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ADMINISTRATIVE RESPONSIBILITY THROUGH THE PRISM OF PHILOSOPHICALLY-LEGAL VIEWS

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Subjected to a critical understanding retrospective and perspective approach to the determination of administrative responsibility, bringing to administrative responsibility of legal entities, normatively enshrined objectives of administrative penalties.

Key words: administrative responsibility, retrospective responsibility, responsibility of legal entities, signs of administrative responsibility.

More than forty years ago, Professor I. A. Galagan in the introduction to his fundamental work "Administrative Responsibility in the USSR (State and Substantive Research)" noted that successes in the study of problems of administrative responsibility "does not reduce its relevance and does not exclude the need to further study of the called institute. The task is, on the base of theoretical generalization of achieved knowledge, to move to the further their development, analysis of not yet investigated, controversial or poorly developed issues" [7, 3].

Moreover, I. A. Galagan himself rightly pointed out that administrative responsibility as a specific phenomenon has all the signs of a general concept of legal responsibility. However, in administrative law, they are filled with specific administrative content. This applies to the grounds of occurrence administrative responsibility, its measures and procedures of application.

Taking into account the specific and common to all other types of legal responsibility signs, I. A. Galagan suggested the following definition: "By administrative responsibility should be understood application in the prescribed manner by the authorized agencies and officials administrative penalties, set forth in the sanctions of administrative and legal norms, to persons who are guilty of committing administrative offences, which contain state and public condemnation, animadversion of their identity and wrongful deed manifesting in negative for them consequences, which they must exercise, and aimed at the goals of their punishment, improvement and re-education, as well as the protection of public relations in field of the Soviet state administration" [7, 40-41].

Having replaced the phrase "Soviet state administration" to "Russian state administration" I am involuntarily convinced that the meaning of the I. A. Galagan work has not lost its significance even today.

However, the problematics of administrative responsibility is such that it was, it is and it will always remain relevant. That is why administrative responsibility, recognized by almost everyone as the major and simultaneously the most common type of legal responsibility due to the variety and massive scale of administrative torts, continues to attract researchers seeking answers to the question about its concept and content. This is not accidental, since there was no and still there is no the legally enshrined (normative) concept of "administrative responsibility", however, as well as the concept of "legal responsibility".

In this regard, in scientific and educational literature administrative responsibility is defined differently.

I. V. Maksimov and G. A. Shevchuk confine themselves to pointing out that "administrative responsibility is a type of legal responsibility and at the same time a type of administrative coercion. As an independent type of legal responsibility, it has its own special signs.

Firstly, the ground for bringing to it is a committing of an administrative offence.

Secondly, its application lies in imposing and executing of administrative penalties.

Thirdly, bringing to administrative responsibility is carried out in a specific order, which is characterized by efficient response" [3, 256].

Around the same approach is suggested by B. V. Rossinsky, who believes that "administrative responsibility is a type of legal responsibility, which is expressed in the imposing by a body or official, empowered with appropriate powers, an administrative penalty on a person who has committed an administrative offense" [4, 603].

Administrative responsibility has characteristics common to legal responsibility in general. However, it also possesses the specific features that are unique only to this type of legal responsibility:

1) administrative responsibility in most cases is an out-of-court responsibility;

2) administrative penalties are imposed by officials on the offenders, who are not subordinate to them;

3) administrative penalties are generally less severe than criminal penalties;

4) application of administrative responsibility does not result in a criminal record of an offender;

5) subjects to administrative responsibility can be not only individuals, but also legal entities;

6) administrative responsibility is established both by the CAO RF and by the adopted in accordance with it laws on administrative offences of the constituent entities of the Russian Federation [4, 603-604].

N. M. Konin notes that "administrative responsibility" is a provided by the legislation legal responsibility for an administrative offense, related to the application of administrative penalties (sanctions). As the main form and the most common type of administrative coercion it has its own purposes and a definite mission in the general system of legal responsibility" [6, 183].

According to D. N. Bakhrakh "under administrative responsibility is understood the application and exercising of administrative penalties for administrative offences by the subjects of functional authority, on the basis and in the manner prescribed by administrative law" [5, 24].

Similar approaches suggest many other authors revealing the content of administrative responsibility, primarily through the characteristic of its inherent features.

As for the position of the legislator regarding administrative responsibility, it can be seen from the analysis of the CAO RF [2], which is for some strange reason called not as Administrative and Tort Code or Administrative Responsibility Code, but as the Code on Administrative Offences, although the area of public relations governed by the Code is much wider than its name.

So, in the CAO RF are enshrined the following signs administrative responsibility.

First, chapter II of the CAO RF, called "Administrative offense and administrative responsibility", allows to judge about that the legislator associates incurrence of administrative responsibility with the fact of committing an administrative offense.

Second, normative-legal regulation of responsibility for administrative offence is a two-level (part 1 of article 1.1 of the CAO RF) with the underlining of the supremacy and priority of the CAO RF over the adopted in accordance with it laws on administrative offences of the constituent entities of the Russian Federation (article 1.3 of the CAO RF).

Third, the subjects of administrative responsibility may be both individuals and legal entities (article 2.1 of the CAO RF), which meet the requirements of articles 2.3-2.6.1, 2.10 of the CAO RF.

Fourth, administrative responsibility is expressed in the application of administrative penalty, which is an established by the State measure of the responsibility for committing an administrative offence (part 1 of article 3.1 of the CAO RF).

Fifth, although the legislator does not explicitly call the goals of administrative responsibility, they are actually defined through the goals of application administrative penalty, namely the prevention of further offences both by an offender and other persons (part 1 of article 3.1 of the CAO RF). In this, an administrative penalty and, therefore, administrative responsibility, cannot have as its aim the humiliation of human dignity of a natural person who has committed an administrative offense, or the infliction of physical pain, as well as the infliction of harm to the business reputation of a legal entity (part 2 of article 3.1 of the CAO RF) .

Sixth, the proceedings on cases on administrative offences regulated by the provisions of section IV of the CAO RF, and within which is implemented the application of administrative responsibility, provides for a combination of judicial and non-judicial procedure of considering cases on administrative offences in accordance with the laid down in section III of the CAO RF jurisdiction of cases on administrative offences and established competence of judges, officials authorized to consider such cases.

However, some enshrined in the CAO RF signs of administrative responsibility cause disagreement of a number of scientists, both on principle and content of their legal regulation. Primarily, this refers to the distribution of administrative responsibility on legal persons.

The emergence of the institute of legal person's administrative liability Professor V. D. Sorokin explained as follows. Under conditions when it was necessary to define the type of responsibility of legal persons in case of violation by them the legislation, the legislator could reason, and, most of all, reasoned as follows.

Criminal liability is initially designed exclusively for individuals and for reasons of principle cannot be applied to legal persons. I stress that this is a "classic

criminal liability", which provides for as a criminal penalty deprivation of liberty, which of course can be applied only to natural persons. In modern version of the Criminal Code, appeared an alternative in the form of a fine. Thus, emerged a "market-based criminal responsibility", which allows rich citizens to break the law as severely as much money they have, and thus enables them to breach the criminal law without actual undergoing the negative consequences, the occurrence of which involves criminal prosecution. If V. I. Lenin declared: "Earth to peasants, factories to workers", the Russian legislators surpassed the leader of the world proletariat by enshrining in the Criminal Code of the RF the slogan "prisons to poor". I do not take into account the rare exceptions, such as the case of the president of the board in Company "YUKOS-Moscow" M. B. Khodorkovsky.

Inclusion of a fine in the list of criminal penalties allowed a number of authors to put and not without some reasons the question of extending the institute of criminal responsibility for legal entities [13]. Although it is not clear for me, how criminal responsibility, associated with the imposition of a criminal punishment in the form of a fine for a legal entity, will be different from the administrative responsibility of a legal person, who was sentenced to an administrative fine, especially if in one and in another case, the decision is made by a judge, i.e., in court. In addition it is difficult to imagine what could mean the concept "criminal record of a legal person" and "legal person with a criminal record". What is the practical sense of the criminal liability of legal entities, when today it is quite simple to eliminate it and to register under a different name? And then, what is the essential difference between the criminal and administrative responsibility except, of course, criminal record?

Another argument in favor of the establishment administrative liability of legal entities may be the fact that the process of bringing to administrative responsibility is far less cumbersome, and many times quicker than the procedure of civil-law responsibility.

Thus, according to Professor V. D. Sorokin, distribution of administrative responsibility to legal entities was a rather forced than reasoned decision of the legislator, who, however, either in past or now, have not been able to decide on the manner in which legally correct to define the guilt of a legal entity. Let me recall that Professor V. D. Sorokin, who has not accepted the institute of administrative responsibility of legal entities, believed this decision wrong and destroying the integrity of the institute of administrative responsibility.

Today, however, administrative responsibility of legal entities is a prescription, which should be accepted by executor of law.

Continuing to analyze the features which theorists of administrative law give to administrative responsibility, can be also underlined such ones, which, although not enshrined in the CAO RF, but immanently inherent to it.

Surprisingly, but legislator does not focus his attention on the fact that the purpose of an administrative penalty, and therefore administrative responsibility, should lie, above all, in the legal assessment of the already committed deed, the gist of which is that the administrative punitive measure is aimed at ensuring of that the offender would compulsorily undergo certain negative consequences for his offence, encouraging him not to commit an administrative offense in future.

Hardly anyone will dispute that bringing to administrative responsibility by imposing on a natural or legal person an administrative penalty, first of all means a State's response to the guilty committed tort, which stipulates infliction to such a person any inconvenience of material, physical, and moral nature. So I cannot agree with the officially enshrined in the CAO RF position of the legislator, according to which the only purpose of application of an administrative punishment, and, consequently, administrative responsibility, is a private and general prevention of administrative offenses.

Can it be true, that according to the legislator, the purpose for the imposing of an administrative penalty is not the past, but future behavior, not a negative responsibility, but the formation of what has been called a positive responsibility? I think, that not the future conduct and deeds of a natural person, not the future deeds of a legal entity, not prevention of administrative torts should be enshrined as the main purpose of administrative responsibility, which is applied just according to the fact of an administrative offense. Let us remember that Hegel argued that man is only responsible for his actions, not beliefs [8, 144-145], not for the future hypothetically possible deeds. The same idea was also professed by K. Marks, who said, "Apart from my actions, I do not exist for the law, I'm absolutely not its object... Laws that make the main criterion not actions as such, but the way of thinking of a person, are nothing more or less than positive sanctions of lawlessness" [17, 14].

Proceeding from the fact that administrative responsibility is considered as one of the types of legal responsibility, representatives of the science of administrative law cannot stay away in a sharp discussion ongoing between supporters of the retrospective (negative) and perspective (positive) approach to the content of legal responsibility.

First ones traditionally noted that "legal responsibility since its appearing has always been the responsibility for the past, for a committed unlawful act. Otherwise, you can come to the unacceptable conclusion that the person, who has not

committed a crime, is already criminally responsible" [24, 43]. The content of any tort is not an alleged, but has already been manifested in a particular action deviant behavior [10, 286-331]. I stress the fact, that with due account for the recent totalitarian past of our country, in the Constitution of the RF is enshrined a provision stating that "no one can be forced to giving up their beliefs" [1, 29].

The second ones assert, that "responsibility covers not only the relations arising from the presence of the grounds for it, but also before that, in the process of the very implementation the obligation to bear responsibility for the performance of functions of the subject of management" [22, 138]. Positive responsibility they associate with the performance of an obligation, emphasizing that:

- "the provided for by the rule of law obligation of implementation activities useful for society. Implementation of legal responsibility, on the merits, it is always an exercise of legal obligations" [20, 29];

- "the beginning of a positive legal responsibility equally accompanies the category of labor discipline as an obligation to work conscientiously in a chosen field of socially useful activities, and perhaps, increasingly merges with it" [23, 31];

- "positive responsibility implies a "steady and honest performance of duties by the person to whom these duties have been assigned by law" [25, 75].

Proceeding from the fact, that "responsible behavior – it is such a behavior that is characterized by a deep awareness of the need to follow the requirements of legal and moral standards, respect for the law and justice, and implies active influence on the course of events, contribution to the common cause and development of society" [19, 43], responsibility "in a positive sense" is proposed to consider as a "responsible attitude to the performance of their job functions, to resolving scientific, industrial, social tasks, to any work that is entrusted personally to a man or a team" [15, 69].

Placing the question "does have the right to exist the division of legal responsibility to retrospective and prospective one?" some authors rather cautiously reply: "From a certain point of view – yes it does, because in a certain way it reflects the actual legal reality. However, legal responsibility in a special legal sense can only be called responsibility for the wrongful acts" [16, 407].

Much more categorical V. M. Baranov, who believes that "to talk about positive legal responsibility is hardly possible. In this case, refers to a kind of "integrated", common social responsibility of lawful behavior of an individual…

In accordance with the concept of "positive" responsibility this responsibility swells to incredible and unnecessary dimensions. Everybody bear responsibility both those who in good faith, voluntarily, consciously perform their duties, and those who commit offences. I think that this is an artificial theoretical construction. This exaggeration of responsibility does not correspond to the nature of the traditional legal institute" [26, 504-505]. A similar position is taken by O. F. Ivanenko, who notes that "legal responsibility can only be understood as the offender's undergoing of these adverse consequences, experiencing on himself the form of public coercion established by the state. Application of the sanction of a legal norm to its offender means to bring him to legal responsibility, to make him to be responsible for committed deed, causing him deprivation of mental or material nature" [12, 4].

