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Alaev I. V.

PUBLIC PERSONS BROUGHT TO ADMINISTRATIVE RESPONSIBILITY UNDER ARTICLES OF CHAPTERS 5, 6 OF THE CODE ON ADMINISTRATIVE OFFENCES OF THE RUSSIAN FEDERATION

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In the article are represented the results of the analysis of the current legislation of the Russian Federation with regard to specific individuals – subjects of administrative responsibility among public persons for offenses specified in chapters 5 and 6 of the Code on Administrative Offences of the Russian Federation. Expresses the view about the next version of the codification of the CAO RF based on separate regulation of tort legal relations with different types of entities – public and private persons.

Key words: administrative responsibility, administrative offences, public persons, administrative responsibility of public persons, codification of administrative and tort legislation.

In accordance with previously determined by us public persons – subjects of administrative responsibility [2], the analysis of norms in the Special part of the Code on Administrative Offences of the RF [1] concerning enshrining in existing federal administrative-tort legislation responsibility of particular public persons (definitions of collective and individual persons applied by the legislator) is of interest.

Due to the fact that some articles of the CAO RF do not provide decoding of subjects of administrative responsibility, as well as is used a legal category of an official, identification of public persons was carried out by us in view of a legislation regulating one or another public legal relations. Results of the author's research of chapters 5 and 6 of the CAO RF are summarized in the table below.

Article of the CAO RF	Subjects of administrative responsibility	
	Individual subjects	Collective subjects
5.1	chairman, member of election committee and referendum committee	The Central Election Commission of the Russian Federation, election commissions of subjects of the Russian Federation, election commissions of municipalities, district election commissions, territorial (regional, city, etc.) commissions, divisional commissions
5.3	official of state bodies, local self-government bodies, public associations	state bodies, local self-government bodies, public associations, non-budgetary funds
5.4	official of a municipal authority, institutions and organizations, including a commander of the military unit, a head of a diplomatic mission carrying out registration (account) of voters, referendum participants, including an official of an election commission, referendum	
5.5	official of state and municipal organizations of broadcasting and editorial offices of state and municipal periodicals	state and municipal organizations in the media sphere
part 2 of article 5.6	chairman, chairman deputy, secretary or another member of election committee, referendum committee with a deciding vote	
5.7		state and local self-government bodies, state non-budgetary funds
5.8	official holding public office or elective municipal office	state and local self-government bodies, state non-budgetary funds
5.9	official of state and municipal organizations in the media sphere	State and municipal organizations, state non-budgetary funds advertising persons mentioned in the article

Continuation of the table

Article of the CAO RF	Subjects of administrative responsibility	
	Individual subjects	Collective subjects
5.10	official of election committee, referendum committee and public associations	public associations, election and referendum committees
5.11	official of public associations	public associations
5.12	official of state and municipal organizations, public associations	state, municipal organizations and public associations
5.13	official of state and municipal organizations, public associations in the media sphere	state and municipal organizations, public associations in the media sphere
5.14	official of state and municipal bodies, state and municipal organizations, state non-budgetary funds and public associations	
5.15	official of election committee, referendum committee, state bodies and local self-government bodies	
5.16	official of public associations	public associations
Part 2 of article 5.17	chairman of election committee and referendum committee	
5.18		election association, an initiative group on referendum conducting, a different group of referendum participants
5.19	authorized representative for financial matters of an election association, initiative group on referendum conducting, a different group of referendum participants	election association, initiative group on referendum conducting, a different group of referendum participants
5.20	officials of, state non-budgetary funds, state corporations and public associations	state non-budgetary funds, state corporations and public associations
5.21	official of federal bodies of executive power, executive bodies of subjects of the RF, and local self-government bodies	
part 1 of article 5.22	member of election committee and referendum committee	

Continuation of the table

Article of the CAO RF	Subjects of administrative responsibility	
	Individual subjects	Collective subjects
5.24	chairman, member of election committee and referendum committee of any level	
5.25	chairman of election committee and referendum committee of any level	
5.27	officials of state bodies, local self-government bodies and state non-budgetary funds	state bodies, local self-government bodies and state non-budgetary funds
5.28	officials of state bodies, local self-government bodies and state non-budgetary funds	state bodies, local self-government bodies and state non-budgetary funds
5.29	officials of state bodies, local self-government bodies and state non-budgetary funds	state bodies, local self-government bodies and state non-budgetary funds
5.30	official (representative of employer) of state bodies, local self-government bodies and state non-budgetary funds	state bodies, local self-government bodies and state non-budgetary funds
5.31	official (representative of employer) of state bodies, local self-government bodies and state non-budgetary funds	state bodies, local self-government bodies and state non-budgetary funds
5.32	official (representative of employer) of state bodies, local self-government bodies and state non-budgetary funds	
5.33	official (representative of employer) of state bodies, local self-government bodies and state non-budgetary funds	
5.34	official (representative of employer) of state bodies, local self-government bodies and state non-budgetary funds	
5.35	official of a legal entity, in care of which is a minor	
5.36	official of a legal entity, in care of which is a minor	
5.37	official of a legal entity, in care of which is a minor,	

Article of the CAO RF	Subjects of administrative responsibility	
	Individual subjects	Collective subjects
	of Child Protection Service and Civil Status Registration Office	
5.38	official of executive bodies and local self-government bodies	
5.39	official of government agencies, executive bodies, local self-government bodies and law-enforcement agencies	
5.40	official of government agencies, executive bodies, local self-government	
5.41	official of local self-government bodies and bodies of the social insurance fund	
5.42	official of executive bodies and local self-government (employers)	
5.43	official of executive bodies and local self-government	
5.45	official (a person holding public office or is in the state or municipal service)	
5.47	officials of government agencies, local self-government bodies, and members of election committee	public authorities, local self-government bodies, election committee and referendum committee
5.48	officials of government agencies, local self-government bodies, owners of state and municipal facilities and installations	public authorities, local self-government bodies, owners of state and municipal facilities and installations
5.49	official of local self-government bodies in the case of the organization of lotteries	local self-government bodies in the case of the organization of lotteries
5.50	official – a deputy, as well as an authorized representative for financial matters of electoral association	electoral association
5.52	official of government agencies, local self-government bodies, state and municipal enterprises and institutions,	

Continuation of the table

Article of the CAO RF	Subjects of administrative responsibility	
	Individual subjects	Collective subjects
	election committees, who are authorized to assist candidates, electoral associations to conduct agitational public events	
5.53	official of the Central Bank of Russia	The Bank of Russia (makes entries to the Central Catalogue of Credit Histories)
5.54	official of the Central Bank of Russia	The Bank of Russia (makes entries to the Central Catalogue of Credit Histories)
5.55	official of the Central Bank of Russia	The Bank of Russia (makes entries to the Central Catalogue of Credit Histories)
5.56	chairman, deputy chairman, secretary of election committee and referendum committee (except CEC)	
5.57	official of government agencies, local self-government bodies represented by the relevant ministries, committees, departments, and educational institutions themselves	under parts 1, 2 of the article: ministry, committees, departments of education and educational institutions itself
5.58	chairman, deputy chairman, secretary and member of election committee and referendum committee	
5.59	official of state bodies, local self-government bodies and law enforcement bodies	
5.60	official of state bodies, local self-government bodies	state bodies and local self-government bodies
5.61	official of state bodies, local self-government bodies	state bodies and local self-government bodies
5.62	official of state bodies, local self-government bodies	state bodies and local self-government bodies
5.63	official of state bodies, local self-government bodies and state non-budgetary funds	state bodies, local self-government bodies and state non-budgetary funds
6.3	official of state bodies, local self-government bodies and state non-budgetary funds	state bodies, local self-government bodies and state non-budgetary funds

End of the table

Article of the CAO RF	Subjects of administrative responsibility	
	Individual subjects	Collective subjects
6.4	official of state bodies, local self-government bodies related to the work of housing and communal sector, passengers transportations, etc.	state bodies and local self-government bodies
6.5	official of state bodies and local self-government bodies related to the work of housing and communal sector	state bodies, local self-government bodies, state organizations and institutions that are involved in the considered area
6.6		state organizations and institutions that are involved in the considered area
6.7		state organizations and institutions that are involved in the considered area
6.15		state and municipal enterprises and institutions
6.16		state bodies, state organizations and institutions that are involved in the considered area

It should be noted that identification of specific subjects of administrative responsibility for provided for by the CAO RF administrative offences through regulated by a various sectorial legislation public relations, from which can only be possible to determine the composition of the specific participants of legal relations protected by the norms of the CAO RF, sometimes makes futile legal administrative prosecution of offenders by the bodies of administrative jurisdictions and their officials. Despite the complexity of forming the norms on administrative responsibility of guilty subjects of law by analogy with the administrative-tort legislation of Kazakhstan, the experience of the neighboring state deserves attention (when one administrative-tort law of the country is enough to determine the subject, object, subjective and objective part of an administrative offense).

However, we are a supporter of the new codification of the CAO RF, which seems in the allocating from it administrative-tort legislation covering its effect on various subjects: private and public ones. Indeed, no one is opposed to the separate regulation of labor and official relations, pensions of "red-tape-monger" and working part of the population, etc.

Refrences:

1. The Code on Administrative Offences of the Russian Federation, No. 195-FL of December 30, 2011[Kodeks Rossiiskoi Federatsii ob administrativnykh pravonarusheniyakh ot 30 dekabrya 2001 g. № 195-FZ]. *System GARANT* [Electronic resource], Moscow: 2012.

2. Alaev I. V. Public Persons – the Subjects of Administrative Responsibility of the CAO RF [Publichnye litsa – sub"ekty administrativnoi otvetstvennosti KoAP RF]. *Aktual'nye voprosy publichnogo prava – The Topical Issues of Public Law*, 2012, no. 4, pp. 4-14.

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Burnysheva L. V.

STATE REGISTRATION AND ACCOUNT OF TAXPAYERS AS A FORM OF PRIOR TAX CONTROL

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Discusses the importance and content of the state registration and account of taxpayers as a form of prior tax control. Substantiates the necessity of introducing legislative amendments that strengthen administrative control to improve the quality of account of taxpayers, as well as non-inclusion in the State Register of unfair taxpayers and short-lived companies.

Key words: tax control, types of tax control, taxpayers, state registration and account of taxpayers, the signs unreliability of a company, unjustified tax benefit, short-lived companies.

"All searches made by officials, revealed to them only that they probably do not know, what is Chichikov, and what, however, Chichikov certainly must be something"
N. V. Gogol

Over the years, the scientists argue about the forms of tax control. On the basis of article 82 of the Tax Code of the Russian Federation, many authors distinguish such forms of tax control as:

1) tax checks;

2) getting explanations of taxpayers, tax agents, and payers of fees;

3) verification of data of Accounting and Reporting;

4) inspection of premises and areas used for deriving income (profit) [7.318, 9.212].

I cannot agree with it for the following reasons: First, this list includes additional elements, mixing forms of tax control with the activities that take place in the course of its implementation, and secondly, the list unreasonably ignores such an important form of tax control as registration and account of taxpayers.

Article 83 of the Tax Code of the RF defines the account of taxpayers only as an objective of the tax control [1], some authors refer the account of taxpayers to the directions of the tax control, mixing it with the control of the use of tax benefits and verification the correctness of use of cash register equipment [12.35]. We believe that this approach violates the logical structure of chapter 14 of the Tax Code of the RF "Tax Control" and detracts the significance of registration and account of taxpayers as a form of prior tax control. Accounting and registration of taxpayers are considered as an independent form of tax control also by V. G. Panskov, M. N. Kobzar'-Frolova, V. A. Tymoshenko, L. V. Spirina and etc. [8, 294; 6, 18; 11].

Let's consider the content and meaning of the registration and account of taxpayers for further tax control.

Should be counted both taxpayers-organizations and individuals (in this category are separately accounted individual entrepreneurs). State registration of legal entities and entrepreneurs precedes putting on record and implemented by tax authorities in accordance with the Federal Law № 129-FL of August 08, 2001 "On State Registration of Legal Entities and Individual Entrepreneurs" (the Law No. 129-FL).

Information on taxpayers is included in USRT (Unified State Register of Taxpayers; EGRN in Russian) and AIS "Tax" (unified automated information processing system). USRT, in turn, includes data from:

- USRLE (Unified State Register of Legal Entities; EGRYuL in Russian),
- USRIA (Unified State Register of Individual Entrepreneurs; EGRIP in Russian),
- as well as data about natural persons who are not entrepreneurs.

It should be noted that the information from the USRLE is publicly available and posted on the web-site of the Russian Federal Tax Service www.nalog.ru.

The procedure for putting on record and deregistration of taxpayers is governed by article 83, 84 of the Tax Code of the RF. Legislator lists in article 83 of

the Tax Code of the RF four grounds of putting on record: 1) the location of an organization, 2) the location of its separate units, 3) the place of residence of a natural person, 4) the location of their immovable property and vehicles, leaving the list open by the phrase "on the other grounds specified in this Code". At this, the procedure of state registration and putting on record of organizations and individual entrepreneurs assumes certain obligations of these entities, as well as a system of responsibility. When implementing of entrepreneurial activity without state registration or in violation of its rules can be applied responsibility under article 14.1 of the CAO RF, article 116 of the Tax Code of the RF, article 171 of the Criminal Code of the RF.

Putting on record at the location of immovable property and vehicles is exercised on the basis of information received from the registration authorities in accordance with article 85 of the Tax Code of the RF. These organs are:

- bodies responsible for cadastral registration, state cadastre of immovable property and State registration of right to real estate and transactions with it,
- bodies responsible for the registration of vehicles
- justice authorities issuing licenses for notarial activities,
- Child Protection Services,
- bodies (institutions) authorized to perform notarial acts, and notaries engaged in private practice,
- bodies responsible for registration (account) of individuals at place of residence (place of stay), civil registration of individuals, etc.

For wrongful failure to submit data to tax authorities for these bodies is provided for tax responsibility under article 129.1 of the Tax Code of the RF.

Any defects, errors relating to the registration and account of taxpayers may lead to violations by controlled subjects of the tax legislation, to the implementation of schemes for tax evasion and thus significant loss of the state budget. These defects, for example, include the appearance in the state register of problematic taxpayers – "short-lived companies". The signs of such firms, according to the FTS, have about 2.2 million of registered taxpayers.

