with administrative-law disputes as a general and particular, and the concept of "administrative-law dispute" is covered by administrative case, which also includes the cases on administrative offenses that are considered by both administrative bodies and courts.

Terminological difference between the words “cases” and “disputes”, which consists in the presence of an unsettled, contentious beginning in the latter term, causes the difference in the concepts of “administrative cases considered before a court” and “public-law disputes”. The content of the first phenomenon covers the second one in the part of administrative disputes. If to present the narrow content of the first phenomenon, it includes court cases on bringing to administrative responsibility by courts. If you examine the content of public-law disputes, it lies in considering applications on contesting administrative acts, decisions and actions (inaction) of public authorities, local self-government bodies, officials, state and municipal employees, persons to whom are given the powers of authority, on compensating damage caused by execution of an unlawful normative legal act. In other words, not all court cases are disputes.

Code of Civil Procedure of the RF does not distinguish independent meaning between administrative cases considered in court and public-law disputes, and covers them with a single term – “cases arising from public-law relations”. Arbitration Procedure Code of the RF occupies almost the same position, calling them cases arising from administrative and other public relations.

Here, slightly digressing from the logic of exposition, we call attention to the fact that in the APC RF, in contrast to the CAO RF and CCP RF, cases on bringing to administrative responsibility are considered in the manner of action proceedings. However, this kind of court proceedings assumes considering and resolving of disputes. Moreover, considering and resolving of disputes is carried out both in the procedure of action proceedings exercised in arbitration courts and in the procedure of action proceedings implemented in the courts of general jurisdiction. In other words, the essence of action proceedings does not depend on the court, which deals with and resolves a dispute. It turns out that, at bringing to administrative responsibility an arbitration court considers not a case on bringing to administrative responsibility, but legally settles an administrative-law dispute on bringing administrative responsibility. In this case the dispute about the guilt of a person brought to administrative responsibility.

Meanwhile, the courts of general jurisdiction, when bringing to administrative responsibility, under the CAO RF consider namely cases (!) on bringing to administrative responsibility in the manner provided for in the CAO RF, but not through the procedure of action proceedings under the norms of the Code of Civil Procedure of the RF. This means that the courts of general jurisdiction, when bringing to administrative responsibility, by virtue of the CAO RF, cannot to consider and resolve disputes on bringing to administrative responsibility. Thus, one and

the same category of cases (cases on bringing to administrative responsibility) is considered and resolved in the courts of general jurisdiction and arbitration courts not only with the peculiarities, the presence of which can be justified, but in general in different procedural proceedings significantly different from each other!

Absolutely clear that this position of the legislator needs to be reviewed and reduced to a common denominator. Cases on bringing to administrative responsibility should be considered in a unified order either in the order of action proceedings or in the order of administrative legal proceedings. But there is a question about what kind of proceedings (action proceedings or administrative ones) must be regarded as the most appropriate to deal with cases of this category. This procedural problem, of course, needs to be studied, but nevertheless we would like to express the author's point of view on this issue, because the procedural problems are closely connected with the substantive features of the resolution of such kind of cases, and sometimes it is exactly the latter ones cause the existence of the first ones. We see three options, two of which are obvious. If we accept that cases of bringing to administrative responsibility are only cases of state coercion, it is necessary to come from the administrative legal proceedings exercised in the manner stipulated by the CAO RF. If we dwell on the fact that cases of bringing to administrative responsibility are administrative-law disputes, the best variant to resolve them is action proceedings.

However, it is possible to offer a third option, the essence of which lies in the legal nature of cases of bringing to administrative responsibility. The essence of this category of cases allows insisting on the recognition them disputes on the guilt of persons brought to administrative responsibility. However, due to the specifics these cases should not be regulated by the rules of action proceedings, as is the case in the Arbitration Procedure Code of the RF. It seems right to consider cases on bringing to administrative responsibility exactly in the order of administrative legal proceedings under the norms of the CAO RF, but by changing these rules in such a way as to reflect in them the features of resolving disputes on the guilt of persons held administratively liable. The fact is that the presence or absence of a dispute should not affect the form of legal proceedings, in which it is considered. Thus, an administrative-law dispute should be solved through administrative legal proceedings, civil-law dispute – through action proceedings, a dispute about the fault of a person subject to criminal responsibility – through criminal legal proceedings. Accordingly, if there is a dispute about the guilt of a person brought to administrative responsibility, then, obviously, it should be considered in the order of administrative legal proceedings.