Considering administrative responsibility as an especial kind of legal responsibility D. N. Bakhrakh also notes that "the problem of responsibility is inextricably linked to the problem of the freedom of will" [5, 21]. In support of this he cites the assertion of Marxism's classics which has not lost its sense even today, that "a man bears full responsibility for his actions only if he committed them having absolute freedom of will ..." [18, 82]. This view is shared by other authors, arguing that "responsibility is a dictated by the objective conditions, their awareness and subjectively set goal necessity of vigorous activity for the implementation of this goal. Freedom creates responsibility, responsibility directs freedom" [14, 72].

Proceeding from my own understanding of the retrospective and prospective responsibility, I agree with D. N. Bakhrakh that positive responsibility "implies recognition of the need of relevant activity, a sense of responsibility. It can be considered as an internal regulator of conduct that closely merges with the duty, obligation, as responsibility for the future. Negative responsibility is understood as a negative assessment of an offense by colleagues, state and society, as society's response to the violation of its interests and norms, as the imposition of sanctions for violation of social rules" [5, 22].

Original and reasonably interesting approach demonstrates A. A. Yurchin, according to whom from the institutional and practical point of view it would be reasonably to present legal responsibility as the relationship between two subjects, in which one party (the subject of responsibility) having freedom of will and choice, undertakes by virtue of possessing of a certain status to form its conduct in accordance with the expected model, the other party (the instance of responsibility) monitors and evaluates this conduct and (or) its results; in the case of negative evaluation and presence of guilt it has the right to react in

a certain way [27, 8]. But with such an understanding there should be a mutual administrative responsibility, including the responsibility of power subjects of administrative and tort relations to physical and legal persons not endowed with state powers of authority [9, 110-113].

For me, it is also clear that understanding of administrative responsibility today must be formed with taking into account not only the traditional approaches demonstrated by most scholars, but also on the basis of the achievements of other subject areas.

As rightly said Professor V. D. Plesovskikh , "administrative responsibility as a complex theoretical and practical category can be viewed in different aspects: historical, social, economic, financial, legal, organizational, informational, etc. Therefore, its scientific understanding involves several levels:

a) dialectical-ideological;

b) general scientific (interdisciplinary);

c) individually scientific;

d) transitional from cognitive-theoretical to the practical and transformative activity" [21, 54].

V. D. Plesovskikh defines administrative responsibility as "an instrument of the state's domestic and foreign policy, one of the instruments of creating and launching the mechanism of innovative development of the country" [21, 55]. Although I am not quite clear how administrative responsibility relates with the foreign policy of the Russian Federation, and how it will determine the innovative development of Russia, but one thing is certain for me: it is time for new approaches to understanding administrative responsibility.

Among contemporary scholars of administrative responsibility the most constructive I see the position of A. S Dugents, who believes that "administrative responsibility is a complex legal system consisting of separate elements, each of which has both similarities and specific features" [11, 7].

A. S. Dugenets emphasizes that "administrative responsibility is a reflection of the state and society needs in combating the destructive system – administrative delinquency. The latter is defined by manifestation of many social, economic and individual factors, which, however, does not remain unchanged. The dynamism of administrative delinquency, the form of manifestation, content and orientation of illegal deeds influence the choice of the model of administrative responsibility at different periods of Russian society development... Administrative responsibility is a complex socio-legal phenomenon, the study of which allows us to determine the following characteristics:

- is a reflection of the needs of civil society in the protection of socially significant interests from administrative offences;
- is a legal expression of the administrative policy of the state;
- is one of the main means of combating administrative delinquency;
- in terms of content consists of establishing and application the measures of administrative punishment for wrongful deeds;
- is implemented in the form of democratic administrative and jurisdictional procedure" [11, 8-9].

Estimating the given characteristics of administrative responsibility, let me notice, that they are, in my opinion, rather an ideal aggregate, than a reflection of today's reality.

Essentially correct assertion, that administrative responsibility is a reflection of the need of civil society in the protection of socially significant interests from administrative offences, will only be valid when formed the civil society, when it is possible to understand what are its needs, to what extent the included in the CAO RF structures of administrative offences cover the whole range of socially significant interest not only from the position of the state, but also of the civil society.

We have yet to understand, what should mean "the legal expression of the administrative policy of the state", because the essence of the being conducted administrative policy is not always clear. But seems more evident the need of forming administrative and tort policy, as a scientifically-based category, about what repeatedly raises the question Professor A. P. Shergin. However, in this understanding there was no and still there is no an administrative and tort policy

The fact that the closest to me in its content position of A. S. Dugenets raises so many questions shows that administrative responsibility, being a dynamically developing socio-legal phenomenon, long will be in the spotlight of researchers. At least, I cannot say about myself that I can give a throughout satisfactory answer to the question of what is the administrative responsibility.

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GUILT, PRESUMPTION OF INNOCENCE AND IMPUNITY IN THE CODE ON ADMINISTRATIVE OFFENCES OF THE RUSSIAN FEDERATION

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Analyzes the concept of guilt, forms of guilt and statuses of various subjects of legal relations in the Code on Administrative Offences of the RF. The content of the presumption of innocence is disclosed with taking into account the genesis of this principle by analogy with criminal and tax law. In the article is proved the existence of presumption of impunity for special subjects of the Code on Administrative Offences of the RF.

Key words: guilt, form of guilt, presumption of innocence, presumption of impunity, administrative offence, administrative responsibility.

In contrast to the earlier CAO of the RSFSR [2], among the principles of the legislation on administrative offenses provided for in chapter 1 of the CAO RF [3], here is included the principle of presumption of innocence enshrined in article 1.5. of the CAO RF, which consists of four parts.

In part 1 of article 1.5. of the CAO RF is defined, that "a person shall be administratively liable only for the administrative offenses where has been found his fault". This provision is embodied in the concept of an administrative offense, which, in accordance with part 1 of article 2.1. of the CAO RF, is understood as "a wrongful, guilty action (inaction) of a physical or legal person for which by this Code or the laws on administrative offences of the Russian Federation is provided for administrative responsibility."

So, first of all, guilt is a mandatory feature of any administrative offense; secondly, the fault is a mandatory condition for bringing to administrative responsibility of any subject of an administrative offense; thirdly, the guilt of a particular physical person or legal entity must be established with respect to the administrative offenses for which he has been brought to administrative responsibility.

Guilt is a subjective side of an administrative offense and may act in two types – either intent or negligence. An administrative offence shall be deemed willful, when the person who has committed it realized the wrongful nature of his action (omission), could foresee the harmful consequences thereof and wished these consequences, or deliberately permitted them, or treated them indifferently (part 1 of article 2.2. CAO RF). An administrative offence shall be deemed as committed through negligence, when a person who has committed it could foresee the harmful consequences of his action (omission) but self-conceitedly hoped to prevent such consequences, or did not foresee the appearance of such consequences, though he had to and could foresee them (part 2 of article 2.2. CAO RF).

It is quite obvious that designed in article 2.2. of the CAO RF forms of guilt reflect the mental attitude of a person to the committed by him deed and its consequences, so – they can be applied only to an individual and are not applicable in respect of a legal entity neither in theoretical, nor the more in practical aspect.

Simultaneously, part 2 of article 2.1. of the CAO RF contains details from which it follows, that "a legal entity shall be found guilty of an administrative offence, if it is established that it had the opportunity to comply with the rules and norms whose violation is administratively punishable under this Code or under the laws of a subject of the Russian Federation, but this person did not take all the measures that were in its power in order to comply with them". This can be seen as that, that the legislator does not extend the concept of "form of guilt" to legal entities. This means, that at the qualification of administrative offenses committed by legal persons, it is implied to establish guilt as such, regardless of its forms. Thus, the title of article 2.2. of the CAO RF should be amended to "forms of guilt of a natural person", and the term "person" replace by the term "natural person".

In the vast majority of administrative offences form of guilt is not a design feature. However, in some cases, it is a specific form of guilt is the reason to bringing an individual to administrative responsibility.

Only a deliberate form of guilt is provided for as a mandatory design features in nine structures of administrative offenses stipulating administrative responsibility for: destruction or damage of printed materials relating to the election, referendum (article 5.14); destruction or damage of another's property (article 7.17);

distortion of environmental information (article 8.5); deliberate obstruction to traffic, including by pollution of road surface (article 12.33); deliberate bankruptcy (part 2 of article 14.12); failure to meet the demands of a prosecutor resulting from his authority established by federal law, as well as the lawful demands of an investigator, an inquirer or an official carrying out proceedings related to an administrative offence (article 17.7); damaging or removing a stamp (seal), applied by a duly authorized official (article 19.2); damage of the identification card of a citizen (passport) (article 19.16); damage or loss of military registration documents (article 21.7).

With regard to the guilt only in the form of negligence are designed two structures of administrative offenses stipulating administrative responsibility for: damaging heating systems and fuel pipelines (pneumatic pipelines, oxygen pipelines, oil pipelines, oil product pipelines, gas pipelines) by negligence (article 9.10) and violation of the Traffic Regulations by a pedestrian, passenger of a vehicle or by any other road traffic participant (excepting the driver of a vehicle) that has caused by negligence the infliction of minor damage to the health of the victim (part 2 of article 12.30).

Thus, in part 1 of article 1.5. of the CAO RF is actually enshrined the principle of guilt of administrative responsibility subjects. This principle is drafted by analogy with part 1 of article 5 of the Criminal Code of the RF [5], from which it follows that a person shall be brought to criminal responsibility only for those socially dangerous actions (inaction) and socially dangerous consequences in respect of which his guilt has been established.

But, if part 2 of article 5 of the Criminal Code of the RF directly establishes that the objective imputation, i.e., criminal responsibility for innocent causing harm is not allowed, then in the legislation on administrative offenses the same judgment is only implicit. However, indirectly denying in part 1 of article 1.5. of the CAO RF the possibility of bringing any person to administrative responsibility for innocent infliction of harm as a result of an administrative offense, the legislator in part 2 of article 2.1. of the CAO RF forms the features of a legal entity guilt determination in such a way, that actually gives a law enforcer the excuse to bring this person to administrative responsibility for the mere fact of committing an administrative offense, that is, through objective imputation. This conclusion is based on the fact that the content of part 2 of article. 2.1. of the CAO RF may be interpreted as follows: "A legal person is deemed innocent of an administrative offense if it is established that it has not been possible to comply with the rules and regulations, for violation of which under this Code or the laws of a subject of the Russian Federation provides for administrative responsibility, under the condition that this person has

taken all possible measures to comply with them". But since, unlike the rights that may be either absolute or relative responsibilities are always absolute, the lack of opportunities of a person to comply with the rules and norms can be in only one case, namely, at the presence of force majeure. And this in turn means that at the present time, the principle of the presumption of innocence can only be applied to individuals, and does not have an appropriate theoretical framework to apply to legal persons.

In the legislation on administrative offenses the presumption of innocence was firstly enshrined in part 2 of article 1.5. of the CAO RF, from which it follows that "a person who is on trial for an administrative offence shall be regarded innocent until his guilt is proved in the procedure established by this Code and determined by a lawful decision of the judge, body or of the official who has considered the case". Thus, until the entry into legal force of the decision of a competent authority, official about the recognition of a person guilty of an administrative offense materials of a case on administrative offence reflect only the opinion of an authority regarding the guiltiness of the person in respect of whom is being conducted proceedings on an administrative offense.

Expanding the scope of the principle of presumption of innocence by the legislation on administrative offenses is an evidence of legal policy aimed at the real ensuring the priority of rights and freedoms of citizens, the protection of identity.

Initially, the principle of presumption of innocence has been embodied in the criminal law in strict accordance with article 49 of the Constitution of the Russian Federation [1]: "Everyone accused of committing a crime shall be considered innocent until his guilt is proved according to the rules fixed by the federal law and confirmed by the sentence of a court which has come into legal force". In turn, this article actually reproduces article 11 of the Universal Declaration of Human Rights adopted by the UN General Assembly on December 10, 1948: "Everyone accused of committing a crime has the right to be presumed innocent until his guilt is proved by legitimate procedure through open court proceedings at which he must be provided all the guarantees necessary for his defense".

However, the principle of the presumption of innocence became actually to be applied in the field of administrative and tort legislation even before the formal inclusion in the Code on Administrative Offences of the RF. This conclusion is based on the fact that already in 1998, the principle was laid down in part 6 of article 108 of the Tax Code of the Russian Federation [4]: "A person shall be deemed innocent of committing a tax offence until his guilt has been proven in accordance with the procedure which is envisaged by federal law, and established by an entered into

legal force court verdict…".The fact that a tax offense is not a crime, but it is an administrative offense involving the violation of the legislation on taxes and fees, follows from part 3 of article 108 of the Tax Code of the RF, which stipulates that the provided for by the Tax Code of the RF responsibility for a deed committed by an individual, occurs if the deed does not contain signs of corpus delicti provided for by the criminal legislation of the Russian Federation".

In the process of overcoming decodification of administrative and tort legislation, and more precisely since the introduction in action of the Code on Administrative Offences of the RF from July 01, 2002, clause 4 of article 91, article 124 and clause 3 of article 126 of the first part of the Tax Code of the RF have been declared void, and enshrined in them elements of tax offenses were excluded from the Tax Code, and included in chapter 15 of the Code on Administrative Offences – " Administrative Offences Concerning Finance, Taxes and Fees, as Well as Security Market". It is therefore logical, that along with this, to the CAO RF has been enabled the principle of presumption of innocence well-proven in the tax legislation. It is noteworthy that the provisions of parts 2-4 of article 1.5. of the CAO RF on the content side repeat the provisions of part 6 of article 108 of the Tax Code of the RF.

Parts 3 and 4 of article 1.5. of the CAO RF define the legal foundations arising between a subject empowered with state and authoritative powers in the field of administrative and tort relations (judges, bodies and officials authorized to consider cases on administrative offenses) and the person accused of committing an administrative offense, in the process of establishing the guilt of a person being brought to administrative responsibility.