Recently, one of the pressing issues of tax control has become the detection of the taxpayers receiving an unjustified tax benefit using "short-lived companies". But despite the variety of forms of struggle against this phenomenon, their number is not decreasing. Hardly a great difference in this fight will be made by the introduction in 2012 of criminal responsibility for the illegal formation of a legal entity; given that the main category of such firms is registered on asocial individuals or by lost passports (but remember Gogol with his "Dead Souls"). It is of interest

the position of S. S. Dukanov on the current issue. He casts doubt on the fact of state registration of a legal entity as the only proof of his legal status and suggests introducing a kind of filter for registration and account of taxpayers by using the term "company of minimum requirements" [5.18]. The mechanism of action is simple – if a legal entity does not meet the basic set of requirements, it is recognized as a nominal (fictitious) company and can be eliminated. The minimum requirements include: 1) existence of real management bodies with minimal employment and real wage; 2) existence of a real address, to which the company can communicate; 3) timely reporting to the tax and other state bodies. The author believes that information on compliance with these requirements should be included in the Unified State Register of Legal Entities and be publicly available. In addition, in case of recording in the State Register information that a company is a nominal one, the counterparties of such a company cannot refer to a bona fide ignorance when entering into transactions with it.

At present time, on the Russian Federal Tax Service website www.nalog.ru you can get to know the name of a juridical person, address, PSRN (Primary State Registration Number; OGRN in Russian), ITN (Individual Taxpayer Number; INN in Russian), TRRC (Tax Registration Reason Code; KPP in Russian) and the date of its registration. The need of companies to get this information about counter parties came in 2006, after the Higher Arbitration Court ruled that tax benefits can be considered unreasonable if a tax authority prove that the taxpayer acted without due diligence and caution, and he had to be aware of violations committed by the counterparty, in particular, by the virtue of relations of interdependence or affiliation of the taxpayer with the counterparty [3].

It should be noted that in the early 90's, when the "short-lived companies" only began to appear, their goal was basically non-payment of taxes by the firm itself. Gradually, the mechanism of their use in tax evasion scheme took on a catastrophic nature, and long overdue, this scheme allows an unscrupulous taxpayer to inflate costs for tax on profit and VAT deductions through artificial introducing in a chain of economic relations a counterparty – "short-lived company".

In scientific literature, many authors explore the problems of tax control, associated with "short-lived companies". But their views are often diametrically opposed. Some care about bona fide taxpayers affected by the excessive claims of the tax authorities. Others complain about the insufficient powers of the tax service.

Having chosen for analysis one hundred decisions of the Federal Arbitration Court of the West Siberian District for the period April - July 2012, the subject of which was unjustified tax benefit, we have found that in almost all cases, the Court

examines the evidence of the tax authorities of the unreality of transactions and lack of taxpayers due diligence in selecting counter parties. Typically, these counter parties have the signs of a "short-lived company". At the same, there is no consensus among judges in identical situations. An example is the decisions of the Federal Arbitration Court of the West Siberian District from May 11, 2012 on the case No. A46-10559/2011 and from June 04, 2012 on the case No. A46-10750/2011. In addition, sometimes the courts to satisfy claims of taxpayers justify their decision as follows: "accusing a taxpayer of not showing due diligence and caution when entering into transactions with counter parties, the tax authority does not consider the fact that it is exactly the tax authority registered these counter parties and gave them the official documents on the basis of which organizations had the right to carry on entrepreneurial activities" [16].

How to ensure in such cases, the balancing of private and public interests, as well as the fundamental principles of tax law – the principle of justice and legality? We believe that a taxpayer should not bear the burden of responsibility for unscrupulous actions of his counter parties, but only in cases where the taxpayer could not know about the unreliability of his partner.

Above we have represented the position of S. S. Dukanov on the need for a protective mechanism at the registration of legal entities. In our opinion, this mechanism must begin to act earlier, before there will appear information about violations of the "minimum requirements".

Signs of unreliability of a company, detected at the registration stage, have been set out in the instructions of the tax service, which was announced on the website of the newspaper "Account. Taxes. Law" from February 21, 2007 as "109 Signs of Unreliability of a Company in the Eyes of a Tax Inspector" [14]. All signs in this document are divided into three groups, the first of them includes twenty-eight signs, detected at the stage of registration. These ones, for example, include:

- registration address is the address of the "mass" registration (that is, there are registered more than 10 firms). Besides there is a statement of the owner of the premises that the premises has not been provided to anyone and will not be available,

- company registration address does not exist,

- an invalid identity document of the applicant, founder or leader is specified in the application for registration,

- an individual is the founder of 10 or more companies ("mass" founder),

- application for state registration is certified by a notary whose signature has been previously tampered with,

- regarding the founder (head) of a company became aware of the facts under which the performance of his/her functions is difficult or impossible (advanced age, student, serviceman, convicted and is serving a sentence, is on long-term treatment, homeless, refugee, forced migrant, incapable), etc.

Thus, the tax authorities form the dossier of a taxpayer, with taking into account all these signs. Taking into consideration focus of the policy, pursued by the tax authorities, on the publicity of information about companies, as said in an interview A. A. Malyshev the Director General of the Information Agency "Valaam" that publishes "Messenger of the State Registration", the conclusion about the need to make available for a wide range of people the information on the unreliability of companies is getting quite apparent [10, 42].

We believe that the introduction of a simple mechanism would reduce the number of tax disputes concerning unjustified tax benefit received by using "short-lived companies". Thus, if the tax authorities have made in the AIS "Tax" some notes (peculiar markers) indicating the unreliability of a company, these markers should be reflected on the website of the FTS in the information of the USRLE. At the time of appeal of a taxpayer for information about his counter party, he can conclude – is there a risk of future claims of tax authorities, or not.

August 17, 2012 the Ministry of Economy posted on the website the project of federal law developed by the Federal Financial Monitoring Service with the amendment of the Codes of the Russian Federation and more than a dozen of laws, primarily aimed at countering the laundering of criminally acquired funds and the most popular shadow schemes of taxation optimization and capital export [13]. "Kommersant" newspaper assesses the project, believing that the fiercest proposal of the Federal Financial Monitoring Service is a parallel change of the law On Bankruptcy and the law On Registration of Legal Entities [15]. In particular, it is proposed to merge the institutes of bankruptcy and liquidation of legal entities. Also, here are slated the measures to strengthen control at registration, proposed to expand the list of reasons for refusal of state registration through adding to paragraph 1 of article 23 of Law 129-FL seven subparagraphs. The following terms are listed among the new reasons:

- if within the period established for state registration, but prior to making an entry in the State Register or taking a decision to refuse state registration, to the registration authority is submitted a judicial act or an act of a bailiff-executor that prohibits the registering body to perform certain registration actions;

- if an individual – the founder (participant) of a legal entity that is a commercial organization, or an individual registered as an individual entrepreneur

on the basis of a court verdict is denied the right to do business for a certain period, and such period has not expired;

If there is an entered into force court decision on recognition of an individual entrepreneur who is a manager of a legal entity insolvent (bankrupt) or on the enforceable termination of his activities as an individual entrepreneur and from the date of these court decisions has not expired a year, or there is an entered into legal force court verdict that has sentenced to this individual entrepreneur deprivation of the right to do business for a certain period, and such period has not expired, or there is an entered into force decision on a case on an administrative offence, in accordance with which the person is brought to administrative responsibility in the form disqualification, and the period for which it is installed has not expired.

But, given that the term for state registration is 5 working days, what is the probability of obtaining the necessary information in such a short time? And how well-functioning should be the information exchange between tax authorities and other bodies and institutions?

It is obvious that the introduction of these reasons for refusal will let tax authorities to use a peculiar filter for the registration of subjects, thereby improving the quality of registration. Currently, article 23 of Law 129-FL lets refuse registration mainly on formal grounds (in the case of failure to submit documents necessary for state registration or submission of documents to an improper registering authority) [2].

In our opinion, in addition to the use of such a filter for registration, it is necessary to extend terms of registration up to 10 working days. In addition, for persons who are "mass" founders and leaders, we must introduce a special procedure for registration, for example, the additional condition: the provision of documents to the registration authority personally and with justification of the need for such registration.

Since January 01, 2011 the required for state registration documents can be sent electronically. This allows carrying out the procedure of state registration without personal submission of documents by an applicant to the registration authority. But due to the fact that the Law 129-FL stipulates notarial procedure of verification of the applicant signature in the application for state registration, the procedure of such registration compulsorily includes a notary. Later, in field and cameral tax inspections, sometimes it turns out that the notary has not verified this application, the notary's seal has been forged or the notary has been deprived of the right to engage in the notarial activity. To prevent such situations at the

stage of registration, it is necessary to legislatively regulate the information exchange of notaries with tax authorities. If to the electronic database of the tax authorities is sent information from the notary who signed a specific application, at the time of filing this application the tax authority will be able to oppose further offenses, denying registration of a business entity. This has been facilitated by the introduction in the year 2012, in accordance with the Federal Law No. 210-FL of July 27, 2010 "On the Organization of Provision of State and Municipal Services", of the interagency electronic interaction system (SMEV in Russian).

Consider another situation faced by inspectors of the Federal Tax Service in the process of tax audits. Sometimes it turns out that the documents on behalf of a counter party have been signed by an unauthorized person, and the leader or founder has died. We believe that in this situation will help information exchange with the authorities recording the acts of civil status. Comparison of databases will allow timely identification of such companies and taking the necessary steps to amend the state register.

We have touched on only one problem related, in fact, with poor quality of registration and account of taxpayers. There are many of such problems, they include also disadvantages of information exchange of the tax authorities with other registration bodies, and the unreliability of databases leading to the fact that some individuals are imposed the payment of taxes on property or vehicles that do not actually belong them, and many others.

Summing up, we note again that the registration and account of taxpayers are independent form of preliminary tax control that should be reflected in article 83 of the Tax Code of the RF. In order to improve the quality of registration and account of taxpayers we need to change the procedure of registration from the declarative to licensing one, also extend the terms for the state registration up to 10 working days, enlarge the list of reasons for refusal of registration and make publicly available the tax authorities information about unreliable companies. To do this, it is needed to make amendments to the Tax Code of the Russian Federation, the Federal Law No. 129-FL of August 08, 2001 "On State Registration of Legal Entities and Individual Entrepreneurs", as well as in the regulation of organization of the tax authorities' work on posting in the Internet on the web-site of the Russian Federal Tax Service information on legal entities in respect of which have been submitted documents for the state registration of amendments made to the constituent documents of a legal entity, and making amendments to the information on a legal entity contained in the unified state register of legal entities [4].

References:

1. Tax Code of the Russian Federation, part one, No. 146-FL of July 31, 1998 [Nalogovyj kodeks Rossijskoj Federatsii. Chast' pervaja ot 31 ijulja 1998 g. № 146-FZ]. *System GARANT* [Electronic resource], Moscow: 2012.
2. Federal Law No. 129-FL of August 08, 2001 "On State Registration of Legal Entities and Individual Entrepreneurs" [Federal'nyj zakon ot 8 avgusta 2001 g. № 129-FZ «O gosudarstvennoj registracii juridicheskih lic i individual'nyh predprinimatelej»]. *System GARANT* [Electronic resource], Moscow: 2012.
3. The decision of the Plenary Session of the Higher Arbitration Court of the Russian Federation No. 53 of October 12, 2006 "On the Arbitration courts' assessment the justification of receiving tax benefits by a taxpayer" [Postanovlenie Plenuma Vysshego Arbitrazhnogo Suda RF ot 12 oktjabrja 2006 g. № 53 «Ob otsenke arbitrazhnymi sudami obosnovannosti poluchenija nalogoplatel'wikom nalogovoj vygody»]. *System GARANT* [Electronic resource], Moscow: 2012.
4. Order of the Federal Tax Service of Russia from November 03, 2006 No. SAE-3-09/765@ «On informing the participants of civil turnover» [Prikaz FNS Rossii ot 3 nojabrja 2006 g. № SAE-3-09/765@ «Ob informirovanii uchastnikov grazhdanskogo oborota»]. *System GARANT* [Electronic resource], Moscow: 2012.
5. Dukanov S. S. From short-lived companies to companies of minimum requirements [Ot firm-odnodnevok – k kompaniyam minimal'nykh trebovanii]. *Nalogovaja politika i praktika – Tax Policy and Practice*, 2012, no. 1.
6. Kobzar'-Frolova M. N. The role and importance of tax control and account of taxpayers in the prevention of tax delinquency [Rol' i znachenie nalogovogo kontrolya i ucheta nalogoplatel'shchikov v preduprezhdenii nalogovoi deliktnosti]. *Finansovoe pravo – Financial Law*, 2010, no. 7.
7. Krohina Ju. A. *Tax Right of Russia: textbook* [Nalogovoe pravo Rossii: uchebnik]. Moscow: NORMA, 2007.
8. Panskov V. G. Tax and Taxation: Theory and Practice: textbook [Nalogi i nalogooblozhenie: teorija i praktika: uchebnik]. Moscow: publishing house Jurait, 2011.
9. Tsindeliani I. A. and etc. *Russian Tax Law: textbook* [Nalogovoe pravo Rossii: uchebnik]. Moscow: EKSMO, 2008.
10. Publicity of information on companies as the main purpose of state registration of legal entities. Interview with the Director General of the Information Agency «Valaam» A. Malyshev [Publichnost' svedenii o kompaniyakh kak osnovnaya tsel' gosudarstvennoi registratsii yuridicheskikh

lits. Interv'yu s general'nym direktorom informatsionnogo agentstva «Valaam» A. A. Malyshevym]. *Nalogovaja politika i praktika – Tax Policy and Practice*, 2011, no. 5.

11. Timoshenko V. A., Spirina L. V. Audits by tax authorities [Proverki nalogovyh organov]. *System Konsul'tant Pljus* [Electronic resource], Moscow: 2012.

12. Ukraintseva A. I. Essence, forms and methods of tax control [Sushchnost', formy i metody nalogovogo kontrolya]. *Administrativnoe i municipal'noe pravo – Administrative and Municipal Law,* 2011, no. 6.

13. *http://www.economy.gov.ru/*

14. *http://www.gazeta-unp.ru/*

15. *http://www.kommersant.ru/doc/2005096*

16. *Judicial acts on the case No.* A45-6756/2010. Available at: http://kad.arbitr.ru/ Card/1b773f5b-b566-45a0-9b1c-12695471c43a (accessed: 20.08.2012)

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CODE ON ADMINISTRATIVE OFFENCES OF THE RUSSIAN FEDERATION: ASSESMENT OF PROBLEMATIC POINTS

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Considering the critical views of legal-scholars on problematic points of the Code on Administrative Offences of the Russian Federation, and expressing observations in respect of the poor coordination by legislator of the norms of tort legislation and the legislation that regulates the budget and tax spheres, the sphere of execution proceedings, here is being justified the necessity of normative consolidation for the notion of an administrative offense, the division in the code grounds for bringing to administrative responsibility and determination the guilt of individuals and legal entities. Here is given the author's definition of the concept "warning" in order to introduce to official turnover the concept "state of administrative punishment".