However, our position requires amendments to the CAO RF, meanwhile, in accordance with the current legislation the cases on bringing by the courts of general jurisdiction to administrative responsibility cannot be recognized as administrative-law disputes. It is administrative cases considered in court, there is government coercion and the term of "case arising out of public relations" is appropriate. Therefore, having highlighted the specificity of administrative legal proceedings (a combination of applying state coercion while bringing to administrative responsibility and resolution of disputes), we find it incorrect to merge into a single entity these essentially different means of protection of rights, freedoms and legitimate interests through exalting the "case" and at the same time ignoring "disputes". Perhaps, it is more correct to separate them by allocating them to independent legal proceedings: "administrative cases considered in court" and "public-law disputes". It is in this situation, these legal proceedings may be well merged by a unified term of "public legal proceedings".

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ADMINISTRATIVE RESPONSIBILITY OF COURT-APPOINTED TRUSTEES

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Administrative responsibility of court-appointed trustees through the prism of specific of their professional activities involving the knowledge of the requirements of normative acts regulating the activities of court-appointed trustees is examined in the article. Attention is given to formal elements of an administrative offense under part 3 of article 14.13 of the Code on Administrative Offences of the RF, bringing to administrative responsibility for which is based on the determination of an offender's violation of specific duties prescribed by the legislation on bankruptcy.

Proposes amendments to the Code on Administrative Offenses of the RF providing for different sets of elements of court-appointed trustees' offences to differentiate the amount of a fine according to the adverse effects that have occurred.

Keywords: administrative responsibility, responsibility of court-appointed trustees, administrative offences of court-appointed trustees, elements of an administrative offence of a court-appointed trustee.

The number of cases of insolvency (bankruptcy) considered by arbitration courts increases annually, with this, the central figure in any bankruptcy procedure is a court-appointed trustee.

The current version of the Federal Law No. 127-FL of October 26, 2002 "On Insolvency (Bankruptcy)" [2] stipulates that a court-appointed trustee is a subject of professional activity and in private practice performs professional activity regulated by this law.

Court-appointed trustee has the right to engage in other types of professional and business activities, upon condition that such activity does not affect the proper performance of the duties specified in the legislation on bankruptcy.

The law attributes mandatory requirements for the candidature of a court-appointed trustee to the possibility of the last to be a member of the self-regulated organization of court-appointed trustees, membership of which is required for it, and the court-appointed trustee may be a member of only one self-regulated organization.

The rights and duties of court-appointed trustees are contained in article 20.3 of the Law "On Bankruptcy". Arbitration insolvency practitioner is obliged, in particular, to take steps to protect the property of a debtor, to analyze the financial condition of the debtor and the results of its financial, economic and investment activities, to keep a register of creditors' claims, to make reasonable and justified expenditures related to the execution of his responsibilities in a bankruptcy case, to perform other functions.

According to paragraph 4 of article 20.3 of the Law "On Bankruptcy" in procedures used in a case on bankruptcy a court-appointed trustee is required to act in good faith and reasonably in the interest of the debtor, creditors and society.

Thus, court-appointed trustee's range of duties as defined by the Law "On Bankruptcy" is quite broad.

Moreover, in every bankruptcy procedure the role of a court-appointed trustee is different; there are its different rights and duties as of a temporary, external, administrative or bankruptcy trustee.

The law establishes that any failure to perform or improper performing the duties assigned to a trustee in accordance with the Law "On Bankruptcy" and federal standards, is a ground for bringing the trustee to responsibility.

So, in considering a particular case on insolvency, a court-appointed trustee for the improper performance of duties may be dismissed by the court of arbitration from the execution of these duties at the request of persons involved in

the bankruptcy case, he may be brought to property responsibility for causing losses to the debtor, creditors and other persons.

In addition, article 14.13 of the Code on Administrative Offences of the RF [1] provides for administrative responsibility for wrongful actions, when going bankrupt.

Meanwhile, a court-appointed trustee is a subject to responsibility only under part 3 of the article – for failure to perform duties prescribed by the legislation on insolvency (bankruptcy) [5].

According to paragraph 10 of part 2 of article 28.3 of the Code on Administrative Offences of the RF the reports on administrative offenses provided for by part 3 of article 14.13 of the Code must be drawn up by authorized officials of the federal executive body exercising control over the activities of self-regulated organizations of court-appointed trustees. These functions are entrusted to the Federal service of State registration, cadaster and cartography (Rosreester) [3].

Cases on administrative offenses, provided for by part 3 of article 14.13 of the CAO RF in accordance with paragraph 3 of article 23.1 of the CAO RF, are considered by the judges of arbitration courts.

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

From the subjective aspect, the offence provided for by paragraph 3 of article 14.13 of the CAO RF is characterized by an act in the form of action or inaction, and is manifested in intentional or reckless failure to comply with the rules applicable in a particular procedure of bankruptcy. Thus it is necessary to proceed from the fact that a court-appointed trustee because of the nature of its profession should know the requirements of normative acts governing the activities of court-appointed trustees, and has to take all possible measures to comply with them.

Since the structure of an administrative offense under part 3 of article 14.13 of the CAO RF is formal, the fact of not performance by a court-appointed trustee its duties, established by the norms of bankruptcy legislation, in any case constitutes an administrative offense [6; 7; 8; 9].