Provision stating that "a person brought to administrative responsibility is not required to prove his/her innocence" (part 3 of article 1.5. of the Code on Administrative Offences of the RF) means that the burden of proof lies with the public authorities, and at the same time, that the subject brought to administrative responsibility is not required to prove his innocence. Commenting on this provision, Professor D. N. Bakhrakh notes, first, that a person brought to administrative responsibility is not obliged to justify himself, to prove his innocence; second, he cannot be compelled to give explanations, to present evidence; third, refusal to participate in proving cannot entail for the person any negative effects [6, 9]. The only thing that should be clarified: it is admissible to compel in terms of conviction, if these actions are carried out in the interests of this person and his legal rights, but the person cannot be forced.

Thus, proving of innocence is not a responsibility of a person called to administrative responsibility. However, in accordance with part 1 of article 25.1 of

the CAO RF, "a person in respect of whom proceeding on a case on an administrative offence is being conducted has the right… to give explanations, submit evidences…" including ones that prove his innocence. Implementation of this right is provided and owing to that under a general rule a case on administrative offence is considered involving the person in respect of whom the proceedings on an administrative offense are conducted. In the absence of the said person the case can be considered only in cases where there is an evidence of proper notice of the place and the time of the case consideration, and if from the person has not been received a request for postponement of the case, or if such a petition has been dismissed (part 2 of article 25.1 of the CAO RF). Along with this, it should be borne in mind that, with due account for the provisions of article 51 of the Constitution of the Russian Federation, there is obvious a person's possibility of refusal from giving explanations.

One of the manifestations of the principle of presumption of innocence is that in accordance with part 4 of article 1.5 of the CAO RF "irremovable doubts in respect of the guilt of a person held administratively responsible shall be interpreted in favor of this person". Doubts are considered irremovable in the case where the evidence collected on the case do not allow to make a clear conclusion about the guilt of a person to a committed administrative offense, for which the person has been brought to administrative responsibility, and herewith legal means of gathering evidence are exhausted.

Thus, the principle of presumption of innocence it is not an impossibility to bring a person to administrative responsibility, but a special procedure to prove the guilt of this person.

Establishment of person's guiltiness is a prerequisite to bring him to administrative responsibility. Absence of guilt of the person brought to administrative responsibility means the absence of subjective aspect of an administrative offense and is a basis for excluding proceedings on a case concerning an administrative offense (clause 2 of article 24.5. of the CAO RF). However, the failure to prove person's guilt is not identical to his innocence, it could mean that the guilt could not be established, including in the case of irremovable doubt interpreted in favor of the person brought to administrative responsibility.

Proceeding from the provisions of part 1 of article 2.1. and part 1 of article 3.1. of the CAO RF, an administrative offense is the only ground of administrative responsibility, and administrative penalty acts as its materialized manifestation. Herewith the ratio between an administrative offense and administrative responsibility cannot be led to the formula "committing of an administrative offence entails

administrative responsibility"; committing of an administrative offence may entail administrative responsibility.

The use in the considered legal design of the concept "person subject to administrative responsibility" is conditioned by enshrining in the legislation of the RF some categories of subjects, which, notwithstanding committed by them administrative offenses are not subject to administrative responsibility.

Firstly, an official, who has committed an administrative offence, only in connection with his failure to discharge his official duties or improper discharge of his official duties, shall be administratively liable (article 2.4. of the CAO RF).

Secondly, Military servicemen and citizens engaged in military refresher training shall bear responsibility for administrative offences in compliance with military disciplinary manuals, and officers of the police, bodies of criminal execution system, State Fire-Fighting Service, bodies for control over the traffic of narcotics and psychotropic substances and customs bodies shall bear responsibility for administrative offences in compliance with the normative legal acts regulating service in said bodies; except commission by them specifically stated in article 2.5. of the CAO RF administrative offences, for the commission of which they are responsible under general conditions.

Thirdly, the issue of the administrative responsibility of a foreign citizen, who is immune from the administrative jurisdiction of the Russian Federation in compliance with the federal laws and international treaties of the Russian Federation and who has committed an administrative offence on the territory of the Russian Federation, shall be resolved in conformity with the rules of international law (article 2.6. of the CAO RF).

Fourthly, deputies, judges and prosecutors are endowed with immunity from administrative responsibility.

Thus, there may be isolated a category of subjects of the administrative offense not subject to administrative responsibility by virtue of the current Russian legislation.

Applicability of the principle of presumption of impunity must be distinguished from the very possibility of bringing a person to administrative responsibility – in the presence of circumstances precluding proceedings concerning an administrative offense (article 24.5. of the CAO RF), including not attainment the age of sixteen years old by the moment of committing an administrative offence (part 1 of article 2.3. of the CAO RF).

Separately the legislator stipulates two possible releases from administrative responsibility:

- person at the age between of sixteen and eighteen years – with application to them the measure of impact provided for by the federal legislation to protect the rights of minors (part 2 of article 2.3. of the CAO RF);
- at insignificance of a committed administrative offense – with the announcement of an oral admonition (article 2.9 of the CAO RF).

All this allows us to formulate the following conclusions.

1. Administrative penalty cannot be imposed on a person who is not subject to administrative responsibility.

2. A person subject to administrative responsibility cannot be subject to an administrative penalty as long as in an established by law procedural order is not proven his guilt of an administrative offense and the decision on the case on an administrative offense has not entered into legal force.

These provisions can be defined as the principle of presumption of impunity.

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INITIATIVE PROJECT OF THE FEDERAL LAW "ON AMENDMENTS TO THE CODE ON ADMINISTRATIVE OFFENCES OF THE RUSSIAN FEDERATION, FEDERAL LAW "ON THE PROCURATORATE OF THE RUSSIAN FEDERATION" AND ARBITRATION PROCEDURAL CODE OF THE RUSSIAN FEDERATION"

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Here are proposed the norms that introduce to administrative and tort legislation administrative responsibility of public civil servants, as well as the procedural norms to the federal legislation which are connected with the peculiarities of the case proceedings on administrative offences of public civil servants. In the project is proposed normative consolidation of time terms for consideration of certain categories of cases arising from public legal relations considered by an arbitration court, as well as other norms of anti-corruption orientation.

Key words: administrative responsibility, administrative offence, bringing civil servants to administrative responsibility, structures of administrative offences of civil servants.

Article 1

Introduce to the Code on Administrative Offences of the Russian Federation (Collection of Laws of the Russian Federation…) the following amendments:

1) part 1 of article 2.1 shall be amended as follows:

"1. Administrative offense – it is not an entailing criminal responsibility punishable violation of established by law directions in legal relations, the parties of which are not in the authority-based subordination or direct dependence, and compliance with these requirements is impelled by the norms of public law for the protection of the state or public order; property; health, rights and freedoms of individuals; established order of administration; as well as property rights and interests of legal entities.

Administrative misconduct is a such type of administrative offenses, for which at the time of its committing the law does not provide for administrative sanctions, or in the absence of the offender sign of guilt, as well as, when the offender is released from administrative responsibility by the law".

2) chapter 2 should be added by article 2.1.1. of the following content:

"Article 2.1.1. Administrative Responsibility

Administrative responsibility is a social and legal category, which characterizes a degree of negative attitude of the state to a wrongful conduct of the participants in public and legal relations, expressed in the imposing to an offender of established by a special law penalties that are applied in the prescribed manner by authorized agencies and officials for the protection of public relations in the field of state administration and punishment of an offender.

Administrative sanctions should be imposed to persons guilty of committing an administrative offence in accordance with the current Code and relevant laws of subjects of the Russian Federation".

3) article 2.4. shall be amended as follows:

"Article 2.4. Administrative Responsibility of Officials.

1. Under administrative responsibility should come such officials who as a result of non-performance or improper performance of his job duties committed an administrative offence or actions of this official resulted in committing an administrative offence by a legal entity.

2. As an official in the context of this Code shall be recognized a physical

person involved on a permanent or temporary basis, on behalf of collective subjects of law, in legal relations with other persons in accordance with the law, statutes, provisions or other organizational and legal documents of these collective subjects, and ones who perform organizational-management or administrative-economic functions or their part in a collective subject of law.

3. The members of the board of directors (supervisory boards), collegial executive bodies (management board, directorate), counting commissions, audit commission (auditors), liquidation of legal persons commissions and leaders of organizations implementing the functions of a sole executive bodies of other organizations must bear administrative responsibility as officials. Persons exercising functions of the member of a competition, auction, bidding, or a united commission created by a state or municipal customer, authorized body, and ones who committed administrative offenses provided for by articles 7.29-7.32 of this Code, shall bear administrative responsibility as officials. Persons engaged in entrepreneurial activities without forming a legal entity, who have committed administrative offenses, bear administrative responsibility as officials, unless this Code provides otherwise".

4) chapter 2 should be added by article 2.4.1. of the following content:

"Article 2.4.1. Administrative Responsibility of a Public Civil Servant

1. Civil servant is a subject to administrative responsibility in case of committing an administrative offense with regard to non-performance or improper performance of his job duties, which resulted in the violation of the rights and interests of citizens, legal entities, and the prohibitions and requirements stipulated by law to public civil servants.

2. Public civil servant is a citizen of the Russian Federation, exercising on a fee basis professional official activities in the provided for by Consolidated Register of Posts of Public Civil Service of the Russian Federation position of public civil service in accordance with an act of appointment and a service contract.

Note. Public servant of another type of public service bears administrative responsibility as a public civil servant in cases where the law does not provide for another legal responsibility".

5) article 2.10 should be added by part 10 of the following content:

"10. Collective subjects – participants of public legal relations, which are not legal entities under the law of the Russian Federation, bear responsibility for administrative offense as legal entities".

6) in article 3.5:

a) first sentence of part 1 shall be amended as follows:

"1. Administrative fine it is a monetary penalty, calculated in the currency of the Russian Federation under normatively enshrined rules on the basis of laid down by the legislator level of property rights restriction as a sufficient measure to compulsion to lawful conduct of subjects of law in legal relations regulated by public law branches.

Administrative fine is established for citizens in an amount not exceeding five thousand rubles; for officials and civil servants – fifty thousand rubles; for legal entities – one million rubles, or can be expressed as a multiple of:"

b) chapter 1 should be added by clause 7) of the following content:

«7) monthly salary of an official, civil (municipal) servant or a monthly income of the person who committed an administrative offence.

7) article 4.5 should be added by part 8 of the following content:

"8. In the case of institution of a case concerning an administrative offence by a prosecutor or judge, when the grounds for instituting an administrative case are: special ruling of court (ruling of an arbitration court), a written application of citizens or a legal entity, indicating bringing to administrative responsibility a civil servant or an official of public civil service, and to this application are enclosed entered into legal force court decisions on administrative and legal disputes, in which has been proved the fact of illicit (illegal) actions (or inactions) and decisions of authorities (and their officials), the terms specified in part 1 of this article shall begin to run from the entry into force of judicial decisions on an administrative and legal dispute".

8) article 19.1. shall be amended as follows:

"Article 19.1. Arbitrariness.

1. Arbitrariness, that is, unauthorized exercise, contrary to a procedure established by a federal law or by any other normative legal act, of one›s real or alleged right, which has not caused essential damage to citizens or legal entities -

shall entail a warning or the imposition of an administrative fine on citizens in the amount of from 500 RUR to 1000 RUR, and on officials and public civil servants in the amount of from 1000 RUR to 5000 RUR.

2. Committing an administrative offence, provided for by part 1 of this article, by an official or a public civil servant, who has been previously imposed an administrative penalty for similar administrative offence -

shall entail the imposition of an administrative fine in the amount of 5000 RUR or disqualification for up to six months".

9) chapter 19 should be added by articles 19.7.7, 19.34-19-52 of the following content:

"Article 19.7.7. Violation of the Terms of Information Submitting and Failure to Submit Information.

1. Delays in providing a citizen with information or collected in the prescribed manner documents, materials directly affecting the rights and freedoms of the citizen, or the provision the citizen of incomplete or deliberately unreliable information –

shall entail the imposition of an administrative fine on public civil servants in the amount of from 500 RUR to 1000 RUR".

2. Delays in providing a legal entity with information or collected in the prescribed manner documents, materials directly affecting the rights and economic interests of the entity, or the provision of incomplete or deliberately unreliable information –

shall entail the imposition of an administrative fine on public civil servants in the amount of from 500 RUR to 1000 RUR".

3. Refusal to provide a citizen or legal entity information or collected in the prescribed manner documents, materials that are in accordance with established procedures can and should be provided on request of citizens, legal entities –

shall entail the imposition of an administrative fine on public civil servants in the amount of from 1000 RUR to 5000 RUR".

Article 19.34. Violation of Established Prohibitions in Public Civil Service.

1. Violation by public civil servants during going through the public civil service of the established by the legislation of the Russian Federation prohibitions related to the deriving of material gain or income –

shall entail a warning or the imposition of an administrative fine in the amount of from 500 RUR to 1000 RUR.

Article 19.35. Illegal participation in Entrepreneurial Activities.

The establishment by a public civil (municipal) servant an organization carrying out enterprise activity, or participation in the management of such an organization in person or by proxy, contrary to the prohibition established by law, if such actions are related with the provision to such an organization benefits and advantages or with other forms of protection –

shall entail the imposition of an administrative fine in the amount of 5000 RUR or disqualification for up to six months.

Article 19.36. Violations of Financial Control Measures.

1. Failure to provide or providing incomplete or unreliable declarations on income, property and other information provided for by the legislation of the Russian Federation, including one on combating corruption, by persons who are candidates for public office or the position related to the implementation of state or similar functions, as well as by husband (wife) of such persons –

shall entail the warning on persons who are candidates for public office in the amount of from 500 RUR to 1000 RUR.