Key words: administrative responsibility, administrative offence, the elements of an administrative offence, administrative and tort legislation, grounds of administrative responsibility, forms of guilt, sanctions

Laws, like people, have their own destiny. Many still remember the troubles around the preparation and adoption on the second try of the Code on Administrative Offences of the Russian Federation [2], though it has already passed its tenth anniversary.

Although by July 01, 2002, in Russia›s recent history had been adopted 16 Codes, the CAO RF among other codes in the legal family of codes has a special place. According to the weighty opinion of Professor V. D. Sorokin, "the adoption of the new Code on Administrative Offences of the Russian Federation on a number of grounds is not an ordinary event, as it is a member of the fundamental laws of the Russian Federation – the systematic normative acts of long-term effect that govern on the federal level extensive areas of state and public life... Even more increases the role of this event, when it comes to the code regulating the most common type of legal responsibility – administrative. Whether it is necessary to prove that each provision of the law, especially the norms of its General part establishing the rules of fundamental properties, bears a very serious social charge in the form of state coercion that comes for administrative offenses" [19, 30, 39].

There is no doubt of the positive effects of the introduction of the CAO RF, but the effect could be even greater if there are not so many issues in the Code.

Thus, Professor Yu P. Solovey, criticizing some of the conceptual provisions of the CAO RF, expresses disagreement with the name of the Code [26, 3-9]. In his view, the new (the same old) name of the Code clearly does not allow to limit the range of regulated by it public relations. CAO RF can be viewed as a "younger brother" of the Criminal Code – "the code on crimes". However, unlike the latter, the subject of regulation of the CAO RF is also relations developing in the proceedings on an administrative offense and executiin of imposed administrative penalties, i.e., those, to which by the analogy are devoted the Code of Criminal Procedure and the Penal Execution Code of the RF. Thus, the Code on Administrative Offences, in fact, should be named as the Code on Administrative Responsibility.

He has also criticized the legislative definition of the concept of administrative offence.

According to Professor D. N. Bakhrakh, "it is difficult to recognize correct the position of the legislator, who excluded recall of licenses from the penal system, and did not include suspending licenses in the list of interim measures. This is a great gift to the bureaucracy, the system of administrative arbitrariness... Besides, having established the duty of the subjects of executive power, which have instituted and investigated the relevant cases on administrative offenses, to refer them to the courts of general jurisdiction for consideration, the legislator has not decided

the issue of the rights and duties of the bodies (officials) that have sent cases to the courts in the course of judicial proceedings. Anything has not been said about these subjects of the authorities in chapters 25, 29 of the CAO RF" [9, 11].

In fact, complaints about the quality of the CAO RF begin from the first article. As noted by N. G. Salishcheva, despite clear provision of part one article 1.1 of the CAO RF on the composition of the legislation on administrative offenses, as before, the Tax Code of the RF, in fact, provides for administrative responsibility for non-payment of taxes by taxpayers. For the CAO RF have been "left" offenses, mainly of officials for violation of terms of tax registration, procedure of submitting necessary information, etc. (articles 15.3-15.9).

In the Budget Code of the Russian Federation [1] there are enumerated elements of administrative offenses (article 283), but many of them are not included in the Special part of the CAO RF (torts in the field of regulating budget legislation are provided for in articles 15.14-15.16 CAO RF), that requires some clarification of positions of both codes.

So from the above article 283 of the Budget Code on violations of the budget legislation of the Russian Federation in the Code does not disclose the concept the following offenses:

- failure to perform the law (decision) on the budget;

- denial to confirm the accepted budgetary obligations, except the grounds established by the Code;

- failure to comply with the regulations of the financial costs of providing State or municipal services;

- failure to comply with the limits of deficit of budgets, State or municipal debt and expenditures of state or municipal debt servicing established by the Code;

- opening accounts in credit institutions if on the concerned territory present institutions of the Bank of Russia, having the opportunity to serve the accounts of budgets of the budget system of the Russian Federation;

- failure to comply by the Chief disposer of the federal budget resources, representing in the court the interests of the Russian Federation with the term of transfer to the Ministry of Finance of the Russian Federation the results of court proceedings on a case, established in clause 2 of article 242.2 of the Code;

- late or incomplete executing of court judgments providing for levy of execution on budget funds of the budgetary system of the Russian Federation.

A number of articles of the Budget Code, revealing the content of offenses from budget offences listed in article 283 of the Code, contains reference rules on stale RSFSR Code on Administrative Offences (see articles 292-300, 302-306) and,

accordingly, there are no elements of administrative offences in the CAO RF. Saving in the Budget Code reference rules on the not applicable tort legislation for more than a decade evidences not only of weak legislative technique when making amendments to the federal laws, but also the absence of the desire of the legislator to reinforce by measures of responsibility public relations regulated by the budget legislation.

Despite the fact, that in the CAO RF bailiffs are defined as subjects of administrative jurisdiction, like officials of the Federal executive body authorized to exercise the functions of compulsory execution of writs of execution and ensuring the established procedure of the court activities (article 23.68 of the CAO RF), and articles 17.14 and 17.15 of the CAO RF provide for bringing to administrative responsibility of persons guilty of violating the legislation on execution proceeding, the legislator has left an additional fiscal measure of responsibility in the very legislation on execution proceeding.

The Federal Law "On Execution Proceeding" provides for exaction from the debtor an execution fee in the amount of seven per cent of the amount to be exacted or the value of the property that shall be exacted, but not less than five hundred rubles from a debtor-citizen and five thousand rubles from the debtor-organization (article 112 of the Law [4]). At its core, this fee is a fine sanction for late performance or non-performance by a debtor of a court order. This penalty imposed by bailiffs is administrative, as it has a function of compulsion to commission of an action in public-law relations.

Special attention is required by the correlation of norms of the CAO RF and the Arbitration Procedure Code of the RF [24, 27].

Normative-legal basis of administrative responsibility, i.e., enshrining in legislation of any offense which entails administrative responsibility, is expressed in the legislative consolidation of the administrative offense's elements, which are the legal basis of administrative responsibility.

Because, unlike the concept of "administrative offence", the concept of "elements of an administrative offence" is not legislatively defined, it is not surprising, that there is no single point of view on the content of this definition in the legal literature.

The issues of elements of an administrative offence have been considered in the works of a number of authors [5, 33-42; 13, 110-125; 18]. Therefore the diversity of wordings used to disclose its essence is quite natural.

According to Yu. A. Denisov, set of elements of an offense is an empirically allocated structure of an offense, enshrined by legal definitions in different

branches of law and in the conceptual system of sciences exploring these branches [14, 72]. This conclusion is interesting on a general-theoretical level, but at the same time is devoid of any practical value.

In turn D. N. Bakhrakh under the set of elements of an offense understands the established by law totality of signs, in the presence of which an antisocial deed may be recognized an administrative offense [8, 478]. The vulnerability of such a definition of the set of elements of an administrative offense is that the recognition of an antisocial deed an offense is only a statement of the fact of law breaching. It appears that the set of elements of an offense is necessary not just for the recognition of a wrongful act a certain statistical unit, but as a factual basis for bringing an offender to administrative responsibility. More preferable is the position hold by a large part of scientists studying administrative law, who inclined to think that "set of elements of an administrative offense is a totality of enshrined by normative-legal acts signs (elements), the presence of which may entail administrative responsibility" [7, 227-228; 31, 101].

Deserves consideration the point of view of A. B. Agapov, who states that "set of elements of an administrative offense is a totality of elements that characterize social danger of the offense, these include: content of tort (objective aspect), psycho-emotional status of participants (subjective aspect and the subject of the set), and the object of an unlawful encroachment; the lack of any of them exclude the presence of a corpus delicti as a whole, and, accordingly, application of state sanctions" [5, 33].

The advantages of this definition should include the following: a) are named the elements of a corpus delicti; b) is clearly stated that the existence of the corpus delicti as a whole is possible only in presence of each of its elements. However, there are moments that seem controversial or cause disagreement. First of all, it refers to the part, which says that elements of the set of elements of an offence characterize social danger of an offense. First, is taken only one of the signs of an offense, besides the one that is traditionally used for separating crimes from administrative offences [10; 11; 15; 21; 29; 30; 32; 33] and the existence of which in administrative offenses is recognized by far not everybody [34; 42; 20, 19-20], including legislators [2, article 2.1.]. Secondly, it turns out that the elements of the set of elements of an offense characterize not an offence itself, but only its social danger, so if we assume that administrative offenses are deprived of social danger, then this definition does not pertain to them. In addition, from the wording does not imply that the presence of the set of elements is a ground for administrative responsibility; the presence of the set of elements is only associated with the possibility to apply state sanctions.

The definition of "sanction" can be interpreted in different ways, such as: 1) approval of an act that gives it legal force; 2) a part of a legal norm, law article; 3) impact measure applied against the violators of a contract; 4) approval, permission [25, 442].

The definition of "sanction" can be interpreted in different ways, such as: 1) approval of an act that gives it legal force; 2) a part of a legal norm, article of a law; 3) retaliation applied against the violators of a contract; 4) approval, permission [25, 442]. In this regard, there is little doubt that state sanctions are used by A. B. Agapov in the meaning of an element of the prohibitive norm of law. But the determination of the set of elements of an administrative offense is important, not just in the terms of application state sanctions, more precisely, administrative penalties, but as a legal basis for bringing a delinquent to administrative responsibility, at this administrative penalty is a measure of responsibility applied to the person who committed an offense.

Attracts attention the fact that in a number of domestic textbooks on administrative law, this definition is either not disclosed [12; 22; 28], or reduced to a simplistic formula like "a set of elements of an offense includes an object, objective aspect, subject and subjective aspect" [6, 106].

This kind of ambiguity, contradiction and uncertainty can be avoided if legislatively enshrine the concept of "set of elements of an administrative offense". Obviously, that this necessity is conditioned by the fact that among the circumstances precluding proceedings on a case concerning an administrative offense the Russian legislator indicates the absence of the set of elements of an administrative offense [2, p. 5.24], without revealing its contents [13, 109]. Simultaneously, in the CAO RF should be included an article enshrining the concept of "grounds of an administrative responsibility".

Similar suggestions have been expressed before, at the time when the Administrative Code of the RSFSR as the subjects of administrative offences and therefore administrative responsibility considered only individuals. For example, the essence of my suggestions was to introduce to chapter 2 of the Code an article, having embodied it to read as follows:

"Grounds for bringing a natural person to administrative responsibility.

1. Person who has reached the statutory age of bringing to administrative responsibility, must and can be subject to administrative responsibility only if the guilty act committed by him constitutes a set of elements of an administrative offense provided for by an administrative-law norm or another legal standard, for violation of which provides for administrative liability.

2. Set of elements of an administrative offense is a system set of features that characterize its elements: object, subject, objective and subjective aspects of the administrative offense, the presence of each of which is necessary and sufficient to admission the fact of commission by a particular person an administrative offense and is the only reason for bringing an individual to administrative responsibility.

Note:

Object of an offense is a something that has been encroached – public relations governed by the rule of law and protected, in the case of their violation, by administrative penalties.

Objective aspect of an offense is an action or inaction that resulted in violation of a norm of law; in the cases provided for in the very norm of law juridical importance have: time, place, method, means, and the nature of committing the deed and consequences.

Subject of an offense is an individual who has committed the deed, the signs of which are described in the article, which provides for administrative responsibility, on the condition that he/she is sane and has reached the age of bringing to administrative responsibility.

Subjective aspect of an offense reflects the mental attitude of a natural person to the offense, his guilt in the form of intent or negligence; determining of the motive and the purpose of committing a specific administrative offense is needed in the cases if these signs are indicated in a norm of law".

Inclusion in the article the note revealing the content of each of the four elements of an administrative offense, I argued, first of all, by the need to raise information awareness of citizens that do not have legal training, and by the fact that one of the conditions for compliance with the law by citizens is their understanding of the essence of legal norms.

In formulating the concept of "set of elements of an administrative offense", I proceeded also from the fact that, according to the Russian legislation, "a person who has attained the age of sixteen years old by the moment of committing an administrative offence shall be administratively liable" (article 13 of the CAO of the RSFSR; article 2.2 of the draft of the CAO of the RF).However, this definition should not be regarded as identical to the definition of a person, who committed an administrative tort, and a person brought to administrative responsibility. Thus, in accordance with the Russian legislation, for military service shall be called up citizens who have reached the age of eighteen, but this does not mean that all of them will be called up, for example, due to the fact that there are provided the release and the postponement of military service (articles 22-24 of

the Law on Military Service [3]). The legislator has established only the age, at which a person may be responsible for administrative tort, in other words, defined a general border of occurrence the ability to bear administrative responsibility. But bringing such a person to administrative responsibility requires a number of additional conditions, in particular, sanity of a person (article 20 of the CAO of the RSFSR) [13, 109-111].

In addition, in some cases, the achievement by a person the age defined in article 13 of the CAO of the RSFSR (article 2.2 of the draft of the CAO of the RF) does not allow to recognize this person as the subject of an offense. In other words, a sane person who has reached the age of sixteen not always can be held administratively liable. Thus, the subjects of an administrative offense, the objective aspect of which is covered by the fact of bringing a minor to a state of intoxication, can be parents or other persons who are above the age of 18 (under article 163 of the CAO of the RSFSR; drawing minors into the use of alcoholic drinks or stupefying substances – part 2 of article 6.10 draft of the CAO of the RF).

Unfortunately, the suggestions that have been introduced by me in the period of validity of the CAO of the RSFSR have not been applied in the preparation and adoption of the CAO of the RF. However, it appears, even now they have not lost the urgency; of course, on condition of the correction certain concepts in view of the fact that in the CAO RF as the subjects of offences act not only physical persons, but also legal entities. Condition of the Russian legislation on administrative responsibility of legal entities on the eve of the adoption of the new CAO RF can be characterized by the following main points:

1) widely using the design of objective imputation the legislator has not abandoned the practice of adopting laws, in which guilt is a mandatory feature of offenses committed by legal entities;

2) there is no basis for the claim that the preference was given to laws allowing or not allowing the possibility of objective imputation;

3) it is rather difficult identify the consistent pattern that allows to clearly understand what did exactly guide the legislator in resolving the question of presence or absence of guilt;

4) in many acts that establish administrative responsibility of legal persons, along and at the same time with them, natural persons are recognized as the subjects of administrative responsibility;

5) there is no clear and convincing explanation in respect of what is meant by the guilt of an legal entity in any legislative act providing for the presence of guilt as a mandatory feature of an offense;

6) have been adopted a significant number of acts, the norms of which do not contain the requirements of determination of guilt for the recognition the fact of an administrative offense and bringing a person to administrative liability, the subjects of which include not only legal, but also natural persons.