This norm is of blanket nature, what involves the use in each particular case of the appropriate norms of legislation on insolvency (bankruptcy). That is, for the bringing a person to administrative responsibility it is necessary to identify a violation of specific duties prescribed by legislation on bankruptcy.

However, as has already been indicated above, the range of duties of a court-appointed trustee is quite broad, and depends, in particular, on a specific procedure of bankruptcy, so, at the start of bankruptcy proceedings. In accordance with paragraph 1 of article 129 of the Law "On Bankruptcy", from the date of approval of a bankruptcy manager prior to the date of termination of bankruptcy proceedings, or conclusion of voluntary arrangement, or removal of the bankruptcy manager he shall exercise the powers of the head of the debtor and other management bodies of the debtor and the owner of debtor's property – unitary enterprise property. Article 94 of the Law "On Bankruptcy" also provides for, that from the date of introduction of external control the powers of the debtor's head terminates, disposal of business affairs of the debtor is assigned to an external manager.

In view of the above, attention should be drawn to the sanction of the examined norm. As a punishment, it provides for an administrative penalty in minimum and maximum limits, which should allow imposing punishment according to the nature of an administrative offense, property and financial situation of the offender and other circumstances stipulated by law. So, for violation of bankruptcy legislation there is provided a fine in the amount of from 2,500 rubles to 5000 rubles.

Meanwhile, if we consider the maximum penalty, it is 6 times less than the monthly fixed salary of temporary or bankruptcy manager.

In accordance with paragraph 3 of article 20.6 of the Law "On Bankruptcy" the remuneration, paid to a court-appointed trustee in a case on bankruptcy, consists of a fixed amount and the amount of interest. The fixed amount of such remuneration is for: temporary manager – thirty thousand rubles a month; administrative manager – fifteen thousand rubles a month; external manager – forty-five thousand rubles a month; bankruptcy manager – thirty thousand rubles a month.

Arbitration court considering a bankruptcy case, based on the decision of the creditors meeting or the reasoned request of the persons participating in the case on bankruptcy, has the right to increase the size of a fixed amount of remuneration paid to a court-appointed trustee, depending on the scope and complexity of its work.

Amount of interest on court-appointed trustee remuneration depends on the balance sheet assets of the debtor and often amounts to hundreds of thousands of rubles.

Thus, the amount of the fine, even at its maximum size is not critical to a court-appointed trustee.

Analysis of judicial practice allows concluding that for one and the same violation there are applied different types of punishment, and sometimes in a manner

prescribed by article 2.9 of the CAO RF a court-appointed trustee shall be exempt from administrative responsibility in connection with the insignificance of an administrative offense.

The reason for this is seen, above all, in blanket nature of the norm. Of course, by itself the blanket nature of the norm does not indicate it's unconstitutionality, because, as pointed out by the Constitutional Court of the Russian Federation in the Ruling No.122-R from 21.04.2005, regulatory standards that establish certain rules of conduct not necessarily should be in the same normative-legal act, in which are contained the norms establishing legal responsibility for their infringement [4]. However, specifying a particular offense and determination of an appropriate punishment would promote to uniformity of judicial practice.

In addition to a fine the sanction of part 3 of Article 14.13 of the CAO RF provides for punishment for court-appointed trustee in the form of a disqualification for a period from six months to three years.

In accordance with part 1 of article 11.3 of the CAO RF disqualification shall consist of depriving a natural person of the right to be engaged in business on management of a legal entity, as well as to be engaged in management of a legal entity in other cases provided by the laws of the Russian Federation.

It is obvious that disqualification is an enough severe punishment. Taking into account the exclusiveness of the called measure, as well as the inadmissibility of the actual employment ban, what has been repeatedly pointed out by higher court instances, this type of punishment is rarely used.

Thus, the analysis of article 14.13 of the CAO RF and the practice of its application leads to the conclusion, that in this version the article does not always allow to resolve the tasks assigned to administrative and tort legislation.

In accordance with article 1.2 of the CAO RF the tasks of administrative-tort legislation are, in particular, not only the safety and protection of the economic interests of society and the state from administrative offenses, but also prevention of administrative offenses, which is consistent with the general objectives of proceedings in courts of arbitration that are defined in article 2 of the Arbitration Procedural Code of the Russian Federation.

Therefore, it seems appropriate to amend the Code on Administrative offences of the RF, through introducing different offences in order to increase and differentiate the amount of fine depending on the consequences, in particular, depending on the infliction of property damage to a debtor and creditors. In addition, it would be appropriate to provide for that the court-appointed trustee's

repeated violation of legislation on bankruptcy within one year is a ground for disqualification of the trustee.

Such amendments would make bankruptcy procedures more efficient, and would contribute the protection of rights of creditors and a debtor.

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