2. Failure to provide, late submission or providing incomplete or unreliable declarations on income, property and other information provided for by the legislation of the Russian Federation, including one on combating corruption, by persons who hold public office, as well as by husband (wife) of such persons –

shall entail the imposition of an administrative fine on a person who holds public office in the amount of from 1000 RUR to 5000 RUR.

3. The repeated commission of actions specified in part two of this article, –

shall entail the disqualification of a person who holds public office for a period from six months to one year.

Article 19.37. Giving a Public Civil Servant an Illicit Material Reward.

1. Giving by an individual or legal entity a public civil (municipal) servant an illegal reward, gifts, benefits or services, if the deed does not contain elements of a criminal offense –

Shall entail the imposition of an administrative fine on persons who give and who receive material reward in the amount of the material reward or the value of gifts, benefits, services.

2. The actions referred to in part 1 of this article committed repeatedly within one year after the imposition of an administrative penalty –

Shall entail the imposition of an administrative fine at double size of the provided for in part 1 of this article.

Note. Individuals and legal persons, who gave a public civil servant illegal reward, gifts, another material possessions, services, benefits or advantages, should not be brought to responsibility if in respect of them had been the case of extortion by the mentioned public civil servant, or if these individuals, legal entities voluntarily within ten days reported about the incident to the competent authorities.

Article 19.38. Illegal Hiring of Public Civil Servants.

1. Hiring by the head of a legal entity or by an individual entrepreneur of

persons who are in the public civil service, in violation of the restrictions established by the current legislation of the Russian Federation –

shall entail the imposition of an administrative fine in the amount of from 5000 RUR to 10,000 RUR.

2. Hiring by the head of a public authority included in the system of Public Civil Service of persons with unexpired disqualification that was imposed as an administrative penalty of a public civil servant of the Russian Federation –

shall entail the imposition of an administrative fine on the head of a public authority in the amount of from 5000 RUR to 10,000 RUR.

Article 19.38.1. Obstruction of the Exercising of the Equal Rights on Access to the Public Civil Service

1. Demanding to the candidate for the post of a public civil (municipal) servant, the requirements which are not stipulated by law and qualification criteria not approved in the prescribed procedure –

shall entail the imposition of an administrative fine in the amount of from 5000 RUR to 10,000 RUR.

2. The actions referred to in part 1 of this article committed repeatedly within one year after the imposition of an administrative penalty –

shall entail the disqualification of an official for a period from six months to one year.

Article 19.39. Impeding the Lawful Activity of a Lawyer.

Impeding by an official of the public civil (municipal) service the lawful activities of a lawyer or college of lawyers, lawyer's college, legal aid agency expressed in non-submission or refusal of submission to the deadlines stipulated by law upon written request of the necessary documents, materials or information needed to carry out their professional duties, if these actions do not have the elements of a criminal offense –

shall entail the imposition of an administrative fine on officials in the amount of from 1000 RUR to 5000 RUR and on public civil servants in the amount of from 500 RUR to 1000 RUR.

Article 19.40. Impeding the Activity of Public Associations.

Impeding the lawful activities of public associations by an official of the public civil (municipal) service, as well as interference in the legitimate activities of these associations by a public civil servant with use of his official position, which has caused a significant violation of their rights and legitimate interests –

shall entail the imposition of an administrative fine on a public civil servant in the amount of from 500 RUR to 1000 RUR

Article 19.40.1. Illicit Interference of Officials in Entrepreneurial Activity.

1. Unlawful interference of state bodies' officials engaged in supervisory and monitoring functions, as well as local executive bodies in the activities of individual entrepreneurs, legal entities through the adoption of illegal acts and giving illegal orders, which prevent business activities –

shall entail the imposition of an administrative fine in the amount of from 5000 RUR to 10000 RUR.

2. The actions referred to in part 1 of this article committed repeatedly within one year after the imposition of an administrative penalty –

shall entail the imposition of an administrative fine in the amount of from 10000 RUR to 50000 RUR or disqualification of an official.

Article 19.41. Official Forgery.

1. Official forgery, that is, the introduction by an official of false information in official documents, as well as the introduction to the said documents corrections that distort their actual content, if these deeds had been committed out of mercenary or other personal interest and led to the violation of the rights and legitimate interests of citizens and legal entities, or legally protected interests of society or the state –

shall entail the imposition of an administrative fine on an official in the amount of from 1000 RUR to 5000 RUR, on a public civil servant – from 500 RUR to 1000 RUR.

2. Seizure by an official of documents proving the innocence of individuals or legal entities from the case materials on a tax or administrative offence, as well as concealment of such evidence –

shall entail the imposition of an administrative fine on an official in the amount of from 1000 RUR to 5000 RUR, on a public civil servant – from 500 RUR to 1000 RUR.

3. The actions referred to in part 1 and 2 of this article committed repeatedly within one year after the imposition of an administrative penalty –

shall entail the disqualification of an official or public civil servant for a period from six months to one year.

Article 19.42. Loss of Documents.

Deliberate damage or destruction of documents of cases on administrative

and tax offenses, or careless storage of these documents, resulting their loss –

shall entail a warning or the imposition of an administrative fine in the amount of from 1000 RUR to 5000 RUR.

Article 19.43. Compulsion to Giving Testimony.

Compulsion a citizen or official, who is a party to an administrative process, to testify, or an expert or specialist to give an opinion or testimony through intimidation, blackmail or other unlawful actions by an official –

shall entail the imposition of an administrative fine on an official in the amount of from 1000 RUR to 5000 RUR, on a public civil servant – from 500 RUR to 1000 RUR.

Article 19.44. Violation of the Procedures of State Control (Supervision).

Violation of procedures (activities) of state control stipulated by the current legislation, if such violations have led to the infringement of the legitimate interests and rights of citizens and legal persons –

shall entail the imposition of an administrative fine on an official in the amount of from 1000 RUR to 5000 RUR, on a public civil servant – from 500 RUR to 1000 RUR.

Article 19.45. Failure to Take Measures under a Special Ruling, Court Decision, Recommendation of a Prosecutor, Investigator or Inquirer.

1. Dismissing by an official of the public civil (municipal) service without a hearing on the merits a special ruling, court decision, recommendation of a prosecutor, investigator or inquirer or the failure to take measures to eliminate the mentioned in them violations of law, as well as ill-timed response to the special ruling, decision or recommendation –

shall entail the imposition of an administrative fine on an official in the amount of from 1000 RUR to 5000 RUR, on a public civil servant – from 500 RUR to 1000 RUR.

2. The actions referred to in part 1 of this article committed repeatedly within one year after the imposition of an administrative penalty –

shall entail the disqualification of an official or public civil servant for a period from six months to one year.

Article 19.46. Failure to Execute Judicial Acts, Decisions of Authorities (Officials) that are Authorized to Consider Cases on Administrative Offences –

1. Evading execution of demands of judicial acts, decisions, authorities (officials) that are authorized to consider cases on administrative offences, if these actions do not contain the elements of a criminal offence –

shall entail the imposition of an administrative fine on an official in the amount of from 1000 RUR to 5000 RUR, on a public civil servant – from 500 RUR to 1000 RUR.

2. The actions referred to in part 1 of this article committed repeatedly within one year after the imposition of an administrative penalty –

shall entail the disqualification of an official or public civil servant for a period from six months to one year.

Article 19.47. Neglect of Duty.

1. Neglect of duty, that is, non-performance or improper performance by public civil (municipal) servants of their duties because of the careless or negligent attitude to the service if this causes the damage or substantial violation of the rights and lawful interests of citizens or legal entities, or legally protected interests of society or the state, but does not cause harm to the life and health of citizens –

shall entail the imposition of an administrative fine on a public civil servant in the amount of from 1000 RUR to 5000 RUR.

2. The actions referred to in part 1 of this article committed repeatedly within one year after the imposition of an administrative penalty –

shall entail the disqualification of an official or public civil servant for a period from six months to one year.

Article 19.48. Abuse of Official Powers.

1. The use by a state civil (municipal) servant of his official powers against the interests of the service, if this deed is committed for mercenary purposes or other personal interest and causes a substantial violation of the rights and legitimate interests of citizens and legal entities, or legally protected interests of society or the state, but does not cause damage to citizens' life and health –

shall entail the imposition of an administrative fine on an official in the amount of from 1000 RUR to 5000 RUR, on a public civil servant – from 500 RUR to 1000 RUR.

2. The actions referred to in part 1 of this article committed repeatedly within one year after the imposition of an administrative penalty –

shall entail the disqualification of an official or public civil servant for a period from one year to three years.

Article 19.49. Exceeding of Official Powers.

1. Commission by an official of the public civil (municipal) service of actions which transcend the limits of his powers and which involve a substantial violation of the rights and legitimate interests of individuals or legal entities, or the legally-protected interests of society and the state, but do not cause damage to citizens' life and health –

shall entail the imposition of an administrative fine on an official in the amount of from 1000 RUR to 5000 RUR, on a public civil servant – from 500 RUR to 1000 RUR.

2. The actions referred to in part 1 of this article committed repeatedly within one year after the imposition of an administrative penalty –

shall entail the disqualification of an official or public civil servant for a period from six months to one year.

Article 19.50. Unlawful Bringing to Responsibility.

1. Imposition of an administrative penalty, as well as bringing to administrative responsibility in violation of the limitation period, secondarily for the same offense, outside the limits established by law, and also in the absence of fault –

shall entail the imposition of an administrative fine on an official in the amount of from 1000 RUR to 5000 RUR.

2. Tax prosecution in the circumstances excluding bringing to responsibility for committing a tax offenses, or re-bringing to responsibility for the same tax offense –

shall entail the imposition of an administrative fine on an official in the amount of from 1000 RUR to 5000 RUR, on a public civil servant – from 500 RUR to 1000 RUR.

2. The actions referred to in part 1 and 2 of this article committed repeatedly within one year after the imposition of an administrative penalty –

shall entail the disqualification of an official or public civil servant for a period from one year to three years.

Article 19.51. Adoption and Application of an Unlawful Normative Legal Act.

1. Adoption by an official of the state (municipal) body of knowingly unlawful legal act affecting the rights, freedoms and duties of individuals, legitimate interests of economic entities and the state, contrary to the Russian Constitution or federal laws –

shall entail the imposition of an administrative fine on an official in the amount of from 1000 RUR to 5000 RUR.

2. Knowingly unlawful application by officials of state bodies, as well as by local representative and executive bodies of normative legal acts, which expired in the prescribed manner, has been recognized by court as invalid, officially unpublished in the prescribed manner, or the applying of which has been suspended by the authorized bodies, as well as acts that have not passed the state registration in justice agencies –

shall entail the imposition of an administrative fine on an official in the amount of from 5000 RUR to 10,000 RUR.

Article 19.52. Unlawful Transfer of Control and Supervisory Functions.

Unlawful transfer by officials of state bodies of control and supervisory functions to unauthorized persons –

shall entail the imposition of an administrative fine on an official in the amount of from 1000 RUR to 5000 RUR".

10) in part 1 of article 23.1:

a) after the words "articles 19.7.5-1", should be added "19.7.7";

b) after the words "19.32", should be added "19.34-19-52".

11) to part 1 of article 25.1 should be added a note as follows:

"Note. The person, the procedural status of which is specified in part 1 of this article, and who refers to the individual subjects of law, in chapters 29 and 30 of this Code by is referred to as a physical person".

12) in article 28.1:

a) part 1 should be added by clause 6) of the following content:

"6) special ruling of court or ruling of arbitration court issued in the case, which arises from public legal relations, in the resolution which has been established the fact of violation of legality by a public authority or its official";

b) part 2 shall be amended as follows:

"2. Materials, notices, applications and rulings of court specified in parts 1 and 1.1 of this article should be considered by officials authorized to draw up reports on administrative offenses, as well as by persons authorized to instigate proceedings on administrative offences";

c) part 3 should be added with the following proposal:

"If there is a reason provided for in clause 6) of part 1 of this article, the case on an administrative offence must be instituted by a prosecutor or judge.

"If the reason for institution of a case concerning an administrative offence is a written application of citizens or a legal entity, indicating bringing to administrative responsibility a civil servant or an official of public civil service, and to this application are enclosed entered into legal force court decisions on administrative and legal disputes, in which has been proved the fact of illicit (illegal) actions (or inactions) and decisions of authorities (and their officials), the case on an administrative offence may be instituted by a prosecutor or judge";

d) clause 5) of part 4 shall be amended as follows:

"5) issuing by a judge of a ruling on preparing a case for court proceedings";

13) part 1 of article 28.2 shall be amended as follows:

"1. About the committing of an administrative offense should be drawn up a record, except in the cases provided for in article 28.4, parts 1, 1.1 and 3 of article 28.6 of this Code, as well as cases of institution of an administrative case in connection with the issuing by a judge of a ruling on preparing a case for court proceedings"

14) part 2 of article 28.3 should be added by clause 96) of the following content:

"96) officials of the public service management bodies, - on administrative offenses provided for in articles 19.1, 19.7.7, 19.34-19.36, 19.38.1-19.52 of this Code".

15) part 1 of article 28.4 shall be amended as follows:

"1. Cases on administrative offenses provided for by articles 5.1, 5.7, 5.21, 5.23-5.25, 5.39, 5.45, 5.46, 5.48, 5.52, 5.58-5.63, 7.24, part 2 of article 7.31, articles 12.35, 13.11, 13.14, 13.27, 13.28, parts 1 and 2 of article 14.25, article 14.35, by part 1 of article 15.10, article 19.1, part 3 of article 19.4, articles 19.6.1, 19.7.7, 19.9, 19.28, 19.29, 19.32-19.52, 20.26, 20.28, 20.29 of this Code, shall be instituted by a prosecutor. When exercising supervision over the compliance with the Constitution of the RF and obeyance of laws in force in the Russian Federation, the prosecutor is also entitled to institute a case on any other administrative offense, the responsibility for which is borne by an official or civil servant in accordance with this Code or the law of a subject of the Russian Federation".