This state of affairs for a variety of reasons could not be called normal. First, establishing administrative responsibility for this or that sphere of social relations, the legislator each time had to decide one and the same question, which of the two options to prefer: presence of guilt as a mandatory feature of an offense or objective imputation. So, everything, ultimately, was contingent on the will of the legislator, which was often notable for variability and inconsistency in decision making.

Second, the preference for one or another variant of administrative responsibility was given depending on the scope of legal regulation. In particular, the presence of guilt of a legal entity as a mandatory sign of an administrative offense is a characteristic of the environmental legislation, and the lack of it – for business activities. At the same time, it remains unclear whether were taken into account peculiarities of this or that sphere in selection the variant of responsibility, and if so, in what manner or were persecuted purely financial interests?

Third, in the current legislation were not made and is not being made distinction in the forms of guilt of a physical and legal person. The above said can be illustrated by the following example. In accordance with article 107 of the Tax Code of the RF, responsibility for tax offenses is borne by organizations and individuals. At the same time from part 1 of article 110 of the Tax Code of the RF follows that, "a person who has committed an unlawful act deliberately or through negligence shall be deemed guilty of committing a tax offence". But out of this version of the article it becomes clear that a "person" can be any – both physical and legal. Subsequent parts of this legal innovation also do not make things clear. Content of intent and negligence (parts 2 and 3) can be applied only to individuals. As for the guilt of an organization in committing a tax offense, it "is determined by the guilt of its officials, or its representatives, actions (inaction) of which caused the commission of this tax offense" (part 4).

In these circumstances, the subjects of administrative jurisdiction are forced to solve the issues of bringing legal persons to administrative responsibility differently.

The problem, which is not simple in itself, is compounded by the fact that "the theory of administrative law hardly accepted, and still hardly accepts this institution" [16]. The lack of elaboration of this issue is evidenced at least by the fact that in textbooks administrative responsibility of legal persons either not considered, or

covered only in passing. One cannot help distinguish the position of V. D. Sorokin, who fundamentally disagrees with the use of objective imputation in administrative law, and also claims that the institute of administrative responsibility of legal persons is alien to the Code on Administrative Offences and destroys the integrity of its subject of regulation [27].

It is important to note that the disputes between the opponents and supporters of the institute of administrative responsibility of legal entities are of conceptual in nature. First insist that responsibility should be only individual, the others note that along with it, also has the right to exist collective responsibility. At this, to prove their rightness both sides give enough good arguments.

I hold to the fact, that the institution of administrative responsibility of legal persons has not only a right to exist, but also requires a deep theoretical research, and the relevance of this to a large extent due to the needs of practice. Recognizing that the problem needs an independent study, and not one, I limit myself to outlining my positions on how objective imputation is consistent with the legal state.

The principle of presumption of innocence enshrined in article 49 of the Constitution of the Russian Federation should be literally understood as being related to a person accused of a crime. Since the Russian legislation does not provide for criminal liability of legal persons, there is every reason to believe that this principle applies only to individuals. In other words, objective imputation with respect to legal persons is not contrary to the fundamental provisions of the Constitution of the RF. In literature was suggested the thought that "we need to finally move away from the tradition of uncritical transfer of criminal-legal structures of guilt to administrative law" [16, 23]. I believe that this statement is true only halfway. Inasmuch crimes and administrative offenses committed by natural persons have one nature, the form of guilt of an individual administrative offender is the same as the form of guilt of a criminal. However, it is fair that the structure of guilt for legal persons must be different.

Thus, not disputing the fact that guilt should serve as a mandatory sign of an administrative offenses committed by natural persons, I cannot agree with those who in principle rejects the possibility of objective imputation against legal persons. And in this regard does not seem excessive to consider the correlation of "guilt" and "responsibility" in the criminal and civil law.

Criminal law explicitly regulates that "objective imputation, i.e., criminal responsibility for innocent infliction of harm, shall not be allowed" (part 2 of article 5 of the Criminal Code of the RF). Thus, guilt is a necessary subjective prerequisite for criminal responsibility and punishment.

On the contrary, civil-law responsibility is characterized by the fact, that "the law may provide for compensation for harm also in absence of guilt of a tortfeasor" (part 2 of article 1064 of the Civil Code of the RF), in particular, an example of objective imputation is the responsibility of a contractor for the improper performance of design and survey works (article 761 of the Civil Code of the RF).

Without a doubt, the guilt should be regarded as a mandatory criterion in establishing responsibility of a natural person, and therefore objective imputation in criminal law and administrative law (for this category of subjects) – is unacceptable. However, unlike criminal law and civil law, administrative law should be considered as a branch of law, in which the principle of presumption of innocence of individuals combines with the principle of presumption of guilt of legal entities.

By the way, if to analyze part 2 of article 2.1 of the CAO RF on the determination of guilt of a legal entity, we will find out that this legal innovation is actually built on the principle of objective imputation.

I do not exclude that in the future administrative responsibility of legal entities will be based solely on objective imputation, however, I am far from the thought, that such a step would be hasty and poorly reasoned. There is a need for a thorough theoretical substantiation of the problem, including from the position of the general theory of law. In addition, only on the basis of solid empirical data can be assessed the reasonableness of various theoretical positions.

And one more remark about the guilt. Despite the obvious fact that the classical form of guilt – intent and negligence – may be applied only to individuals, with tenacity the legislator does not want to admit it and distributes them to any person, including legal one. Despite the obvious fact that the classical form of guilt – intent and negligence – may be applied only to natural persons, with tenacity the legislator does not want to admit it and distributes them to any person, including legal one. This gross mistake is easy to remove by making amendments both to the title and the content of article 2.2 of the CAO RF, through replacing the words "forms of guilt" by the words "forms of guilt of a natural person", and the word "person" by the words "natural person".

It is quite logical that the penalties applicable to legal persons should be adequate to their legal status. Naturally, a fine, as the universal form of punishment, plays a dominant role among the measures of responsibility for that category of subjects of an offense. However, it is necessary to form and legislatively enshrine the system of various measures of administrative responsibility of legal persons. Among the sanctions applied to collective entities, which have committed an administrative offense can be included: obligation to eliminate the consequences of

the damage caused; suspension and termination of license; deprivation of tax exemption and subsidies; forcing to increase the amount of insurance of production risks; forcing to form a compensation fund.

Simultaneously, in order to expand the individualization of imposing administrative penalties, it is advisably to introduce a warning, as measure before the imposition of other administrative penalties, to the sanctions of all the articles of the Special part of the CAO RF, which enshrine administrative offenses providing for or allowing the opportunity of their commission by negligence. In addition, it will eliminate the confusion about what the legislator is guided by, when introduces warnings to sanctions of some articles, but not to others.

Besides it is quite logical also to enshrine some other limitations of applying warnings. It is hardly justified to apply this measure to a person who gravely or systematically breaches the legislation on administrative offenses, or to persons who, at the time of consideration of a case on an administrative offense, are under "administrative penalty", that is, until the date one year after the end of execution of the order on the imposition of a previous administrative penalty.

Based on the above said, I suggest to embody article 3.4 of the CAO RF in the new edition:

"Article 3.4. Warning.

1. Warning is a rendered in writing official admonishment to a natural person or legal entity from the opportunity of the commission by them illegal action (inaction).

2. Warning cannot be imposed on a person who is under "administrative penalty", that is, until the date one year after the end of execution of the order on the imposition of a previous administrative penalty, or in the case of gross or systematic violation of the legislation on administrative offenses, or if the subjective side of an administrative offense, committed by an individual, is characterized by a deliberate form of guilt".

This version also allows entering into the official turnover the concept of "state of administrative punishment".

Unfortunately, remarks towards the developers of the CAO RF and the deputies who adopted it in the current edition, can be continued.

However, this is not about unsubstantiated reproaches. Representatives of science and practices are ready for a constructive dialogue with legislators [17]. As rightly pointed out by B. V. Rossinskiy, "the accumulated over these years practice of proceedings on administrative offences indicates that the provisions of the CAO RF have a lot of gaps and contradictions, which in some cases considerably

complicate the work of the subjects of administrative jurisdiction, other bodies and officials empowered with appropriate law-enforcement powers, causes the violation of rights and legitimate interests of the participants of proceedings on the cases of this category" [23, 493].

If such a dialogue takes place and if we can overcome the growing pains and overcome old mistakes that accompany the "life" of the current CAO RF, then it will be awaited by much longer than quindecennial fate of its predecessor the CAO RSFSR.

References:

1. Budget Code of the Russian Federation of July 31, 1998, No. 145-FL [Bjudzhetnyj kodeks Rossijskoj Federatsii ot 31 ijulja 1998 g. № 145-FZ]. *System GARANT* [Electronic resource], Moscow: 2012.
2. Code on Administrative Offences of the Russian Federation of December 30, 2001, No. 195-FZ [Kodeks Rossijskoj Federatsii ob administrativnyh pravonarushenijah ot 30 dekabrja 2001 g. № 195-FZ]. *System GARANT* [Electronic resource], Moscow: 2012.
3. Federal law No. 53-FL of March 28, 1998 On Military Duty and Military Service [Federal'nyi zakon ot 28 marta 1998 g. № 53-FZ «O voinskoi obyazannosti i voennoi sluzhbe»]. *System GARANT* [Electronic resource], Moscow: 2012.
4. Federal Law No. 229-FL of October 02, 2007 On Execution Proceeding [Federal'nyi zakon ot 2 oktyabrya 2007 g. № 229-FZ «Ob ispolnitel'nom proizvodstve»]. *System GARANT* [Electronic resource], Moscow: 2012.
5. Agapov A. B. *Administrative Responsibility: textbook* [Administrativnaya otvetstvennost': Uchebnik]. Moscow: Statut, 2000.
6. *Administrative Law* [Administrativnoe pravo]. Editor in chief prof. Tumanov G. A, Moscow: 1995.
7. Alehin A. P., Kozlov Ju. M. *Administrative Law of the Russian Federation. Part 1. Essence and Main Institutes of Administrative Law: textbook* [Administrativnoe pravo Rossiiskoi Federatsii. Ch. 1. Sushchnost' i osnovnye instituty administrativnogo prava: Uchebnik]. Moscow: 1995.
8. Bahrah D. N. *Administrative Law of Russia: textbook* [Administrativnoe pravo Rossii: Uchebnik]. Moscow: Eksmo, 2010.
9. Bahrah D. N. CAO RF – Advantages and Disadvantages [KoAP RF – dostoinstva i nedostatki]. *Aktual'nye problemy primenenija Kodeksa Rossijskoj*

Federacii ob administrativnyh pravonarushenijah – The Topical Issues of Application the CAO RF, Omsk: 2004.

10. Bojchev G. Crime and Administrative Offence [Prestuplenie i administrativnoe pravonarushenie]. *Socialisticheskoe pravo – Socialistic Law*, 1979, no. 7.

11. Bushuev G. V. Crime and Administrative Offence, their Similarities and Differences [Prestuplenie i administrativnoe pravonarushenie, ikh skhodstvo i otlichie]. *Voprosy ohrany obwestvennogo porjadka i socialisticheskoj sobstvennosti v svete Osnov zakonodatel'stva Sojuza SSR i sojuznyh respublik ob administrativnyh pravonarushenijah – The issues of protection of public order and socialistic property in the light of the Basics of the USSR and the Union Republics' legislation on administrative offences,* Gorky: 1981.

12. Gabrichidze B. N., Eliseev B. P. *Russian Administrative Law: textbook for higher schools* [Rossijskoe administrativnoe pravo: Uchebnik dlja vuzov]. Moscow: 1998.

13. Denisenko V. V. *System Analysis of Administrative and Tort Relations* [Sistemnyi analiz administrativno-deliktnykh otnoshenii]. St. Petersburg: 2001.

14. Denisov Ju. A. *General Theory of Offence and Responsibility. Sociological and Legal Aspects* [Obshchaya teoriya pravonarusheniya i otvetstvennosti. Sotsiologicheskii i yuridicheskii aspekty]. Leningrad: publishing house of Leningrad University, 1983.

15. Druzhinina V. F. On the Division of Crime and Administrative Misconduct [O razgranichenii prestupleniya i administrativnogo prostupka]. *Sovetskoe gosudarstvo i pravo – Soviet State and Law*, 1978, no. 4.

16. Ivanov L. Administrative Responsibility of Legal Entities [Administrativnaya otvetstvennost' yuridicheskikh lits]. *Rossiiskaya yustitsiya – Russian Justice*, 2001, no. 3.

17. Kizilov V. V. Initiative Project of the Federal Law On Amendments to the CAO RF, Federal law On Procuratorate of the Russian Federation and Arbitration Procedural Code of the Russian Federation [Initsiativnyi proekt Federal'nogo zakona «O vnesenii izmenenii v Kodeks Rossiiskoi Federatsii ob administrativnykh pravonarusheniyakh, Federal'nyi zakon «O prokurature Rossiiskoi Federatsii» i Arbitrazhnyi protsessual›nyi kodeks Rossiiskoi Federatsii»]. *Aktual'nye voprosy publichnogo prava – The Topical Issues of Public Law*, 2012, no. 7.

18. Kisin V. R. *Administrative Offence: Concept, Elements, Classification* [Administrativnoe pravonarushenie: ponyatie, sostav, kvalifikatsiya]. Moscow: 1991.

19. Code on Administrative Offences of the Russian Federation [Kodeks Rossijskoj Federacii ob administrativnyh pravonarushenijah]. *Introductory*

comment of the Honored Scientist of RF, doctor of law, prof. Sorokin V. D., St. Petersburg: Piter, 2000, pp. 30, 39.

20. *Comments to the Code on Administrative Offences of the Russian Federation* [Kommentarii k Kodeksu Rossiiskoi Federatsii ob administrativnykh pravonarusheniyakh]. Editorial board: Veremeenko I. I., Salishcheva N. G., Sidorenko E. N., Yakimov A. Yu., Moscow: 2002.