16) part 1.1 of article 29.6 shall be amended as follows:

"1.1. A case on an administrative offence is considered within two months of receipt by the judge, competent to hear the case, the record of the administrative

offense (prosecutor's decision for instituting proceedings), and other materials of the case, as well as the special ruling of court (ruling of arbitration court) or a written application of a citizen or legal entity that meets the requirements of part 3 of article 28.1 of this Code"

Article 2

Introduce to the Federal Law "On Office of Public Prosecutor of the Russian Federation" (Gazette of the Congress of People's Deputies of the Russian Federation and the Supreme Soviet of the Russian Federation, 1992, no. 8, p. 366; Collection of Laws of the Russian Federation ...) the following amendments:

1) in part 2 of article 1 after the words "coordination of law enforcement agencies to combat crime;" should be added "administrative prosecution in accordance with powers established by the Code on Administrative Responsibilities of the Russian Federation;";

2) article 26 should be added by part 3 of the following content:

"3. In cases on administrative offenses instituted by a prosecutor in respect of officials, the prosecutor does not exercise supervisory functions with regard to compliance with the rights and freedoms of the citizen, who holds the position of the public civil (municipal) service and is accused of committing an administrative offense".

Article 3

Introduce to the Arbitration Procedural Code of the Russian Federation (Collection of Laws of the Russian Federation ...) the following amendments:

1) article 112 should be added by part 4:

"4. Resolution of questions about the distribution of court costs in cases arising from administrative and other public legal relations is made within a period not exceeding two months, including the timing of postponement consideration of the case".

2) article 189 shall be amended as follows:

"Article 189. Time Terms for Consideration and Resolution of Cases

1. Cases arising from administrative and other public legal relations are considered and resolved within one month from the date of completion of preparing a case for court proceedings.

2. For certain categories of cases arising from administrative and other public legal relations, the law may establish other terms.

3. Term for postponement of consideration cases arising from administrative and other public legal relations cannot exceed ten working days plus time to post written evidences, if there are any in a city different from one, where the party that obliged to provide the evidences is.

Note. Total number of proceeding's postponements at first instance of arbitration court on the petition of one party of the process should not exceed three times".

3) chapter 22 should be added by article 189.1 of the following content:

"article 189.1. Peculiarities of Considering and Resolving of Cases

1. Cases arising from administrative and other public legal relations are considered under the general rules of action proceedings provided for in this Code, with the peculiarities established in this section, unless other rules of administrative proceedings provided for by the federal law.

2. Application on cases arising from administrative and other public legal relations are submitted to arbitration court under the general rules of jurisdiction provided for in this Code, unless this section stipulates otherwise.

3. The burden of proving the circumstances that led to the adoption of the contested act, legitimacy of contested decisions and actions (inaction) of state bodies, local self-government authorities and other bodies, organizations empowered by federal law with certain state or other public powers, officials is entrusted to the bodies and persons who have taken the disputed act, decision, heave committed the disputed actions (inaction).

4. The actual data presented by bodies or persons who have taken the disputed act, decision, have committed the disputed actions (inaction) are recognized by the court inadmissible as evidences, if they have been obtained in violation of the law through deprivation or restraint of legal rights of persons involved in the case or in violation of other rules of the arbitration proceedings when preparing the case for court proceedings or during the court session on the case, which have affected or could affect the reliability of the obtained actual data, including the following:

1) use of violence, threats, deception, as well as other unlawful acts;

2) use of delusion of the person involved in the case, in respect of his/her

rights and duties, arising from the lack of explanation, its incomplete or incorrect explanation to this person;

3) carrying out proceedings by a person that does not have the right to carry out proceedings on the case;

4) participation in the proceedings of the person subject to recusation;

5) significant breach of procedure of legal proceedings;

6) evidences from an unknown source or from a source that cannot be determined at the hearing;

7) use in the course of proving methods that are contrary to current scientific knowledge.

5. Inadmissibility of the use of actual data as evidences, as well as the possibility of their limited use in the proceedings on a case is established by a court on its own initiative or upon a petition of parties involved in the case.

6. Evidences obtained in violation of law are considered as not having legal effect and cannot be the ground of court judgments and also be used in proving any circumstance relevant to the case.

7. Actual data obtained with the violations provided for in the first part of this article may be used as evidences of the fact of relevant violations and guiltiness of persons who have committed them.

8. Evidences of circumstances that have not been laid down to the basis of contested decisions and actions (inaction) are inadmissible in the case on disputing the legality of decisions and actions (inaction) of state bodies, local self-government bodies, other bodies and organizations, which are lodged by federal law with certain state or other public powers.

9. At making decisions on cases arising from administrative and other public legal relations, and the determination in the course of judicial proceedings violations of legitimacy by state bodies, local self-government bodies, other bodies and organizations, which are given by federal law certain state or other public powers, officials who have taken a disputed act, decision, have committed disputed actions (inaction), a court may issue an order and transfer it to an appropriate organization or officials that are required to report within a month on the measures they have done".

4) part 2 of article 201 should be added by the sentence of the following content:

"The copy of such a decision of arbitration court is to be sent to prosecutor within five days".

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Starilov Ju. N.

ADMINISTRATIVE REFORM AND PROCEDURES IN THE CONTEXT OF OVERCOMING "EXCESSIVE" ADMINISTRATIVE REGULATION

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Here are provided an analysis of previously conducted administrative reforms (with respect to the set and actually solved tasks) in the context of ensuring the rule of law in the activities of public authorities and their officials and the respect for the rights of citizens and legal entities. Examines administrative and procedural activity of public authorities, its normative regulation and identifies the key provisions of Russian legislation on administrative procedures.

Key words: administrative reform, administrative procedures, administrative regulating, public regulating, administrative procedures' legislation, types of administrative procedures, principles of administrative procedures.

About the goals, objectives, stages and the key visible results of administrative reform in Russia has been said and written in excess of reasonable efforts. You will notice that the ideals of the administrative reform throughout its conduct were changing. At the beginning of 2008 (and especially in the middle of 2008) was being actualized the idea of overcoming the "excessive" administrative regulation and "excessive" administrative control (supervision). Of course, who does not like this idea? Who wants to see a representative of any government or municipal administrative control and supervision? And even more to receive from them orders, instructions, and directions.

As you know, an administrative reform is conducted not primarily for the sake of administration, although, of course, we cannot exclude the fact that the administrative reforming establishes new legal conditions of organization and functioning of the administrative system of the country. Along with this an administrative reform designed to improve the system of public administration, which, in turn, will contribute to improvement of the welfare of society, development of the economy and economic relations, culture, education, science and all other spheres of public and state life. Administrative reform is designed to establish better administrative legal order. Thus, administrative reform is intended to establish the legality of committed administrative actions, the necessary procedure to implement administrative functions under any conditions and circumstances. Administrative reform must also ensure public confidence in the executive power. In the film by Nikita Mikhalkov "12", as well as in real life, one of the characters concludes: "There will never be a Russian man living by the law!" It is expected that an administrative reform is intended in each case also to "teach" a person and citizen to live "under the law". "Living by the law" is a duty of the State and society, each official and each subject of law; "living by the law" is a key to the prosperity of society and the good functioning of the State apparatus.

Among all the essential elements and manifestations of an administrative reform especial attention is paid to reducing the "excessive" administrative regulation and "excessive" administrative control. That means, as though it is noticed that in the system of public administration administrative regulation and administrative control has obtained unacceptably high value. Therefore, the "excessive" administrative regulation, according to the authors of the administrative reform, has to be eliminated or multiply reduced. Along with this, you can ask the question: is it possible to reach a solution to this issue without a radical improvement of the legal regulation of internal administrative and legal relations that permeate the organization and functioning of the bodies of executive power? It is unlikely that the system of public administration could be improved only by organizational restructuring, establishment of administrative regulations, listing of public functions and public services.

We can assume that one of the main branches of public law as for the scope of actions, legal importance, positive and negative results, is an administrative law. The attention paid by the political leadership of the country to an administrative reform and its implementation, allows being even more certain that the administrative law in Russia is the most important legal mean to improve the practice of state and municipal government. March 27, 2008 at the meeting of the State Council,

which was held in Tobolsk, representatives of the executive power sharply criticized the very executive power for the numerous mistakes, contradictory activities and lack of preparation of the administrative apparatus to effective public administration. If to summarize all the main things that were discussed at the meeting of the State Council, it is clear that on the agenda raises a new administrative reform, which is aimed to improve state administration (public administration in general).

Precisely in this context emerged the idea to eliminate "excessive" administrative control and supervision. But how to measure the "excessiveness" of administrative regulation and administrative control? As is known, in case of practical implementation of control, it means that it should be conducted legally and within the legitimate administrative procedures. It turns out that the established model and the system of the state or municipal control a priori must comply with the principle of legality. How can we find "excessiveness" inside this control?

In European countries believe that state administration should be "good". Exactly the term "good governance" is used by a legislator. In Russia in general the term "state administration" disappeared from the constitutional and legal lexicon in 1963. Article 41 of the Charter of Fundamental Rights of the European Union is called as "The right to good governance". That is, each person has the right to have his case considered by a competent authority or institution and always with the indispensable observance the principle of non-membership in any party, the case must be considered fairly and within the prescribed time limits. Every person has the right to be heard before in respect of this person will be applied coercive measure or a measure that would worsen his position. All this also means the obligation of officials of State administration to justify their decisions and actions. Thus, "good governance" in these countries is created and ensured by the basic principles of the administrative procedures. It seems that in Russia the conducting of complex state reforms, above all, should be based on this fundamental provision – the right of citizens to good governance.

Also at the meeting of the State Council in Tobol'sk were talking, in fact, about the need to ensure good governance in the country. Overcoming "excessive" administration is also due to the fact that in the country is being actualized the problem of eliminating all unnecessary "administrative". If you even look at the established in practice terms and concepts, it is clear that these terms allow us to see the essence of the problem. In Russia they say about the need to "combat administrative barriers", improve "administrative image", overcome "administrative nihilism", establishing "administrative clarity", exit from "administrative fog", form "administrative legal framework", eliminate "administrative mistakes", create

"administrative ideals", "administrative standards" and qualitatively improve "administrative rule-making", "administrative revision".

But particularly significant nevertheless was the idea of revising the practice of state control and supervision, i.e., it is about substantial democratization in the given field of relations. Against such a background may be a view that all the theory of state and administrative supervision that has been being created for decades begins to crumble.

"Excessive" state administration is regarded by the Russian politicians, legislators and scholars as one of the very negative features of modern public administration. Frankly the term "excessive administration" is not being explained, fully and deeply researched. However, one thing is clear: excessiveness of administration is the ability of officials to commit actions that are thoroughly and normatively not regulated. Besides, in practice, is permitted ineffective and may be even illegal procedure for implementing the competence of public authority bodies and the powers of appropriate officials. Excessiveness of administration can be considered as a lack of proper procedure of taking administrative decisions and implementing management actions. Today there is much talk about excessiveness of public administration in connection with the fight against corruption. Therefore planned legislative novations of overcoming corruption offenses in the system of state administration are attributed to the need of elimination excessive administration, and expansion the legal regulation of the activities of executive bodies of the public authority and their officials.

To better see the need for improvement of administrative law, the institutions of which are designed to largely eliminate "excessive" public administration, it is advisable to pay attention to "political basis" of legal reforms that should certainly contribute to ensuring government guarantees against "negative" public administration both for citizens, and for other subjects of law. Therefore, this article provides a brief theoretical analysis of the situation in Russia in late 2007 - early 2008. At the same time it provides an analysis of the views of prominent political figures of the country and the scientists on the efficiency and quality of state power, especially the executive (administrative) and judicial one. Both branches of state power, that have been formed over the last twenty years to the modern structures and institutions, in these years have been the subject of state intervention, reforming and active legislative regulation. It is well known that the process of judicial and administrative reform is currently ongoing.

The topic of state guarantees and overcoming "excessive" public administration is very relevant, but has not get so far proper research in special political and

legal literature; hardly enough attention is paid to this issue by scientists, politicians and public figures. However, the entire government activity is primarily aimed at practical providing of proclaimed state guarantees. And just therefore the issue of state guarantees in any field of legal relations deserves serious scientific understanding, analysis and criticism.

Today, the most important task is an issue of practical ensuring the envisaged by the state guarantees that exist for the possibility of society to see the real potential of a strong state, acting state; to receive state support and state provision. According to Putin, it is "a democratic state should become an effective tool for self-organization of civil society" [10]. Thus government guarantees may be real and effective under terms of the formation of a democratic State. Government guarantees of – state protection; ensuring the rights and legitimate interests, subjective public rights and freedoms of a man and citizen; well-being of a man and citizen; the efficiency of public administration, state-building. If in a country they say and take care of the state guarantees, such a country is developing in accordance with reasonable goals and objectives. If they forget about state guarantees, the country descends into chaos of "administrativizm" and the practice of violations of the principle of legality. Legitimacy without government guarantees ceases to exercise its purpose. Obviously, not every state can fully, consistently and comprehensively ensure and guarantee the established standard of public administration, welfare, social and economic development, protection of the rights and freedoms of a man and citizen, legitimate interests of legal entities.

Has the very Russian state become a guarantor of society welfare? Whether the State can effectively perform its functions? What does effective governance mean at all? In the current socio-political and legal literature is stated that the effectiveness of management lies in the very results of managerial impact [6, 68-94].