21. Krivolapov G. G. Criterion of division crimes and misconducts [Kriterii razgranicheniya prestupleniya i prostupka]. *Trudy Moskovskoj vysshej shkoly MVD SSSR. Sovershenstvovanie dejatel'nosti organov vnutrennih del v uslovijah razvitogo socializma – Proceedings of the Moscow Higher School of the MIA USSR. Improvement of the Internal Affairs Bodies' activities under Developed Socialism*, Moscow: 1979, no. 3.

22. Manohin V. M., Adushkin Yu. S., Bagishaev Z. A. *Russian Administrative Law: textbook* [Rossijskoe administrativnoe pravo: Uchebnik]. Moscow: 1996.

23. Rossinskij B. V. Topical issues of improving the CAO RF [Aktual'nye voprosi sovershenstvovaniya Kodeksa RF ob administrativnykh pravonarusheniyakh]. *Nauchnye trudy Evrazijskoj akademii administrativnyh nauk – Scientific works of Eurasians Academy of Administrative Sciences*, Moscow: 2006.

24. Saliweva N. G. About the issue of improving the norms of the CAO RF [K probleme sovershenstvovaniya norm Kodeksa Rossiiskoi Federatsii ob administrativnykh pravonarusheniyakh]. *Aktual'nye voprosy administrativno-deliktnogo prava. Materialy mezhd. nauch.-prakt. konf., posvjawennoj 70-letiju Zasluzhennogo dejatelja nauki RF, dokt. jurid. nauk, prof. A. P. Shergina – The topical issues of administrative and tort law. Proceedings of the international scientifically-practical conference dedicated to 70th anniversary of the Honored Scientist of RF, Doctor of law, Professor Shergin A. P.*, Moscow: All-Russian Research institute of the MIA of Russia, 2005.

25. *Dictionary of Foreign Words* [Slovar' inostrannyh slov]. Moscow: Russkij jazyk, 1985.

26. Solovej Ju. P. About the critic of some conceptual provisions oa the CAO RF [K kritike nekotorykh kontseptual›nykh polozhenii Kodeksa Rossiiskoi Federatsii ob administrativnykh pravonarusheniyakh]. *Aktual'nye problemy primeneniya Kodeksa Rossiiskoi Federatsii ob administrativnykh pravonarusheniyakh –The Topical Issues of Application the CAO RF*, Omsk: 2004, pp. 3-9.

27. Sorokin V. D. About Two Tendencies that Destroy the Entirety of the Institute of Administrative Responsibility [O dvuh tendencijah, razrushajuwih

celostnost' instituta administrativnoj otvetstvennosti]. *Pravovedenie – Jurisprudence*, 1999, no. 1, pp. 46-54.

28. Tihomirov Yu. A. *Course of Administrative Law and Procedure* [Kurs administrativnogo prava i protsessa]. Moscow: 1998.

29. Fefilova V. F. *Crime and misconduct*: thesis abstract of candidate of legal sciences [Prestuplenie i prostupok: Avtoref. dis. ... kand. jurid. Nauk]. Moscow: 1977.

30. Fefilova V. F. Division of Crimes and Misconducts [Razgranichenie prestuplenii i prostupkov]. *Vestnik MGU – MSU Messenger*, Ser. Pravo, 1976, no. 4.

31. Chetverikov V. S. *Administrative Law: study guide* [Administrativnoe pravo: Uchebnoe posobie]. Moscow: 1998, p. 101.

32. Shishov O. F. On the Division of Crime and Administrative Misconduct in Soviet Law [O razgranichenii prestuplenii i administrativnykh prostupkov v sovetskom prave]. *Sovetskoe gosudarstvo i pravo – Soviet State and Law*, 1961, no. 6.

33. Shishov O. F. *Crime and Administrative Misconduct* [Prestuplenie i administrativnyj prostupok]. Moscow: 1967.

34. Yakuba O. M. *Administrative Responsibility* [Administrativnaya otvetstvennost']. Moscow: 1972.

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ABOUT THE ISSUE OF SUBSTANTIATION OF JUDICIAL ACTS OF AN ARBITRATION COURT, RENDERED ON THE CASES ARISING FROM ADMINISTRATIVE AND OTHER PUBLIC LEGAL RELATIONS

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In the article is represented author's point of view on the issue of increasing the legitimacy of judicial acts rendered by arbitration courts of the Russian Federation on cases arising from administrative and other public relations. Is given a critical analysis of the Arbitration Procedural Code of the Russian Federation regarding the regulation of the motivation part of judicial acts' content in various stages of the administration of justice. Suggests appropriate amendments to the APC RF, which ensure performing the obligations of court instances on the providing: a reasoned refusal to transfer the case to the Presidium of the Higher Arbitration Court, the reasons for which the court rejected this or that evidences, accepted or rejected arguments of persons involved in a case given in support of their claims and objections, as well as the reasons for which the court has not applied the laws and other normative legal acts to which referred persons involved in a case.

Key words: judicial acts of the court of arbitration; motivating part of a judicial act; cases arising from administrative and other public legal relations; substantiation of judicial acts.

By studying the issue of legality and validity of acts taken by the arbitration courts arising from public legal relations should be noted the lack of serious research on the issue. Legal scholars sidestep general theoretical aspects of administration of justice and do not deeply analyse the presence of diametrically opposed court's judgments on identical disputes of economic units with public authorities, sometimes unnecessarily referring to the difference of evidentiary in case materials.

In our view, the provisions of part 3 of article 189 of the Arbitration Procedure Code of the RF [1]: "*3. The burden of proving the circumstances, which have served as grounds for the adoption of the disputed act, the legality of the disputed decisions and actions (inaction) on the part of state bodies, local government bodies, other bodies and organizations vested by federal law with certain state or other public powers, is imposed upon the bodies and persons who adopted the disputed act or decision, or committed the disputed actions (inaction)*" – bring all disputes between economic units and public persons to one common denominator. However, arbitration judges, in giving judgments, are more oriented to the evidentiary basis provided by business entity to support its claim than to proof of legality of contested decisions and actions (inaction) of state bodies, local self-government bodies and other bodies and organizations that are given by federal law separate state or other public powers, officials, which is assigned to bodies and persons who took the contested act, decision, committed the contested actions (inaction).

One can argue endlessly about the balance of private and public interest, the procedural equality of the parties with regard to the obligation to provide evidence, etc. However, the purpose of this article is to consider other issue, and, in our opinion, important one – justification of taken judicial acts to be reflected in their motivation part. We think that it is because of poorly reasoned by legal norms position of Arbitration Court, which took this or that position in the dispute, the dispute has continuation up to the last court instance.

Legal scholars noted that "the level of currently ongoing judicial protection does not always meet the growing needs of the population" [7, 47]. As the considered measures of raising the level have been studied the issues of: electivity of president judge by judges of such courts, revival of the Institute of People's Representatives, load reduction, including through out of court and pre-trial settlement of disputes, introduction of a simplified procedure for consideration of some types of cases in arbitration proceedings, creation of its own security service to eradicate corruption in courts, allocation of a fixed percentage in the budget for the judicial system [7, 49]. Controversial, in our opinion, is the acceptance by Terekhin A. V. of the earlier idea of rejection to make a motivated court judgment for all cases, where

such a judgment will be obligatory only upon a complaint or request from participants in case.

Borisova E. A. wonders "why a court decision of first instance is checked again if it has already been checked by the court of appeal?" [4, 29], and then she states that "a court's judgment can be neither the object of the cassation appeal, nor object to cassation check" [4, 29]. With this position of the author we strongly disagree. The author, as we believe, overly relies on the potency of appeal instance in the correction of judicial errors of the first instance. However, in our opinion, an appeals instance resolution does not always "absorb" a court's judgment.

Of the numerous practices of disputes between economic units and public person, the authors note the "unity" of arbitration judges of appeal, cassation and supervisory instances of unwillingness to give reasoning on the provided arguments in the relevant complaint of a party of process. Appeal instance uses for this formal excuse – reconsideration of dispute on the merit not associating itself with the arguments of an appeal (only in the complained part of a decision, see article 268 of the Arbitration Procedure Code of the RF). Supervisory instance uses simplified formula – exposure of motives in a judicial act adoption, usually without any substantial reasoning (see paragraph 6 of article 301 of the Arbitration Procedure Code of the RF).

Such justice recalls a dispute of a deaf with mute. An understandable expectation of a procedural party complaining the decision of arbitration court is often not satisfied by appeal instance, as the complainant does not receive a response to his, set out in the complaint, legal position and his own understanding (interpretation) of the law norms and actual events. As we see it, the panel of judges, which considers an appeal, resorts to this "trick" (ignoring of appeal arguments) in those cases where the very court's decision is poorly justified, but appeal instance intends to uphold its operative part for particular (including subjective) reasons. And practice has shown that such cases occur more often when a weak decision has been made in a dispute in favor of a public authority (usually arbitration courts do not take weak decisions in favor of economic units in disputes of economic units with public persons)

Let us consider another case of a "legal" substantiation (of motive in the context of article 301 of the Arbitration Procedure Code of the RF) of refusing to meet complaints on judicial decisions rendered by lower instances in the supervisory instance of arbitration court. This is the direction of court to form the legal position of court by the Presidium of the Higher Court of Arbitration of the Russian Federation after adoption of contested judicial acts. For example, in the case

No. A57-3530/2008 judicial panel denied the applicant the transfer of the case to the Presidium on the grounds that: "... as the legal position on this issue has been formed by the Presidium of the Higher Arbitration Court of the Russian Federation in decision No. VAS-14140/11 from 17.04.2012, that is, after the adoption of the contested judgments, there is no reasons to satisfy the application of company "Elton" on the transfer of the case to the Presidium" [3]. In our opinion, with such motive supervisory instance recognizing judicial errors of the arbitration courts in respect of misuse of law norms and by denying the applicant settlement of the case in accordance with the rule of law, in fact, refuses to exercise the functions conferred on the Court – administration of justice. The lack of legal positions of arbitration court is similar to ignorance of a student the answers to an exam ticket. However, the student receives "F", but the acts of the arbitration court are a priori considered legitimate (i.e., assessed at "A").

Dissatisfaction with justice among the participants of public-law disputes is caused by another formulation of refusing motive of the supervisory instance on the complaint that is set forth in the following sentence: "Having considered the application of the antimonopoly body, a panel of judges considers that it contains arguments that show that there are no grounds provided for by article 304 of the Arbitration Procedural Code of the Russian Federation for transferring the case to the Presidium of the Higher Arbitration Court of the Russian Federation to revise the contested judicial acts by way of supervision" [2]. This formulation is often used by supervisory instance, with the difference from the above example that in it are replaced the names of persons, in satisfaction of whose applications is refused.

Only cassation instance of arbitration court follows the rule of maximum justification of its judicial acts. However, limits for examination of a case in arbitration court of cassation instance limit the potency of the instance to correct judicial errors of lower instances of arbitration court, unless there are no violations of norms of procedural law, which, in accordance with part 4 of article 288 of the Arbitration Procedural Code of the Russian Federation, are the grounds for the annulment decisions of the arbitration court of the first instance, arbitration court of appeals instance (see part 2 of article 286 APC RF), and the courts' conclusions, which are set out in contested acts, consistent with the description of detected circumstances and evidences forming the basis of court's judgments (see part 3 article 286 APC RF). The problem of contesting judicial decisions up to the last instance, we believe, lies in the absence of proper descriptions in the motivation part of judicial acts the reason of failure to accept this or that evidence of the dispute parties. Court instances

are too lazy to justify in writing their views on the evidences that are not laid down to the basis of acts taken, that is perceived by a procedural party, which lost a dispute, as an evasion from the estimation of evidences, and convinces of the rightness of its own position, resulting in the filing of complaints in the next arbitration court instance.

Analysis of the norms of the APC RF that establish requirements for the content of judicial acts, shows that the operative part of the judicial acts taken on the cases arising from administrative and other public relations is subject to the main regulation. For example, article 195 of the APC RF establishes the requirements for the operative part of the decision on contesting a normative legal act:

"3. The operative part of the decision on a case of contesting a normative legal act must contain:

1) the name of the body or person who adopted the disputed act, its name, number and date of adoption of the act;

2) the name of the normative legal act of greater legal force, for the conformity to which the disputed act was checked;

3) an indication to the recognition of the disputed act's conformity to the normative legal act of greater legal force and to the refusal to satisfy the stated claim, or to the recognition of the disputed act's non-conformity to the normative legal act of greater legal force and to its full or partial invalidation".

In part 4 of article 201 of the APC RF fixed requirements to the operative part of an arbitration court decision, handed down on the case on contesting non-normative legal acts, decisions of the bodies exercising public powers, officials: "4. The operative part of the decision on a case of contesting of non-normative legal acts and decisions of bodies exercising public powers, and of officials must contain:

1) the name of the body or person who adopted the disputed act, decision; the name of the act or decision, the number and date of its adoption;

2) the name of the law or of another normative legal act, for the conformity to which the disputed act or decision was checked;

3) an indication to the recognition of the disputed act as invalid or the decision as unlawful, fully or in part, and the duty to eliminate the committed violations of the applicant's rights and lawful interests, or to the refusal to satisfy the applicant's claims, fully or in part".

The operative part of the decision on a case of contesting actions (inaction) of bodies exercising public powers and officials, and of contesting refusals to perform actions and take decisions must contain:

"1) the name of the body or person who performed the disputed actions (inaction) and refused to perform actions and take decisions; information regarding actions (inaction) and decisions;

2) the name of the law or of another normative legal act, for the conformity to which the disputed actions (inaction) and decisions were checked;

3) an indication to the recognition of the disputed actions (inaction) as unlawful and the duty of the appropriate bodies exercising public powers and officials to perform certain actions, to take decisions, or in another way to eliminate the committed violations of the applicant's rights and lawful interests within the term established by court, or to the refusal to satisfy the applicant's claims, fully or in part" (see part 5 of article 201 of the APC RF).

Article 206 and 211 of the APC RF also determine the main content of the operative part of the decision of arbitration court in cases on bringing to administrative responsibility and cases on contesting decisions of administrative body respectively.

Despite the fact that arbitration court in cases arising from administrative and other public relations, in session performs examination of a contested act or some of its provisions, contested decisions and actions (inaction) and determines their compliance with the law or another normative legal act, establishes presence of powers of a body or a person who took the contested act, decision or committed disputed actions (inaction), and establishes whether the rights and legitimate interests of the applicant in the field of entrepreneurial and other economic activities are violated by the contested act, decision and actions (inaction), Motivation Part of handed down judicial acts leaves much to be desired.