Search for answers to these questions will inevitably lead to the need to study the state power, legal system of the country, state-legal construction, already conducted and currently implemented the most important and obvious reforms, such as judicial or administrative one. Namely judicial and executive branches of state power are really "responsible" for the practical implementation and ensuring of established by the legislature guarantees; judicial and executive power, being daily exposed to public criticism, can actually contribute to strengthening state guarantees, or on the contrary, by its actions and decisions destroy a legal mechanism of state guarantees, thus making a negative contribution to the actively discussed now phenomenon of national legal nihilism. Indeed only a short time ago, Dmitry Anatol'evich Medvedev spoke about the origins of legal nihilism, "which continues

to be a feature of our society", while recalling the famous aphorism: "rigidity of laws is offset by their non-performance". [22]

Undoubtedly legal nihilism is a negative feature of Russian society (about this has been much said and written in Russia during the last decades). However, first of all, legal nihilism is a negative characteristic of the Russian state. State power and especially executive power has been showing in the past twenty years the "miracles" of legal nihilism and open aversion of the requirements of Russian law by this authority. In a country where the legal nihilism of state power is daily demonstrated by countless examples of neglecting the spirit and letter of the law, legal nihilism of society becomes indispensable companion of the country's unlawful development. It is clearly necessary to understand that the true and primary origins of legal nihilism consist in illegal manifestations of state activity, in an inconsistent and unfair functioning of state and municipal apparatus, state and municipal employees. Whether not therefore the state has to constantly initiate and carry out any reforms of state power, in particular, the executive and the judiciary?

If you formally look at the administrative reform's goals and objectives, established at the very beginning of the change of legal and administrative systems, they, of course, slightly changing still remain unchanged, not-fully achieved and unresolved. After all, usually, we are talking about increasing the efficiency and improving state administration; ensuring the rights and freedoms of man and citizen, legitimate interests of legal entities and individual entrepreneurs; guaranteeing state interest, increasing the responsibility of state and municipal employees; simplification (or creation) of administrative procedures [32]; transparency of judicial and executive authorities; establishing responsibility for taken administrative and legal acts or judicial decisions; increasing living standards of judges and public servants. Especially actively began to reform the judicial and administrative authorities in the early twenty-first century. As a result of changes in Federal and regional legislation, administrative and judicial systems have undergone significant changes.

Administrative reform conducted a few years ago [6], was, obviously, conceived as a new optional element in improving public administration. Undertaken changes in the system of organizational and legal forms of state administration, system and structure of federal executive authorities, public administration at regional level, obviously, were intended to improve governance and establish new guarantees.

If you look at the administrative reform in terms of its results, it turns out that the desired results have stayed only in ideal designs on paper. Russian

President Vladimir Putin in mid-February 2008 said with regret: "I think that the very structure that has been created in the last four years has not worked in such a way as planned some of our colleagues: ministries are engaged only in rule-making activities, agencies and others perform their functions" [18], at that he explained that the scheme did not work because ministers "still immediately began to pull on a blanket administration" [18]. The authors of the administrative reform saw its main content in the systematization and optimization of state functions. And as the main instrument, already in 2004 was chosen the development of approximately 500 administrative regulations – normative acts detailing the interaction of officials and citizens [8]. The latest achievements, institutions and procedures that are embedded in the administrative system must change state administration, improve it; introduce "administrative clarity" in this sphere of relations. State guarantees, created in the process of administrative transformations (administrative reforms) should contribute to improvement of not only the legal and administrative system, but real improvement in the performance of state functions. It is an administrative system, based on modern principles of the rule of law, can provide, for example, the reality of such a political statement as "freedom and justice, civil dignity, well-being and social responsibility of a man" [13].

According to V. V. Putin, the main problems of modern state administration include: large bureaucracy of the state apparatus; corrupt system that is not motivated to positive changes and rapid development; excessive administrative pressure on the economy; necessity to optimize the functions and change the system of financing, which may motivate effective activity of the executive branch of the government and the very state and municipal servants; creation of competitive conditions to attract in the state service the best personnel; increasing the responsibility of management personnel to the society; over-centralization of state administration: "Any, even elementary decisions are made in the government for months, even years. Everything seems to be done on the instructions and correctly. But this is exactly the case when an order becomes a nonsense" [10]. As the most important features of the new system of public administration Vladimir Putin has formed the following: "independence and responsibility, dynamic movement forward, following the general ideology of the country development, the efficient use of resources, bold and original solutions, support for initiatives and innovations, staff turnover, competence and outlook" [10].

Reiterates the importance and exceptional significance of the so-called administrative procedures for the improvement of public administration. Substantiating the thesis that "officials should be fully aware that it is society that is their employer

and that they bear responsibility to the whole Russian society, to Russian citizens" [38] Dmitry Medvedev, as the main condition, identified the need to strengthen all administrative procedures in the regulations of public authority bodies' work. "And this should be done in order not to produce next more bureaucratic documents, but for citizens to know the responsibilities of each official and have a real opportunity to complain against unlawful actions or inactions. In this case the punishment of guilty officials should be unavoidable" [38]. It turns out that "knowing of the officials' duties by citizens" and "the inevitability of punishment" of state employees are the most important factors to improve public administration.

However, in itself the statement of such abstracts will not resolve the issue of management practice. As long exists public administration and civil service, so long they talk about the need to increase or inevitability of responsibility of the state apparatus. Here only in practice legal responsibility rarely ensues to civil servants. Although the legislator himself has long been in a lot of legislative acts has established the procedure for applying responsibility to civil servants. Then what for do constantly talk about the need of officials' responsibility if they do not perform their job duties, violate the rights and freedoms of citizens, the legitimate interests of legal entities, organizations? Responsibility has already been established. Consequently, the Institute of responsibility simply does not work. It turns out, that in practice does not work even the principle of responsibility of state employees for being developed and adopted solutions, non-performance or improper performance of their official duties. This principle of civil service is limited mostly to the establishment by legislator of the responsibility (disciplinary, administrative, financial, and criminal) for misconducts (deeds) or inactions of state employees.

The discussion of the problem of administrative procedures in some cases (in some areas of legal regulation and activity) is completed by a statement of change in the "ideology" of administrative procedures. For example, Dmitry Medvedev suggests "fundamentally change the ideology of administrative procedures related to the starting and running a business" [38]. Besides it is proposed to replace the majority of licensing procedures to notification ones that will let, according to Dmitry Medvedev, to overcome "bureaucratic indifference" and "bribery" [38]. Thus, the political policy statements regarding the essence of administrative procedures reflect the main juridical purpose of the legislation on administrative procedures: establishment the power of administrative and legal regulation (laws, administrative regulations) over the practice of state administration, implementation of functions and powers, creation of the regime of legitimacy in management actions, required order in the field of public administration. Obviously, such statements of

public figures have to contribute to the development of the "ideology" of the draft law "On Administrative Procedures".

According to Dmitry Medvedev, "administrative reform should be brought to the end, in place of licensing procedures should come notification ones, the number of officials should become less, significant part of state functions should be transferred to the non-state sector, and corruption should be given "a real fight"; "administrative clarity (i.e., a clear understanding of on what levels are made particular decisions) is the first condition to ensure public support", "the power does not exist for itself, but for the effective management of a country in the interest of citizens. And exactly to this model, we need to strive. The model, which is essentially based on a social agreement between the government and society, on a contract, which creates mutual obligations of parties and generates full responsibility of the government to the people", "if we want to become a civilized state – we need first of all to become a legal state" [19].

Legislation on administrative procedures contradictory develops in Russia. It was formed as a result of the conducted in the country administrative reform (2003-2008). The point is that the development of the legislation on administrative procedures is implemented not by the development of the law "On Administrative Procedures" but through the establishment of appropriate sections approved by the federal and regional levels of administrative regulations on execution of state functions and rendering state services. For example, the Administrative regulation of performing by the Federal Immovable Property Cadastre Agency the state function of state land control (approved by the Order of the Ministry of Justice of the Russian Federation No. 254 from December 27, 2007) [29] in the third section includes provisions on administrative procedures, which refers to the sequence of actions in the execution of this state function. About the same legal standard of establishing the administrative and procedural relations is used in the preparation of all administrative regulations adopted at the level of the federal executive power [2, 3, and 4].

Legislation on administrative procedures is the most important term for overcoming "excessive" administrative regulation and administrative control (supervision). The formation of such legislation on administrative procedures (i.e., the norms on the sequence of implementation government functions and rendering public services), in principle, will not replace the traditional administrative and legal norms, which must be contained in the Federal Law "On Administrative Procedures". However, it is hoped, that the development of the legislation on administrative regulations will anyway contribute to the formation of the modern theory of administrative procedures and the development of the law "On Administrative

Procedures", which would contain the norms on the general principles and procedures for settling administrative cases, and adopting administrative and legal acts by state and municipal administration.

For the implementation of the competence of state bodies, resolving the tasks of state power (executive, legislative and judicial), ensuring the rights, freedoms and legitimate interests of citizens and legal entities, there are normatively established general and specific procedural forms within of which are defined and used in practice relevant legal procedures – law-making, administrative (managerial), judicial.

Legislative power is exercised by law-making legal procedures [15], directly establishing the procedure for adopting laws. However, in this area of state activity other procedures of the so-called preparatory nature are used, i.e., procedures that are not directly related to the activities of the parliament (in the literal sense of the word), but contributing to the implementation of the very legislative process.

Judicial power is exercised by court proceedings (justice), which can also be represented in the form of special legal procedures designed for this type of state activity. They are legislatively included in the Procedural Codes of the Russian Federation (for example, Civil Procedure Code, Arbitration Procedure Code, Criminal Procedure Code).

Exercising of executive power, the implementation of state administration, as well as the activities of the executive bodies of local self-government and all authorized officials cannot be imagined outside the normatively established legal procedural orders or, as sometimes they say, administration and management processes. Activity of executive bodies and their officials, state and municipal employees is defined not only by many rules of substantive law, but also by the system of procedural administrative-law norms.

Executive power is exercised by the law enforcement (law fulfillment) and law-making (rule-making) activities. However, administrative procedures are created and used only for law enforcement activities of bodies of public administration and theirs officials, including while the adoption of individual administrative acts. Rule-making activity of executive bodies is formed, as a rule, on the basis of relevant normative acts, which do not establish as a subject of legal regulation administrative and procedural activity.

Administrative procedures are of essential legal value in the practice of the state-legal building and public administration. Institute of administrative procedures is an integral part of modern administrative law. In countries that have a long practice of application the legislation on administrative procedures, in the system

of state administration has been established proper legal order, democracy, openness in functioning of state bodies apparatus, real responsibility of civil servants and officials.

Administrative procedures, whatever they are understood in the theory of administrative law and practice of state administration, are associated with the creation of a special legal order in the implementation of certain management actions, or adoption of appropriate administrative decisions. Consequently, administrative procedures should be considered as the most important administrative and legal institute that logically fits into the structure of administrative and legal regulation.

Appearing in the legislation legal procedures, including legal and administrative procedures, should be assessed from the standpoint of legal significance, practical utility, and principal sectorial legal belonging.

Administrative procedures (in the literature they are often referred to as "positive" administrative procedures), their legal regulation and, most importantly, legal quality and availability have a direct impact on the implementation by citizens and organizations of their rights and freedoms. Since all the subjects of law anyhow come into different relations with the executive bodies of state and municipal power and their officials, administrative procedures are very diverse and widespread in management practice.

Administrative procedures – actually existing procedural legal norms, which can be structured and codified. And if in the process of structuring are found any gaps and contradictions, it's not a reason to deny the legal nature of this group of procedures. The place for them is prepared by the whole system of administrative law sector, without them, this branch of law is not comprehensive and complete.

Administrative procedures are traditionally included by authors in the structure of administrative process [37]. However, in literature maintains the view that managerial process does not refer to administrative process on any of the traditional grounds that separate one branch of the procedural law from the other. Besides, It is proposed to link management process with numerous administrative procedures that legally "draw up" practical management activity [21, 35, 570-576]. Management process is referred to the procedure to achieve normatively stated objectives of governance with help of legal, organizational and other means of managerial impact [35, 572].

Administrative procedures are included by legislators in the legal system and the structure of a modern state of law in general, and in the system of exercising of executive power, in particular, because of the need to enter to the organization and functioning of public authority a proper order, ensuring the compliance

with the principle of legality, providing the guarantees of usefulness, efficiency and transparency of administrative actions. For example, in European countries operate special laws on management (the laws on Administrative Proceedings or on Procedural Activity in the Field of Management) [5, 28]. Russia is just approaching this legal standard in the area of managerial process. One can even assume that the absence of the laws on administrative procedures shows "immaturity" of the Russian administrative legislation and the Russian theory of administrative law. Because historically, the formation of modern administrative law was carried out in the direction of strengthening the influence and power of law (laws, order) on the public administration, i.e., administrative practice in all its variety and scope ought to experience a normative "burden" and be carried out under the normatively established rules. Management process should be based on legal norms established in laws. Hence, the most important direction in law-making activity in the field of managerial process is the adoption of laws governing administrative (managerial) procedures (the title of this law in the Russian scientific literature is being produced today, for example: Managerial Procedural Code; the Law "On Administrative Proceedings", the Law "On Administrative Procedures") [21].

Theoretical analysis of existing in the current literature views of scientists about the nature, purpose, prospects of legislative regulation and sectorial affiliation of administrative procedures allows us to conclude that administrative procedures are considered in the theory of administrative law in the following aspects: forms of exercising executive power [12]; legal acts of administration (or administrative and legal acts); administrative procedure [17]; settlement of legal disputes [31]; administrative justice, the protection of the rights and freedoms of individuals and citizens [9, 33, 41 and 42]. In Russia were published scholarly works directly devoted to the study of all the sides of this complex administrative and legal institute [6, 11, 23, 26, 30, 36, and 40].