Regulation of part 1 of Article 189 of the APC that cases arising from administrative and other public relations, are considered by the general rules of action proceedings provided for the APC, with features defined in Section III of the Code, in our opinion, does not require arbitrators strictly follow the provisions of Article 170 of the APC in the manufacture of a judicial decision.

Normative position of part 1 of article 189 of the APC RF about that cases arising from administrative and other public relations are considered by the general rules of action proceedings provided for by the APC RF, with features defined in Section III of the Code, in our opinion, does not require arbitrators strictly follow the provisions of article 170 of the APC RF in the making of a judicial decision. That is, we believe, judges complying with the procedural aspects of the very proceedings on a case and resolving in court proceedings issues provided for by article 168 of the APC RF and based on their own discretion determine the scope

of the motivation part of decision and its contents on cases arising out of administrative and other public relations, that ultimately affects the reasonableness and, consequently, the legality of the decision taken.

From the specified in paragraph 4 of article 170 of the APC RF list of reflected issues relating to the motivation part of the decision, in our view, in many cases there are no grounds on which the court rejected certain evidence, accepted or refused the arguments given in support of claims and objections of persons involved in the case, as well as the grounds on which the court did not apply laws and another normative legal acts, to which referred persons involved in the case.

Recognition by legal scholars the need for compliance of made texts of solutions on cases arising from administrative and other public relations with the requirements of article 170 of the APC RF as an axiom [5, 6], does not mean adhering this rule by the whole judicial community. Therefore, we believe, we need a mandatory enshrining of requirements for the content of the motivation part of decisions and subsequent judicial acts on this category of cases considered by arbitration courts.

The absence in the motivation part of a judicial act of reasons on which the court rejected certain evidence, accepted or refused the arguments given in support of claims and objections of persons involved in the case, as well as reasons for which the court did not apply the laws and other normative legal acts, to which referred persons involved in the case, must lead to the abolition of the judicial act. In such circumstances, articles 170 and 271 of the APC RF defining the content of judgments and decisions of the appeal instance of the arbitration court, respectively, will fully "work" in cases arising from administrative and other public legal relations.

As we see it, an increase in the time to produce a reasoned judicial act will be repaid a hundredfold in its future appeal, in view of the fact that the maximum justified and lawful decision (resolution) of arbitration court will eliminate the illusion of the parties of a public legal dispute concerning the prospects of its appeal. The loser of a dispute will have clear understanding of errors made in the application of law norms and the assessment of actual circumstances.

Additionally it is recommended to stay on the norm of article 301 of the APC RF, which includes to the content of the court's judgment on refusal to transfer the case to the Presidium of the Higher Arbitration Court of the RF **reasons for refusal** of the case transfer to the Presidium for review of a judicial act by way of supervision. As motive in psychology is understood a perceived reason underlying the choice of actions and behavior of a person [8], impulsive cause (reason) to

any action, arguments in favor of something [9], i.e. quite certain subjective characteristics of a person. Establishing of direct dependence of justice in supervisory instance on a subjective factor is unlikely to contribute to the formation of economic units' trust in justice administrated to them and acceptance as a legitimate and fair a judicial act taken by supervisory instance. We do not exclude the abuse of the right to appeal by a procedural party, but in respect of it there are effective countermeasures of assignment court costs on such a party.

However, in order to avoid such wordings of motives, as we discussed earlier, it seems useful to refine the norm of the APC RF on the issue by introducing the following note to article 301:

Note. Under the motive in the context of this article is understood the presentation of reasons on which the court rejected certain evidences, accepted or refused the arguments given in support of claims and objections of a person that had lodged a complaint on the review of judicial acts by way of supervision

References:

1. Arbitration Procedural Code of the Russian Federation from July 24, 2002, No. 95-FL [Arbitrazhnyi protsessual'nyi kodeks Rossiiskoi Federatsii ot 24 iyulya 2002 g. № 95-FZ]. *System GARANT* [Electronic resource], Moscow: 2012.
2. Ruling of the Higher Arbitration Court of the RF No. VAS-10912/11 from August 31, 2011 "On refusal to transfer the case to the Presidium of the Higher Arbitration Court of the RF" [Opredelenie VAS RF ot 31 avgusta 2011 g. № VAS-10912/11 «Ob otkaze v peredache dela v Prezidium VAS RF»]. *System GARANT* [Electronic resource], Moscow: 2012.
3. *Ruling of the Higher Arbitration Court of the RF No. VAS-11732/10 from August 03, 2012 "On refusal to transfer the case to the Presidium of the Higher Arbitration Court of the RF"* [Opredelenie VAS RF ot 3 avgusta 2012 g. № VAS-11732/10 «Ob otkaze v peredache dela v Prezidium VAS RF»]. Available at: http://kad.arbitr.ru/PdfDocument/faf01446-4039-4bd1-a20b-0d4abb4b45f0/A57-3530-2008_20120803_Opredelenie.pdf (accessed: 04.08.2012).
4. Borisova E. A. The sequence for appealing court decisions in arbitration and civil procedure [Borisova E. A. Posledovatel'nost' obzhalovaniya sudebnykh aktov v arbitrazhnom i grazhdanskom protsessakh]. *Arbitrazhnyi i grazhdanskii protsess – Arbitration and Civil Procedure*, 2012 no. 8, p. 29.
5. Guev A. N. Article by article commentary to the Arbitration Procedural Code of the Russian Federation – System GARANT, 2010 [Postateinyi kommentarii k Arbitrazhnomu protsessual'nomu kodeksu RF - Sistema GARANT, 2010]. *System GARANT* [Electronic resource], Moscow: 2012.
6. *Commentaries to the Arbitration Procedural Code of the Russian Federation (article by article)* [Kommentarii k Arbitrazhnomu protsessual'nomu kodeksu Rossiiskoi Federatsii (postateinyi)]. Under edition of Yarkov V. V., 3rd edition, changed and added, Infotropik Media, 2011.
7. Terehin V. A. Problems of increasing the efficiency of justice and credibility to judiciary: continued discussion [Problemy povysheniya effektivnosti pravosudiya i doveriya k sudeiskomu korpusu: prodolzhenie diskussii]. *Rossiiskaya yustitsiya – Russian Justice*, 2012, no. 8, p. 47.
8. *http://www.psychologist.ru/dictionary_of_terms/index.htm?id=1209* (accessed: 04.08.2012).
9. *http://www.slovochel.ru/motiv.htm* (accessed: 04.08.2012).

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ABOUT THE FORM AND DEGREE OF GUILT OF A LEGAL ENTITY FOR COMMITMENT OF AN ADMINISTRATIVE OFFENCE

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On specific examples of law enforcement in the article is considered the actual implementation of normative consolidation in the Code on Administrative Offences of the RF of the concept of legal entity guilt. Notes mismatch of definition of legal entity guilt in the general part of the CAO RF and the guilt of a legal entity stipulated in the elements of administrative offences in the special part of the CAO RF. When imposition of an administrative penalty to a legal entity here is suggested to take into account degree of guilt of the legal entity, determined according to the guilt of its officials.

Key words: administrative responsibility, administrative responsibility of a legal entity, guilt, forms of guilt, administrative offence

The general formula of guilt of a legal entity in committing an administrative offense is contained in part 2 of article 2.1 of the Code on Administrative Offences of the Russian federation (hereinafter – CAO RF) [1], and is significantly different from the forms of guilt of an individual, which are defined in article 2.2. By virtue of Part 2 of article 2.1 of the Code on Administrative Offences of the RF a legal entity is guilty of an administrative offense if it is established that it had the ability to comply with rules and norms, for violation of which the Code or the laws of the Russian Federation provide for administrative responsibility, but that person did not make all his best efforts to comply with them. If we compare this norm with the norms provided for in article 2.2 of the CAO RF, then it is hard to escape a conclusion that the guilt of a legal entity can only be expressed in the form of negligence. In fact, the failure of a legal entity to take all possible from him measures to comply with certain rules and norms is a manifestation of negligence, carelessness, and only shows a careless form of guilt.

Thus, contained in Part 2 of article 2.1 of the CAO RF concept of guilt of a legal entity does not imply the possibility of committing an intentional administrative offense. It is clear that the legal entity, as opposed to physical, person cannot have any mental attitude to a committed unlawful act (action or inaction), and, accordingly, his guilt cannot be expressed in the form of intent or negligence. This fact is indicated in the literature and jurisprudence [9, 122; 12, 29-30; 10, 60; 5; 6]. Apparently legislator proceeded from these reasons in formulating the norm of part 2 of article 2.1 of the CAO RF. At the same time in a number of articles (parts of articles) of the Special Part of the CAO RF is provided for administrative responsibility of legal persons for administrative offenses, the disposition of which directly indicates only to willful form of guilt. These administrative offences include, for example, concealment, or willful distortion of complete and reliable information about the state of the environment and of natural resources (article 8.5); concealing information about a sudden murrain or about simultaneous cases of animals falling ill on a mass scale (article 10.7); deliberate concealment of an air accident or incident (article 11.30); deliberate obstruction to traffic (article 12.33); deception of consumers (14.7); inclusion in declaration about the volume of production and turnover of alcohol and alcohol-containing products deliberately distorted data (article 15.13); unintended use of budgetary funds and assets of state non-budgetary funds (article 15.14); making forged documents, stamps, seals or blanks, and their use, transfer or sale (article 19.23). In this regard, in the case of committing by a legal person of any of the above, and similar administrative offenses it is necessary to establish the existence of intent for committing

the appropriate action or omission. This is evidenced by the judicial practice, in particular on cases of bringing legal entities to administrative responsibility under articles 12.33 and 15.13. of the CAO RF [4; 8]. Otherwise, a legal entity cannot be brought to administrative responsibility in connection with the absence of the event and of the corpus delicti of the appropriate offense.

Obviously, in such cases, is not applicable the general formula of a legal entity's guilt contained in part 2 of article 2.1 of the CAO RF. Consequently, the guilt of a legal entity when the commission of the mentioned administrative offences shall be determined on the basis of the presence or absence of a deliberate form of guilt of individuals acting on behalf of the legal entity (director, his deputy, other employee responsible for compliance with the appropriate rules). If herewith will be established the presence of intent of a legal entity's responsible employee to commit illegal actions (inaction) forming the event of a corresponding administrative offense, then the legal entity should be recognized as guilty of the offense. A similar approach should be applied, from our point of view, and in those cases where a legal person is imposed an administrative penalty for committing an administrative offense, the form of guilt for commission of which is not explicitly stated in the disposition of the relevant norm of the Special Part of the CAO RF or Russian Federation subject's law on administrative offences (administrative responsibility), that is, when a guilt can be expressed both in the form of intention, and in the form of negligence. These administrative offences include, for example, violation of the legislation in the area of securing the sanitary-and epidemiological well-being of the population and legislation on technical regulation (article 6.3 of the CAO RF); violating the rules for maintenance and repair of dwelling houses and (or) living quarters (article 7.22 of the CAO RF); damaging electric power circuits (article 9.7 of the CAO RF); violating veterinary-and-sanitary rules of transportation or slaughter of animals, the rules of processing, storage or sale of livestock products (article 10.8 of the CAO RF) and etc. In all such cases, the determination of the form of guilt of legal entity's employees who have directly committed illegal actions (inaction) and have been brought to administrative responsibility, at the same time will be the determination of guilt form of the very legal entity. Respectively, depending on the determined form of guilt – intent or negligence – should be decided the question on the type and degree of severity of an administrative punishment being assigned to a legal entity.

In connection with the above understanding of the guilt of a legal entity, objectively arising out of the system interpretation of provisions of the General and Special parts of the CAO RF, arises the question with regard to the correctness of

the wording contained in part 2 of article 2.1 of the CAO RF, to its relevance to the real state of affairs. And this provision is such that it conforms to a much greater extent not to the norm provided for by part 2 of article 2.1 of the CAO RF, but by part 4 of article 110 of the Tax Code of the Russian Federation [2], according to which the guilt of a legal entity of committing a tax offense is determined by the guilt of its employees. Accordingly, the guilt of an organization under the provisions of article 110 of the Tax Code of the Russian Federation may take the form of intent or negligence. In this regard, it may be worthwhile to borrow from the Tax Code of the Russian Federation exactly this approach to the determination of guilt of a legal entity in relation to an administrative offense and normatively enshrine it in the CAO RF. With that said deserves attention the position on the issue expressed by Maksimov I. V., who offers in determination a legal entity guilty of an administrative offense to consider both subjective and objective aspects, that is, both the behavior of individual employees of a legal entity, and the behavior of the very entity as a whole [11, 100-104]. In any case, the mentioned issue is controversial [14, 6-13; 13, 13; 15, 411-418], and its solution requires additional special research. However, to date it is clear that at the imposing to a legal entity administrative penalties for administrative offenses, which can only be done intentionally, it is necessary to establish this form of guilt for the respective actions (or inaction) for the employees of a legal entity brought to administrative responsibility, and take into account its presence with respect to such entity itself.

Let us turn then to the issue of degree of a legal entity guilt of an administrative offense and how it should be taken into account when imposing him an administrative penalty.