In recent years on this issue have been defended several dissertations [7; 14; 16; 20; 24; 25; 27 and 34].

On administrative procedures are saying as about the system of administrative and procedural legal relations that are emerging in various administrative and legal institutions. Administrative and procedural legal relations having the features of homogeneity are located in the system of broader administrative and procedural relations.

The structure of administrative and procedural legal relations includes: "positive", i.e., non-conflict legal relations that form between the executive bodies of state or municipal power on the one hand, and citizens and organizations – on the

other hand. The content of such legal relations in the field of public administration (state or municipal administration) is the need of exercising or realization by citizens and organizations of their rights, freedoms or legitimate interests (these relations are sometimes called "external public legal relations").

The main purpose of forming administrative and procedural legal relations is establishing administrative legal order of implementing managerial activities; realization of rights and performing duties of citizens and organizations; ensuring the legality of public administration; establishing the guarantees of fairness and reasonableness of adopting administrative acts or fulfillment of managerial actions; performing of legally significant actions with regard to the applicants.

Content of administrative procedures consists of the following elements: purpose of administrative procedures; their legal regulation; principles of administrative procedures; procedure for implementing managerial actions; consideration and resolution of administrative cases; execution decisions made on administrative cases.

Modern legislator understands administrative procedures as the established order of activity of administrative bodies to consider and resolve administrative cases. At the same time in other countries in current laws on administrative procedures is established the procedure for "consideration and resolution of administrative cases" through the use of administrative proceedings (i.e., "the settled by an administrative procedure process of consideration and resolution of an administrative case").

Signs of administrative procedures are:

1) implementation of the competence of an appropriate executive body of public authority; administrative powers of authority ensure the performance of appropriate management functions;

2) establishment of procedural forms promoting the realization of the rights and freedoms of man and citizen, as well as the legitimate interests of organizations, legal entities and individual entrepreneurs;

3) legal form of executing of public administration and executive power;

4) normativity of administrative procedures, i.e., normatively established order for their use and application;

5) administrative-legal regulation of the goals and objectives of a relevant administrative procedure;

6) determination of administrative and legal status of participants (subjects) of administrative procedures, i.e., subjects of procedural legal relations;

7) consideration and resolving of an individual administrative case;

8) exercising of an administrative procedure is associated with the application of various sectors of substantive law;

9) adopt various legal acts of management (both intermediate and final).

By content the administrative and procedural activity is related neither to judicial consideration of disputes about subjective public law (administrative and legal disputes), nor to the application the measures of administrative coercion.

Administrative procedure, in terms of its internal structure, is considered as a system of coherently committed by authorized subject organizational actions drawn up in the intermediate and final decisions on each administrative case. The main stages of administrative procedures are: institution of an administrative proceeding, consideration of an administrative case; taking of a decision on an administrative case (adopting of an administrative act), revision of a decision on an administrative case; execution of a decision on an administrative case.

Decision making on an administrative case is usually identified with the adoption of an administrative act. Thus, in practice, the administrative procedures are considered as a form of adoption of an administrative act. Therefore, the central part of the laws of different countries “On Administrative Procedures” contains a chapter called “Administrative act”. It includes the following articles: form and content of an administrative act; adoption and entry into legal force of an administrative act; explaining of an administrative act; cancellation of an administrative act; return and compensation in connection with the cancellation of an administrative act; revising of an administrative act on newly discovered evidences. The final chapter of administrative and procedural law is an “Execution procedure”, which sets out the rules of execution of an administrative act, period of its voluntary performing, forcible execution of an administrative act and the consequences of its non-performance.

The basic principles of administrative procedures are:

- *legitimacy*, i.e., the exact observance by participants of administrative proceedings of the Constitution of the RF, federal laws and other federal normative legal acts, laws of subjects of the Russian Federation; any action or decision of an administrative body must comply with the laws; administrative authorities shall act only within the limits of their legal competence;

- *presumption of reliability*, i.e., information, submitted by applicants about the actual circumstances of an administrative case that is being considered by an administrative body, shall be considered reliable and genuine in all cases up to the moment when the opposite is proven by officials of the administrative body;

- *prohibition of abuse of rights*, the application by an administrative body of any

legal act should be performed in strict accordance with its meaning and the main purpose; it is unacceptable to abuse the gaps or ambiguities in the current legislation in the process of administrative bodies' activity;

- *prohibition of arbitrariness*, i.e., unconditional exclusion from administrative practice of manifestations of unequal approach in the assessment of the same factual circumstances of a case in similar legal situations;

- *prohibition of bureaucratic formalism*, i.e., a ban of administrative bodies to burden concerned parties with obligations or to deny them the right only in order to meet their corporate rules and requirements; if a considered administrative case may be resolved without complying with these rules, administrative bodies are prohibited to use to the detriment of persons concerned the fact of non-compliance by them with corporate rules and requirements;

- *public hearing* of administrative cases in the executive bodies of state power and local self-government;

- *conducting of proceeding* on administrative cases *in Russian*; administrative proceedings may also be conducted in the official language of the Republic, which is the subject of the Russian Federation. Interested parties, who do not speak the language in which is conducted the proceedings on an administrative case, are explained and provided with the right to get acquainted with the all materials of the case, to give explanations, to appear in court and to submit petitions, to enter appeals in their native language or in any freely chosen by them language of communication, as well as to use the services of an interpreter in accordance with the procedure established by law;

- *proportionality* of the implementation of any actions of administrative bodies to the goals and objectives for which they are carried out in practice;

- *the right to be heard*, that is, an administrative authority shall be entitled to take an administrative act only on the condition that the person, whose rights or legitimate interests are supposed to be limited by the act, is given the opportunity to express his views on all the circumstances relevant to the legitimate and correct settlement of a case;

- *impartiality*, i.e., administrative body's officials are required to provide impartial consideration and settlement of an administrative case;

- *substantiation* of every administrative decision or action; an administrative body incur an obligation of a thorough and comprehensive examination of all the circumstances relevant to the legitimate, proper and fair resolution of a case;

- *ban* of an administrative body *to demand* from persons concerned the documents, the details of which are already contained in existing in a case more

general documents that provide clear and sufficient understanding of their content for the proper settlement of this administrative case (principle of "greater includes the lesser");

- *efficiency and economy*, i.e., a proceeding in sufficient short time and with reasonable economy of forces and means of an administrative body in the exercise of its powers.

Types of administrative procedures are defined primarily by the spheres of relations regulated by the legislation on administrative procedures, such as: registration administrative procedures; administrative procedures for licensing; certification administrative procedures; procedures to implement the competence of a managerial body; procedures that implement the legal status of a citizen or a legal entity; permitting administrative procedures.

The main type of administrative procedures is positive ones, i.e., it is the procedures of forming, organization and activities of the executive bodies of public authority to ensure the rights and freedoms of man and citizen, as well as the legitimate interests of organizations; procedures that contribute to the implementation of competence of ruling subjects of public administration (e.g., the adoption of acts of governance; consideration of citizens' complaints); procedures of exercising by executive bodies of public administration of specific legal actions for registration, licensing, permitting, control or supervision.

Positive administrative procedure is a normatively settled and designed to achieve a particular result formalized activity of authorized executive bodies of public authority and their officials to consider and resolve individual administrative cases and take administrative decisions that contribute to the exercising of the established in laws rights, freedoms and legitimate interests of citizens and organizations.

If we proceed from the view that in the application of administrative coercive measures are also used administrative procedures, then we can talk about so-called jurisdictional procedures [41, 95]. Jurisdictional or administrative and tort procedures are law-enforcement procedures used by authorized administrative bodies and officials to implement the protective function of public administration. As a rule, from the system of jurisdictional administrative procedures are excluded those, which are enshrined in the Code on Administrative Offences of the RF [41, 94].

The law "On Administrative Procedures" creates the possibility for the formation of relatively isolated group of legal norms governing the positive administrative procedures of law. From a scientific and theoretical point of view, are of great importance the different aspects of the concept of administrative procedures, their

essence, features, necessity, background and reasons for existence, value, function, types, sources of administrative procedures. From a practical point of view, by relevant issues can be considered the ones of legal quality, effectiveness of the laws on administrative procedures, problem of their legal regulation and the issues of improvement of the legislation on administrative procedures.

The problem of streamlining administrative procedures is inextricably linked to the ensuring of the regime of legitimacy in state administration, improvement the organizational structure of the executive bodies of state power, its system of internal and external communications, as well as the exercising of rights and freedoms of individuals and organizations. The current state of the Russian legislation on administrative procedures does not meet modern needs and standards of administrative and legal regulation of the public administration rules and the procedure of resolving administrative cases. The lack of a single normative act on administrative procedures is a huge gap in administrative law, while foreign lawmakers have long since filled it (in the U.S.A., Germany, France and other countries) having adopted appropriate laws. In many countries already for several decades has been operating the legislation containing norms on administrative procedures. Relevant laws regulate not only controversial (or negative) procedures (when there is a dispute between a citizen and an administration or has been committed an administrative offence), but also non-controversial (positive) procedures (when there is not such a dispute).

The legal regulation of administrative procedures in the activities of officials, state and municipal employees will contribute to the elimination of legal collisions, as the relevant administrative procedures will ensure the legitimacy of practical exercising of the administrative and legal status of officials, that is, they will not go beyond the limits of their powers and violate the competence of state bodies.

The need for proper legal regulation of administrative procedures in the special Russian Federal law “On Administrative Procedures” is driven by the need of:

- creating opportunities to form relatively isolated group of legal norms governing the positive administrative legal procedures;

- settlement by law of interrelations that are emerging between the bodies of state and municipal authorities, on the one part, and numerous unsubordinated subjects – citizens or organizations, on the other;

- establishment of the full, effective and relevant to current standards in the field of public administration procedure of implementation managerial actions, adopting administrative acts, as well as the consideration and resolution of individual administrative cases;

- ensuring the legality of public administration, since the normative establishment of procedural rules in public administration will serve the purpose of the ensuring of legitimacy, first of all, by that it will settle actual relations, the law will give them a formal certainty and thereby prevent abuse of law or significantly restrict such an abuse;

- determination of the administrative and legal status of administrative procedures' participants (individuals and legal entities who exercise the granted to them rights and freedom, and protect their legitimate interests);

- taking into account high prevalence of administrative procedures in the practice of public administration and their classification.

During the last decade have been developed two draft laws "On Administrative Procedures". The first is a project developed by the "Fund Constitution" [42, 16-17; 39]. This draft law includes eight sections: 1) scope of the law; 2) general principles of a legal state and principles of an administrative procedure; 3) procedural principles and the procedure for implementation of administrative actions and taking decisions (participants (parties) of a procedure, their procedural status, etc.); 4) procedure in the first instance; 5) procedure for appeals and taking decision; 6) special types of administrative procedures; 7) execution of orders; 8) responsibility (state bodies and their employees). Thus, according to the authors of the draft law, it must establish a process for the issuing, modification, cancellation and execution of orders (legal acts of management). As the orders they understand the based on public law individual acts of administrative bodies, related to a specific cases, the subject of which is: a) justification, changing and termination of rights and obligations; b) determination of the presence or absence, as well as the scope of rights and obligations, c) rejection of petitions on justification, changing, termination or determination of the existence of rights or obligations, refusing consideration of such petitions.

The second draft of the federal law "On Administrative Procedures" is a legislative draft introduced for consideration in 2001 to the State Duma by a Deputy of State Duma V. V. Pokhmelkin. This draft law was aimed at establishing rules of consideration and resolving administrative cases by executive bodies of state power, executive bodies of local self-government and their officials.

This draft law established the principles and procedure for the exercising of managerial activity on the provision, certification, registration, or suspension (termination) of certain competences of organizations, individual entrepreneurs and individuals. Administrative case in it is defined as a set of documents and materials that record the process of preparation, consideration and taking a decision on

the provision, certification, registration or suspension (termination) of a concerned person's competence. In the role of administrative procedures are proposed the established by legislative acts regulation norms that establish the grounds, conditions, sequence and procedure for settlement of administrative cases.

Considered draft law contains the following chapters: main provisions of the legislation on administrative procedures (pp. 1-8); general conditions of consideration administrative cases (pp. 9-14); representation in relations regulated by the legislation on administrative procedures (pp. 15-18); evidences (pp. 19-30); administrative expenses (pp. 31-35), procedural deadlines (pp. 36-38); filing application for the considering of an administrative case (pp. 39-44); preparation of an administrative case for consideration in administrative proceeding (pp. 45-48), consideration of an administrative case (pp. 49-56); decision on an administrative case (pp. 57-62); simplified procedure for consideration of certain categories of cases (pp. 63-66); terms and procedure for appeals on administrative cases (pp. 67-70); filing of an administrative complaint (pp. 71-74); consideration of an administrative complaint (pp. 75-80); execution of decisions on administrative cases (pp. 81-88).

Article 2 of the analyzed draft law establishes relations regulated by the legislation on administrative procedures. Legislation on administrative procedures regulates the relations on the consideration and resolution by the executive bodies of state power, the executive bodies of local self-government, their officials administrative cases on the provision, certification, registration and suspension (termination) of competence of organizations, individual entrepreneurs and physical persons.