It seems that the degree of entity guilt of an administrative offense characterizes the amount, size of guilt of this entity in comparison to other persons involved in the commission of the offense or who contributed to its commission. Illegal actions (inaction), which form the events of relevant administrative offenses, are committed on behalf of legal entities by their leaders and other employees. In this regard, in addition to taking into account a legal entity employees' form of guilt of committing an imputed against him administrative offense, you must also take into account the size of their guilt in comparison with the guilt of the legal entity as a whole. For example, in administrative and jurisdictional practices in bringing legal entities to administrative responsibility under part 2 of article 14.5 of the CAO RF for non-use of cash registers in the sale of goods and services are accounted the measures that have been taken by legal entity in order to ensure fulfillment by its employees, particularly by the seller, of the legislation on

the use of cash registers (conclusion of employment contract, coaching, control, etc.) [3; 7]. Thus is determined the degree of guilt of a legal entity in comparison with the guilt of its employee who improperly executes his duties. In the same way may be determined the degree of legal entity guilt also when committing other administrative offenses, for example, ones provided for in articles 6.3, 7.22, 8.1-8.2, 9.7-9.8 and other articles of the CAO RF. At the same time, if it is established that a legal entity represented by its leaders has taken all necessary measures to prevent the violation of the relevant rules on the part of its employee, its guilt of committing an administrative offense shall be recognized minimum. In some cases, on the contrary, the guilt of committing certain administrative offenses may be more vested on a legal entity, but not on its leaders or other employees. This refers to cases where it is difficult to establish specific employees of a legal entity, direct actions (or inaction) of which have led to committing an administrative offense or where the offense was committed collectively, that is, by a large number of employees or the whole collective of the legal entity simultaneously. For example, an analysis of administrative and jurisdictional practice shows that it is not always possible to establish the guilt of specific employees of a legal entity who carried out an illegal storage of production waste (article 8.2 of the CAO RF); unlawful cutting, damaging or digging out of trees (article 8.28 of the CAO RF); damaging electric power circuits (article 9.7 of the CAO RF); damaging roads (article 12.33 of the CAO RF) and etc. Examples of administrative offenses, which may be committed by a significant number of employees or the entire staff of a legal entity, may include: violating the rules for operation water-management and water-protection structures and devices (article 8.15 of the CAO RF); exhausting harmful substances into atmospheric air s (part 1 of article 8.21); violating the forest use rules (article 12.33); violation of the requirements of design documents and normative documents in the field of construction (article 9.4); engaging in business activities without a special permit(license) (part 2 of article 14.1); abuse of the dominating position on the commodity market (article 14.31). In all the above and other similar cases the degree of legal entity guilt of committing an administrative offense is greater than the degree of guilt of its employees. Accordingly, this fact should be taken into account in determining the type and size of an administrative punishment being imposed to a legal entity. Meanwhile in practice, the degree of guilt of a legal entity is usually not established and is not taken into account in the imposing to it an administrative penalty. The given circumstance gives rise to the conclusion of the need of normative enshrining in part 3 of article 4.1 of the CAO RF of the relevant rule.

References:

1. Code on Administrative Offences of the Russian Federation of December 30, 2001, No. 195-FZ [Kodeks Rossijskoj Federatsii ob administrativnyh pravonarushenijah ot 30 dekabrja 2001 g. № 195-FZ]. *System GARANT* [Electronic resource], Moscow: 2012.

2. Tax Code of the Russian Federation, part one, No. 146-FL of July 31, 1998 [Nalogovyj kodeks Rossijskoj Federatsii. Chast' pervaja ot 31 ijulja 1998 g. № 146-FZ]. *System GARANT* [Electronic resource], Moscow: 2012].

3. Decision of the Federal Arbitration Court of the Volga district from March 16, 2004 on the case No. A12-17657/03-S19. *System GARANT* [Electronic resource], Moscow: 2012].

4. Decision of the Federal Arbitration Court of the East-Siberian district from August 12, 2004 on the case No. A19-6102/04-21-F02-3116/04-S1. *System GARANT* [Electronic resource], Moscow: 2012].

5. Decision of the Federal Arbitration Court of the Nord-West district from October 21, 2005 on the case No. A66-5835/2005. *System GARANT* [Electronic resource], Moscow: 2012].

6. Decision of the Federal Arbitration Court of the Volgo-Vyatski district from March 19, 2008 on the case No. A79-9256/2007. *System GARANT* [Electronic resource], Moscow: 2012].

7. Decision of the Federal Arbitration Court of the West-Siberian district from April 22, 2008 on the case No. A70-3087/2007. *System GARANT* [Electronic resource], Moscow: 2012].

8. Decision of the Federal Arbitration Court of the Volgo-Vyatski district from March 20, 2008 on the case No. A82-13542/2007/29. *System GARANT* [Electronic resource], Moscow: 2012].

9. Denisenko V. V. *Systemic Analysis of Administrative and Tort Relations* [Sistemnyi analiz administrativno-deliktnykh otnoshenii]. St. Petersburg: 2001.

10. *Comments to the Code on Administrative Offences of the Russian Federation* [Kommentarii k Kodeksu Rossiiskoi Federatsii ob administrativnykh pravonarusheniyakh]. Under edition of Nozdrachev A. F., Moscow: 2010.

11. Maksimov I. V. *Administrative Penalties* [Administrativnye nakazaniya]. Moscow: 2009.

12. *Scientific and practical guide to the application of the CAO RF* [Nauchno-prakticheskoe posobie po primeneniyu KoAP RF]. Under edition of Serkov P. P., Moscow: 2006.

13. Ovcharova E. V. *Administrative responsibility of legal entities*: thesis abstract of candidate of legal sciences [Administrativnaya otvetstvennost' yuridicheskikh lits: avtoref. dis. … kand. yurid. Nauk]. Moscow: 2001.

14. Petrov M. P. *Administrative responsibility of organizations (legal entities)*: thesis abstract of candidate of legal sciences [Administrativnaya otvetstvennost' organizatsii (yuridicheskikh lits): avtoref. dis. … kand. yurid. Nauk]. Saratov: 1998.

15. Polivanov G. S. The Main Problems of Application Administrative Responsibility to Legal Entities [Osnovnye problemy primeneniya administrativnoi otvetstvennosti k yuridicheskim litsam]. *Ros. pravovoe gosudarstvo: itogi formirovaniya i perspektivy razvitiya – Russian Constitutional State: Results of the Formation and Prospects of Development* ,Voronezh: 2004, part 3.

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CONTINUING OR LATENT ADMINISTRATIVE OFFENCES?

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Analyzing the issues of application the provisions on a continuing offense in the context of determining limitation for bringing to administrative responsibility and views of jurists on overcoming collisions of private and public interests, the authors propose a new approach to the calculation of the terms of the limitation of actions in the administrative and tort legislation – based on the division of offenses to public (open) and latent (hidden) administrative offenses.

Key words: administrative offences, administrative responsibility, Limitation for bringing to administrative responsibility, continuing offences, latent offences, limitation of actions.

Lately, scholars and practitioners have frequently started to refer to the problem of the division of offenses to continuing and not continuing ones [7; 8, 3-12; 9, 189-190; 13; 15, 63-67; 14, 151-153; 10, 60-66; 5; 6; 3]. The impetus for this was the Decree of the Plenary Session of the Supreme Court of the Russian Federation No. 5 from March 24, 2005 "On Some Issues Raised by the Courts in Applying the Code on Administrative Offences of the Russian Federation" [2], the content of paragraph 14 of which sparked a wave of criticism.

There are two provisions of the Decree that have caused criticism from scientists.

First – a range of acts, which may contain a legal obligation, long-term nonperformance or improper performance of which is a continuing administrative

offense. In this Decree is provided a definition of a continuing offense, which "is recognized as an administrative offense (action or inaction) expressed in a long never-ending non-performance or improper performance of duties imposed on an offender by law". Analyzing the mentioned Decree D. N. Bakhrakh noted the need to add this definition with the words "or adopted on its basis subordinate acts" [7]. The next two decisions of the Supreme Court of the Russian Federation indicate a sequential formation of a clear position: so, the Decree of the Presidium of the Supreme Court of the Russian Federation from February 27, 2008 "Review of the Legislation and Judicial Practice of the Supreme Court of the Russian Federation for the fourth quarter of 2007" clarifies that provision of paragraph 14 of the Decree No. 5 from March 24, 2005 is applicable also in cases where the time limit for performing a duty is established by not only a normative legal act, but also by another act, including an order of an authority exercising state supervision. Later the Plenary Session of the Supreme Court of the Russian Federation in its decision No. 23 of November 11, 2008 "On Amendments to some Decisions of the Supreme Court of the Russian Federation" has enshrined a broader concept of acts that impose obligations on an offender, having specified that "such obligations may be also imposed by another normative legal acts, as well as non-normative legal acts, for example, recommendation of a procurator, order of a body (official) performing state supervision (control)" [3].

In the first legal collision resolution should be noted matching and consistent positions of scientists and law enforcement to determine the range of acts that could contain a legal obligation, long-term non-performance or improper performance of which is a continuing administrative offense.

Second – wording of the definition of a continuing offense in part of exclusion of offenses consisting in non-compliance with provided by legal acts obligation by the deadline.

According to V. I. Popova the Decree of the Plenary Session of the Supreme Court of the Russian Federation No. 5 from March 24, 2005 "On Some Issues Raised by the Courts in Applying the Code on Administrative Offences of the Russian Federation" "has not clarified, but confused the considered issue" [17, 50].

The wording contained in the Decree of the Plenary Session of the Supreme Court of the Russian Federation has put many control bodies employees in a difficult position. How can it be that the offense has been committed, the duty is not performed, but there is no possibility to bring an offender to administrative responsibility?

Not only law-enforcers, but also scientists who study administrative law started the search for an acceptable solution. We should take note of proposal of D. N. Bakhrakh to rediscover an offense and draw up a new record on administrative violation if the statute of limitation for an offenses has expired, but the obligation has not been executed and the offense is continuing, because "no matter, why in due time the offender has not been punished, continuing even after the drawing up a record, in other words, willful violation of the law must not remain unpunished" [7]. S. V. Yaroslavtseva takes the same position in relation to paragraph 14 of the Decree of the Plenary Session of the Supreme Court of the Russian Federation No. 5 from March 24, 2005. She recognizes the idea provided by D. N. Bakhrakh "progressive in terms of theory" [20, 34] and calls to "consider a period of bringing to administrative responsibility for a continuing offense unexpired, if at the date of passing resolution on bringing to administrative responsibility the circumstances that caused the bringing to such responsibility have not been eliminated, regardless of when it was firstly discovered" [20, 36]. Despite the fact that the "obligation of compulsory payments does not lose its validity and after failure to comply with it in the prescribed period" [12, 41], such a conclusion, taking into account its binding to the existing wordings of the objective side of many administrative offenses, is very similar to the famous phrase of Zheglov: "If the Brick is a thief – his place in prison, and people don't care about the way I will put him in there".

A somewhat different approach to the solution of this problem has L. Yu. Plotnikova. She forms the following definition of a continuing offense – it is "a detrimental to the legally protected public relations action or inaction that is committed continuously for a long time, expressed in non-performance or improper performance of obligations assigned on the subject of administrative law and / or accompanied with a subsequent non-performance or improper performance of obligations assigned by the rule of law after the deadline that stops with its suppression or independent decision to terminate"[16, 55].

She also suggests to change the calculation of the limitation periods to administrative offenses, using the wording adopted in the Criminal Code of the RF, namely, "calculate from the date an offense was committed prior to the entry of a decision on the administrative offense in force, including the time that has elapsed before the discovery of the offense" [16, 55]. Mechanistic approach to copying the achievements of criminal and criminal procedural sciences to the legislation on administrative responsibility seems to be unreasonable.

In the considered approaches to the resolution of the called legal collision through the updating of the concept of a continuing administrative offense seems

unreasonable unification of various deeds under a single concept of a continuing offense: violation of order, breach of conditions, violation of rules, violation of requirements and deadlines [8, 3].

If the attribution of the first four types of violations to continuing offences is not in doubt, the latter is unlikely to be considered as such. Describing continuing offenses P. P. Serkov focuses at the absence of qualifying signs of time and place of a not exercised legal obligation. He notes that their absence does not allow "to determine the end of the objective side of an administrative offense" [18, 3]. On the basis of the fact that it is possible to place on record the start of the limitation period of bringing to administrative responsibility at the termination or suppression of failure to comply with a legal obligation P. P. Serkov concludes, that there is a long-term continuing non-performance of obligation imposed by law before the occurrence of these two circumstances. In case of breach of an obligation by a certain deadline, the sign of time is available [18, 3]. Therefore, there is no reason to classify such an offence as a continuing one.

It should also be noted that if at committing an administrative offence there is a possibility to suppress it by state bodies or still it may be possible to stop its commission by the very person, it is a continuing offense. This is a characteristic feature of continuing offences. If there are not such possibilities, because the offense has been actually over when it has been started – then this is a usual offense [10, 65]. Many articles of the Code on Administrative Offenses of the RF are formulated in such a way that you cannot prevent or stop an offense, you can only reveal it. For example, article 15.5 provides for responsibility for violation of deadlines stipulated by the legislation on taxes and fees for submission a tax return to the tax authority at the place of registration. With the submission of a tax return beyond deadline the situation does not change – the term is broken simultaneously with the beginning of the day following the day when the duty has to be performed. A. Zharov points at another set of elements of an administrative offense which cannot be detected by oversight bodies within the prescribed time limits to bring the perpetrators to administrative responsibility [11, 52-54]. Violation of article 67 of the Labor Code, which requires the employer to conclude an employment contract with an employee in writing, no later than three working days after the actual admission of the employee to work. Responsibility for this offence is stipulated by part 1 of article 5.27 of the CAO RF. Indeed, the application in court instances interpretation of continuing offenses, which is given in paragraph 14 of the Decree of the Plenary Session of the Supreme Court of the Russian Federation No. 5 from March 24, 2005, in respect to the situation described by A. Zharov fosters impunity of a flagrant offender.

Analysis of the articles of the Code on Administrative Offences of the RF coupled with criticism of scientists allows drawing a conclusion about inconsistency of wording of some articles of the Code with the theoretically grounded by many scientists concept of continuing offense.

It seems appropriate to use the existing experience for the formulation of the objective side of continuing offenses. For example, as in part 3 of article 16.23 of the CAO RF – "**Failure or breach of the term** (emphasis added by authors) of the report to the customs authority on changing the information specified in the application for inclusion in the register of persons working in the field of Customs Affairs; in part 1 of article 19.7.1. "**Failure to submit** information to the body authorized to perform state regulation of tariffs, if the mandatory submission of information is provided for by normative legal acts for the establishment, changing, introducing or abolition of tariffs, and exercising by this body the powers of control (supervision), **as well as failure to submit the information in terms specified by the authorized body** (emphasis added by authors)".

The formula, describing a continuing offense coupled with the delay in the performance of legal obligations, in the Special Part of the Code could be as follows: "non-performance of a legal obligation and / or violation of the terms of its performance".

Introducing of proposed amendments to certain articles of the Special Part of the Code on Administrative Offences of the RF seems to be more effective measure than the considered in this article means of solution of this legal problem, which consist in making amendments to the General part of the Code in the form of a broader definition of a continuing offense. Adjustment of separate articles of the Special Part of the Code, first, allows a differentiated approach to the establishment of administrative responsibility for non-performance of legal obligations, and second, deprives the possibility of negligent public servants to "draw out" the instituting of an administrative case and its consideration.

However, we believe, that for a rather long time there will be issues in law-enforcement regarding the attribution to continuing offences administrative ones related to the continuing wrongful deed of a perpetrator after the expiry of the deadline stipulated by a norm of public law for performing of a certain obligation.