According to the authors of the draft law, applicability of the legislation on administrative procedures applies in respect of relations in the fields of:

a) registration of legal entities and individual entrepreneurs;

b) licensing of particular types of activity;

c) registration of rights to real estate and transactions with it;

d) granting plots of land, subsoil plots, forest plots, water objects, as well as withdrawal of these plots and objects from the owner or other lawful possessor;

e) providing land plots, subsoil, forests, water bodies, as well as the removal of these sites and objects from the owner or other lawful owner;

f) providing organizations, individual entrepreneurs or individuals credits, loans, subsidies, grants, subventions, subsidies, compensations, financial and material assistance, investment, quotas, guarantees, privileges and benefits from the federal budget, the budgets of the Russian Federation subjects, local budgets, as well as Non-budgetary funds;

g) placement of the State (municipal) orders;

h) management of state and municipal property or property rights;

i) issuance of a permit to carry out construction and erection works (construction permits), exploit building and other facilities or equipment, as well as to take another managerial decisions on the issues of investment activity;

j) mandatory certification of products, works and services;

k) registration of citizens on place of residence and stay;

l) vehicles registration;

m) providing citizens of living accommodation in houses of state and municipal housing funds and use these facilities;

n) privatization of dwelling premises;

o) award and payment of pensions and allowances;

p) recognition of an individual's status that gives ground to obtain benefits and privileges;

q) issuance of documents with legal significance;

r) provision, certification, registration and suspension (termination) of another competences of organizations, individual entrepreneurs and physical persons;

Applicability of the mentioned draft of a federal law does not apply to relations in the fields of:

a) preparation and adoption of normative legal acts by the bodies of state power and local self-government;

b) privatization of state and municipal property, except for dwelling premises;

c) proceedings on the cases on administrative offences, the criminal and civil court proceedings;

d)imposition, introduction and collection of taxes and fees, including customs fees;

e) state and municipal service or employment relationships;

f) holding of a public competitive tenders and other relations with the participation of state bodies and bodies of local self-government, regulated by civil legislation of the Russian Federation;

g)issue and circulation of securities;

h) preparation and taking managerial decisions not related to the provision, certification, registration and suspension (termination) of competences of organizations, individual entrepreneurs and physical persons;

i) preparation and taking managerial decisions by the subjects other than

the executive bodies of state power, executive bodies of local self-governments or their officials.

There are other suggestions for creation of the legislation on administrative procedures. For example, S. D. Khazanov, discussing about the possible subject of legal regulation of the federal law on administrative procedures, points out that it should apply to the following types of administrative and procedural relations: a) licensing procedures; b) registration procedures; c) right ensuring (right lodging) procedures; d) information and documentation procedures; e) examination and certification procedures; f) controlling and supervising procedures; g) jurisdictional procedures; h) administrative and tort procedures (except those which are provided for by the CAO RF); i) administrative and executive procedures (except those provided for by the Federal Law "On Execution Proceedings" and the CAO RF); j) public-service procedures related to the ensuring of the legal status of civil servants; k) disciplinary and organizational procedures; l) procedures for the application of measures of administrative and legal coercion [41, 94-95].

Some authors suggest to adopt a federal law "On Administrative Procedures", which comprehensively regulating this type of managerial relations, would spread its effect only on the so-called out-of-apparatus administrative procedures [27, 14]. If we talk about the levels of legal regulation of administrative procedures, here is proposed to create, for example, a three-tier system of legal regulation of these relations: the first level – federal law "On Administrative Procedures"; the second level – federal laws regulating separate procedural proceedings; the third level – normative legal acts adopted in pursuance of federal laws, and administrative regulations of executive bodies [16, 9].

From the given analysis of opinions of Russian scientists regarding the essence, content and value of administrative procedures in the system of executive power and public administration, become relatively clear the ideas about the main features, principles and model characteristics of the future law "On Administrative Procedures".

The desire of legislators to create a quality, in terms of the content and system of procedural norms, law "On Administrative Procedures" is a timely and correct step towards building the rule of law and, therefore, restrictions of arbitrary and unlawful official conduct of public servants. Unfortunately, adopted Federal Law No. 210-FL of July 27, 2010 "On the Organization of the Provision of State and Municipal Services" covers only a part of relations stipulated for regulation in the law "On Administrative Procedure", and the draft law proposed by V. V. Pokhmelkin was rejected by the State Duma of the Federal Assembly of the RF in 2009 [1].

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TWO CODIFICATION ISSUES OF ADMINISTRATIVE AND TORT LEGISLATION

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Sets before the principal issues to be solved in the further improvement of the administrative and tort legislation of Russia, including those relating to the problem of delimitation of administrative and tort law and administrative and jurisdictional procedure (separate codification of substantive and procedural norms of administrative responsibility). Here is substantiated the formation of de jure and de facto independent branch of law – administrative and tort law.

Key words: administrative responsibility, administrative and tort legislation, administrative and tort law, codification of administrative and tort legislation.

Administrative offences have been and remain the most common types of wrongful misconduct. The scope of administrative delinquency, the diversity of its manifestations and inflicted harm determine the need to counter administrative offences, reduce the threshold of its danger to legally protected interests. For this purpose the State is improving the legislation on administrative responsibility. Has already been performed its second codification, the Code on Administrative Offences of the Russian Federation from 2001 replaced the first-born – the Code on Administrative Offences of the RSFSR of 1984. For ten years of its operation have been adopted more than one hundred and forty federal laws that significantly changed each section of the Code. But, I think, the local amendment possibilities have been exhausted. At present, there is a task to exercise the third codification of administrative and tort legislation on the base of new realities and analysis of application the current CAO RF. Its solution assumes further elaboration of the fundamental

issues of legal regulation of administrative responsibility, sectorial identifying of administrative and tort norms, the role of administrative and legal restrictions in the modern Russian legal system, etc. This scientific base is important to define the concept of a new administrative and tort legislation, establishing appropriate normative models. In this connection, it seems necessary to draw attention to the conceptual issues related to the future codification of administrative and tort legislation, assess the existing doctrinal developments and rulemaking experience.

These issues need to be considered with the system approach. The importance of this approach is the following. Law in general is a complex system that combines many subsystems of different levels. Of all their diversity should highlight such subsystems as a branch of law, legal families, and protective (tort) branches of law. Note also that the structure of law, its component subsystems, their relations do not remain the same, as well as social relations regulated by legal norms. The dynamics of these relations determines the emergence of new legal communities (as was the case with the norms on administrative responsibility, which previously were a part of the administrative law). To address rulemaking tasks of codification level it is necessary to find out sectorial affiliation of appropriate body of laws, its place in the overall structure of the Russian legislation, connection with other legal communities (legal families, branches, etc.). Using the systematic approach we will try to justify our vision of these problems.

First, about sectorial affiliation of norms of administrative responsibility. This aggregate is a separate branch of the Russian law – administrative and tort law. This conclusion has been substantiated by us earlier [9, 7], so it is advisable only to recall the main key positions.

The basis of the sectorial identification of legal norms is a systematic approach. Branches of law streamline regulation of autonomous groups of social relations, ensure in respect to them a certain legal regime of legal regulation [1, 162]. They act as load-bearing structures in the mechanism of legal regulation, make it meaningful and task-oriented. Sectorial identification of norms allows to determine the main components of the legal system, isolate the corresponding blocks of the current legislation, facilitate its application and legal classification of cases, the search for and interpretation of legal instructions. Separateness of norms on administrative responsibility is based on the recognized by the theory of law independence criteria of branch of law. This aggregate has its own subject, method of legal regulation, has its own separate normative base.

Decisive for the formation of a corresponding branch of law is an existence of its subject of legal regulation.

Moreover the subject – it is a main non legal reason for the isolating of branch of law [1, 170]. Law just reflects some public needs. Availability of administrative delinquency as a serious destructive system necessitates a protective response of the State, which is primarily expressed in the establishment of legal responsibility for administrative offenses. Relations arising in respect of these offenses are nothing but administrative responsibility relations, which got the name in literature as "administrative and tort relations" [2, 3], which gave the name of the relevant field of law. It should be emphasized that the legal fact giving rise to their emergence, change and termination is a committing of an administrative offense. And each of these legal facts is extremely detailed in the norms of the Special part of the CAO RF and laws on administrative offences of the subjects of the Russian Federation, and the determining in the actions of a person signs of a particular offense is a fundamental obligation of the subjects of administrative jurisdiction. Thus, the subject of the considered branch of law is administrative and tort relations, within which is exercised administrative responsibility. These relations in content and orientation are closer to the criminal-law relations. This is evidenced by the similarity of the basic institutes of administrative-tort law and criminal law, the presence of a large number of related elements of administrative offences and crimes in the Special Sections of the CAO and the Criminal Code of the RF (about a hundred of corpus delictis). Such extensive common field of protection through the norms of administrative-tort and criminal law is an objective reality, which leads to the conclusion that the administrative- tort law is an integral part of the family of protective (tort) Russian law. This conclusion is important for coming together the content of the CAO RF (more precisely Administrative-tort Code of the RF) and the Criminal Code of the RF, elaboration the optimal model of their integration.

The considered branch of law is also characterized by the inherent in it special method of legal regulation, that is, an aggregate of legal techniques of impact on public relations. Branch method depends primarily on the combination of prohibitive, obliging and permissible methods of legal regulation [1, 178]. For administrative-tort law the first one is dominant. It is a prohibition through imperative determination by the legislator of dangerous to society deeds, and the threat of the application administrative penalties in cases of their committing defines the essence of method of regulating the administrative-tort law.

Administrative and tort law has not only its own subject and method of legal regulation, but also the relevant organization of the normative material. In the process development of law, its structural subdivisions do not remain unchanged. The formation of a branch of law is strongly influenced by the level of maturity, the way

of enshrining a separate group of norms. A quantum jump in the organization of norms on administrative responsibility in the form of the Union republics' codes on administrative offenses in 1984-1985 on the merits completed the normative formation of administrative- tort law. It should be emphasized that the CAO RF of 2001 demonstrates a new level of organization of administrative responsibility norms, reflects the need for jurisdictional protection of public relations of modern Russia, which has settled down to a course of building a democratic state. The current CAO RF contains not only the norms of administrative responsibility, but also the principles cementing the unity of all the norms of administrative-tort law (the principle of presumption of innocence, equality before the law, etc.). Namely such a high degree of organization of these norms allows drawing a conclusion about the independence, "sovereignty" of this branch of Russian law.

Thus, administrative-tort law is an independent branch of the Russian law, carrying out a substantive regulation of administrative responsibility. To determine the direction of future codification works is important, what will be their main vector. Will remain the current mixed codification of substantive and procedural norms of administrative responsibility, or work the way out the idea of their separate codification? These norms determine what actions constitute administrative offenses and administrative penalties for their commission. Administrative-tort law is a means of countering administrative delinquency and enters the family of protective (tort) Russian law. Precisely this conceptual position should, in our opinion, be reflected in a future draft of Administrative-tort Code. Of course, should be preserved the continuity with the current legislation on administrative responsibility (norms of the first two sections of the CAO RF). But that does not mean their cosmetics revision. We need a serious analytical work, thorough revision of the existing substantive norms, study of the practice of judges and other subjects of administrative jurisdiction. In this case, special attention should be paid to the relevancy of administrative-law restrictions, which determines the conversion of an actual behavior to the legal structure of an "administrative offense". Such a conversion of a social to legal was named as administrative delictolization [8, 41-45]. Administrative delictolization is a tool by which the state implements its policy to counter administrative delinquency, normatively determining, what deeds are related to administrative offences. However, administrative delictolization should be implemented with taking into account the two-tier structure of the current administrative-tort legislation. In recent years it has become less of duplication of the CAO RF norms in the laws of the subjects of the Russian Federation, but become a problem of unbundling of allied structures of administrative offences

in the federal and regional legislation (for example, improper use of budget resources, the responsibility for which is stipulated in article 15.14. of the CAO RF, and appropriate articles of laws of the subjects of the Russian Federation). Therefore, it is important in such cases, clearly identify the distinguishing marks of such structures. One solution to this problem would be preparing the model laws on administrative responsibility of the subjects of the Russian Federation.

Second, about the procedural regulation of administrative responsibility. Recall that the current CAO RF is based on the joint codification of substantive and procedural norms of administrative offenses. In our opinion, this normative solution is not the best. Recall that strictly speaking the subject of the administrative-tort law is the relations of the legal responsibility for administrative offenses. This conclusion is based on the fact that the application of substantive norms on responsibility is exercised within the appropriate type of legal process. Such assumes maintenance of substantive norms on legal responsibility (civil-law, criminal, administrative). It is this role is the basis of the pair structuring of the current tort legislation (the appropriate part of the Civil Code – the Code of Civil Procedure of the Russian Federation, of the Criminal Code – the Criminal Procedural Code of the Russian Federation), which should also be extended to the norms on administrative responsibility. Proceeding from the requirements of the systemacity of the Russian tort legislation, it can be argued that the form of implementation of the administrative-tort law is an administrative-jurisdictional process (administrative-tort process).

Conclusion on the division of administrative-tort law and administrative-jurisdictional process assumes the expediency of separate codification of substantive and procedural norms on administrative responsibility. Deepened study of the problems of administrative responsibility should be based on the theoretical concept of administrative-tort law and the recognition of administrative-jurisdictional process as an independent type of legal process. Joint codification of substantive and procedural norms on administrative responsibility in a single normative act, as it has been done in the CAO RF, is not the best variant of the organization of its normative basis. One of the priorities in our opinion should be the development of two separate codes of Russian Federation: Administrative-tort code regulating material relations for this type of legal responsibility; Administrative-tort Procedural Code regulating procedural relations of the administrative responsibility implementation. This idea has not only found support in the scientific literature, but also realized in the author's projects of the mentioned Codes of the Republic of Kazakhstan [6], in the adoption of the Procedural Executive Code on Administrative Offences of the Republic of Belarus[4, 5], in legislations of other countries.

In the future Administrative-tort Procedural Code of the RF should be reflected the current procedural norms on administrative responsibility. However, in it should be clearly defined the functions of administrative-tort process (administrative prosecution and protection of rights of proceedings participants), proceedings participants, stages, evidences, etc.

Such a normative solution would meet the requirements of systemacity of the Russian tort legislation, promote a more clear normative regulation of administrative responsibility.

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