In common usage, the concept "continuing deed" is considered in terms of time, so artificial restriction in the administrative-tort legislation of category of continuing in time unlawful acts (including after a deadline established for performance of a public-law obligation) in determining limitation for bringing to administrative responsibility quite reasonably causes aversion of some jurists

(scholars and practitioners). In essence, any wrongful deed connected with the failure to comply with the imposed by a norm of law obligation is a continuing in time offense, until the detection of this offense, no matter whether the term of execution of obligation has expired, or such is not enshrined in a norm of law. As we see it, public interests, which are protected by the CAO RF, in the matter of determining continuing offences lie in the other – in bringing to administrative responsibility of perpetrators whose crimes are of latent nature. This is evidenced by amendments of article 4.5, which have been made since the adoption of the CAO RF, and which have increased the number of state-regulated areas, limitation period for which is set at one year or more. It is because of the latency of most administrative offenses has been introduced a rule on the calculation of the statute of limitations from the time of its revealing. However, the wording of this rule in relation to continuing offenses is not successful, due to the fact that the majority of administrative offences are connected to non-performance of public-law duties with established terms of their execution.

As we see it, the legislator has confused himself with the application of category of continuing offenses and got in a stalemate situation, which has no effective solution in terms of concurrent complying with the rights and interests of individuals (limiting of law enforcer's discretion) and ensuring the realization of public interests. In our opinion, the introduction of categories of "public" (open) and "latent" (hidden) administrative offenses to the administrative-tort legislation would remove a number of questions in application of the provisions on the limitation on holding a person administratively responsible. In this case, the category of public administrative offenses will be constituted by those offenses in which the wrongful act of a guilty person is visible for an indefinite number of persons both subjects of an administrative tort legal relation [19, 14-113], and persons who did not participate in this legal relations. Public offense is committed by a delinquent ostentatiously. In this connection, it is easy to reveal it and place on record the time of an event. Setting hard deadlines for an administrative jurisdiction authority to bring to administrative responsibility the person guilty of tort is quite reasonable for the case of a public offense, because the value of any punishment not only in its inevitability, but also in the quickness of its application to a delinquent.

Bringing to administrative responsibility in cases of latent administrative offenses involve primarily the problems of their establishment (revealing). Enumerating by the legislator in part 1 of article 4.5 of the CAO RF of the legislation (covering almost all the chapters of the Special part and regulating the majority of public-law relations in Russian society), in the regulation area of which the limi-

tations for bringing to administrative responsibility is a year or more, shows the understanding that offenses in these areas are of latent nature, and their revealing is only possible in the exercise of control and supervisory activities of the administrative jurisdiction bodies. Different limitation periods in the category of latent offences can be explained by different assessment of the legislator the degree of torts' public danger (harmfulness) and desire of the legislator to punish a guilty person. Given that the procedure for revealing a latent offense may take time, the legislator should be clear how dangerous to leave unpunished this or that administrative offense of this category. As we see it, if there are no victims (private individuals or public formations) and damage to the budget, it is quite possible to limit limitation period for bringing to responsibility for latent offenses to six months (max a year) from the time of revealing (or from the time when the latent offense should have been revealed). In other cases, it would be possible to establish a common preclusive term by analogy with Civil Code of the RF – three years.

In view of the above, parts 1, 2 of article 4.5 of the CAO RF could have the following content:

"Article 4.5. Limitation on Holding a Person Administratively Responsible

1. Decision with regard to case concerning administrative offence cannot be made after two months (on the case on administrative offence, considered by a judge – after three months) from the date of committing a public (open) administrative offense and after one year from the date of detection of a latent (hidden) administrative offense.

2. In the context of this Code a public (open) offense is recognized as an administrative offense, which at the time of its committing was visible (demonstrably committed) for an indefinite number of persons, both for the subjects of administrative-tort legal relation, and persons who did not participate in this legal relation.

Latent (hidden) offense is recognized as an administrative offense, the committing of which is invisible for an indefinite number of persons, and cannot be revealed without implementation of control and supervisory measures of the relevant authorities and officials".

Realizing that this suggestion is an innovation in the administrative-tort legislation, it should be noted that a bunch of definitions of "public (open)" – "latent (hidden)" administrative offense is more effective in law-enforcement than continuing and non-continuing offense, as publicity and latency of an offense are quality characteristics. Delineation of administrative offenses on the grounds of time, carried out in the CAO RF, is unsuccessful and confuses law-enforcement.

References:

1. Code on Administrative Offences of the Russian Federation of December 30, 2001, No. 195-FZ [Kodeks Rossijskoj Federatsii ob administrativnyh pravonarushenijah ot 30 dekabrja 2001 g. № 195-FZ]. *System GARANT* [Electronic resource], Moscow: 2012.

2. The decision of the Plenary Session of the Higher Arbitration Court of the Russian Federation No. 5 of March 24, 2005 "On some issues that arise in the courts when applying the CAO RF" [Postanovlenie Plenuma Verkhovnogo Suda Rossiiskoi Federatsii ot 24 marta 2005 g. № 5 «O nekotorykh voprosakh, voznikayushchikh u sudov pri primenenii Kodeksa Rossiiskoi Federatsii ob administrativnykh pravonarusheniyakh»]. *System GARANT* [Electronic resource], Moscow: 2012.

3. The decision of the Plenary Session of the Higher Arbitration Court of the Russian Federation No. 23 of November 11, 2008 "On amendments to some decisions of the Plenary Session of the Higher Arbitration Court of the Russian Federation" [Postanovlenie Plenuma Verkhovnogo Suda Rossiiskoi Federatsii ot 11 noyabrya 2008 g. № 23 «O vnesenii izmenenii v nekotorye Postanovleniya Plenuma Verkhovnogo Suda Rossiiskoi Federatsii»]. *System GARANT* [Electronic resource], Moscow: 2012.

4. The decision of the Plenary Session of the Higher Arbitration Court of the Russian Federation of February 27, 2008 "Review of the legislation and judicial practice of the Higher Court of the Russian Federation for the fourth quarter of 2007" [Postanovlenie Prezidiuma Verkhovnogo Suda Rossiiskoi Federatsii ot 27 fevralya 2008 g. «Obzor zakonodatel'stva i sudebnoi praktiki Verkhovnogo Suda Rossiiskoi Federatsii za chetvertyi kvartal 2007 goda»]. *System GARANT* [Electronic resource], Moscow: 2012.

5. The letter of the Federal Customs Service of Russia No. 01-06/23399 of July 12, 2005 "On attribution administrative offenses to continuing ones" [Pis'mo FTS Rossii ot 12 iyulya 2005 g. № 01-06/23399 «Ob otnesenii administrativnykh pravonarushenii k dlyashchimsya»]. *Tamozhennye vedomosti – Customs Gazette*, 2005, no. 11.

6. The letter of the Federal Tax Service Administration in the city of Moscow No. 09-10/69306@ of August 04, 2006 [Pis'mo upravleniya Federal'noi nalogovoi sluzhby po g. Moskve ot 4 avgusta 2006 g. № 09-10/69306@]. *Moskovskii kur'er – Moscow Courier*, 2006, no. 19.

7. Bahrah D. N. Problems of Continuing Offences [Problemy dlyashchikhsya pravonarushenii]. *Sovremennoe pravo – Modern Law,* 2005, no. 11.

8. Bahrah D. N., Kotel'nikova E. V. Continuing Administrative Offences: Issues of Law-enforcement Practice [Dlyashchiesya administrativnye pravonarusheniya: voprosy pravoprimenitel'noi praktiki]. *Administrativnoe pravo i process – Administrative Law and Procedure*, 2005, no. 3, pp. 3-12.

9. Bahrah D. N. Whether is the offense under part 1 of article 19.5 CAO RF a continuous one? [Yavlyaetsya li dlyashchimsya pravonarushenie, predusmotrennoe chast'yu 1 stat'i 19.5 KoAP RF?]. *Zakon – Law*, 2008, no. 12, pp. 189-190.

10. Vedenin V. S. On the issue of appealing against the decision of traffic police [K voprosu ob obzhalovaniyakh postanovlenii GIBDD]. *Yurist – Jurist*, 2009, no. 1.

11. Zharov A. Continuing Administrative Legal Relations [Dlyashchiesya administrativnye pravonarusheniya]. *Zakonnost' - Legality*, 2010, no. 11, pp. 52-54.

12. Zvecharovskij I. The end of crimes related to evasion of compulsory payments [Moment okonchaniya prestuplenii, svyazannykh s ukloneniem ot uplaty obyazatel'nykh platezhei]. *Rossiiskaya yustitsiya – Russian Justice*, 1999, no. 1, p. 41.

13. Ivachev I. *Continuing Legal Relations* [Dlyashchiesya pravonarusheniya]. EZh-Yurist, 2005, no. 35.

14. Makarova E. G. On the Problem of Continuing Administrative Offenses in the Field of Fire Safety [O probleme dlyashchikhsya administrativnykh pravonarushenii v oblasti pozharnoi bezopasnosti]. *Mezhdunarodnye juridicheskie chtenija: materialy nauchno-prakticheskoj konferencii – International juridical reading: proceedings of scientifically-practical conference*, Omsk: Omsk Institute of Law, 2008, part II, pp. 151-153.

15. Mewerjakova T. R. Peculiarities of Holding Administratively Liable for Continuing Offences [Osobennosti privlecheniya k administrativnoi otvetstvennosti za dlyashchiesya pravonarusheniya]. *Politseiskoe pravo – Police Law*, 2006. no. 4, pp. 63-67.

16. Plotnikova L. Yu. Problems of Holding Administratively Liable for Continuing Administrative Offences [Problemy privlecheniya k administrativnoi otvetstvennosti za dlyashcheesya administrativnoe pravonarushenie]. *Zakon – Law*, 2008, no. 9.

17. Popov V. I. About the Issue of a Continuing Administrative Offence [K voprosu o dlyashchemsya administrativnom pravonarushenii]. *Politseiskoe pravo – Police Law*, 2005, no. 4.

18. Serkov P. P. Continuing Administrative Offences [Dlyashchiesya administrativnye pravonarusheniya]. *Rossiiskaya yustitsiya – Russian Justice*, 2007, no. 7.

19. Tolstopjatova O. V. *Subjective Elements of Administrative and Tort Relations: Issues of Theory and Practice*: thesis of candidate of legal sciences [Sub"ektnyi sostav administrativno-deliktnykh otnoshenii: voprosy teorii i praktiki: dis. … kand. yurid. Nauk]. Rostov on Don: 2004.

20. Yaroslavtseva S. V. About the Limitation Period for Bringing to Administrative Responsibility for Continuing Offenses [O sroke davnosti privlecheniya k administrativnoi otvetstvennosti za dlyashchiesya pravonarusheniya]. *Arbitrazhnaya praktika – Arbitration practice*, 2008, no. 7.

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DEVELOPMENT TRENDS OF THE RUSSIAN LEGISLATION ON ADMINISTRATIVE OFFENCES

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In the article are presented the results of the critical analysis of changes in the CAO RF over the past decade with the assessment of positive and negative aspects of these changes. Are projected the directions of further development of administrative and tort legislation of Russia.

Key words: legislation on administrative offences, administrative offences, administrative responsibility, administrative penalties, the principles of administrative and tort legislation

The importance of the legislation on administrative offenses is determined by its role in the fight against the most common illegal phenomena – administrative offenses. This legislation exercises administrative deliktolization of deeds, defines the system and types of administrative penalties, formulates structures of particular administrative offenses, the procedure for implementation administrative responsibility, system and powers of the subjects of administrative jurisdiction. Norms of the legislation on administrative offences have two functions: a) they enshrine the administrative policy of the state, and b) they are a form of implementation of this policy. The content of these norms and thrust of administrative repression does not remain unchanged; their change is inseparable from the dynamics of socio-economic development of the state, from the needs of the administrative and judicial protection of public relations, from the level of scientific research of the problems of administrative responsibility.

The development of legislation on administrative offenses is divided into three main stages: 1) before codification (1917-1984 years), characterized by the presence of numerous normative acts on administrative responsibility of different levels, the lack of an unified legislative determination of order and the mechanism for its implementation; 2) the first codification (1984) as a result of which was adopted the Code on Administrative Offences of the RSFSR – a comprehensive normative act, which combined substantive, competent and procedural norms on administrative responsibility; 3) the second codification (2001) – the adoption of the Code on Administrative Offences of the RF [1] on the basis of the Constitution the Russian Federation and its improvement. Features of each of these stages have been the subject of numerous studies, and their analysis is beyond the scope of our task [13; 11; 14].

Since the entry into force of the CAO RF have passed ten years, has been accumulated some experience of application its norms, that allows to estimate the completeness and quality of the norms and practice of their application. The current stage of development of the legislation under consideration can be described as the evolution of the norms of administrative responsibility on the basis of the Russian Federation Constitution [15, 4]. If the codification was used to solve the problem of a radical reform of the legislation on administrative offenses, its integration in the legal system of Russia, then the evolutionary development period of this legislation is associated with its improvement based on the needs of administrative and judicial protection of public relations and law-enforcement experience.

Identification the major trends in the modern development of the legislation on administrative offenses is not only a doctrinal interest, allowing to understand the mechanism of establishing and implementing of administrative responsibility. The solution of this scientific task makes it possible to determine the vector for implementation of administrative policy, identify problem situations in law-enforcement practice, and predict further development of the legislation on administrative offenses.

In our opinion, the following trends characterize the current legislation on administrative offenses.

First, there is virtually completed the formation of two units that constitute the legislation on administrative offences: federal and regional ones. Although in the law (article 1.1 of the CAO RF) this division was enshrined initially, after the adoption of the CAO RF it took several years for the creation of a regional legislation on administrative offenses. There is no a unified form of it: in some regions of Russia it is represented by separate laws on administrative offenses, in others – by

a Code on Administrative Offences. However, there is an apparent tendency of legislators of the RF subjects to the codification form of consolidating the legislation on administrative offenses. Analysis of the Russian Federation subjects' Codes on Administrative Offences indicates the duplication of norms of the Federal Code, that has led to the problem of delimitation the subject of regulation of the CAO RF and the norms of a regional legislation on administrative offenses, including in respect of related sets of elements of an offense, procedural rules, etc., what has already been pointed out in the literature [8, 9].

Second, the dynamism of the CAO RF improvement which is associated with the rapid development of contemporary public relations. Whereas in 2002 was adopted five federal law on amendments to the Code in 2003 – 8, 2004 – 11, in 2005 – 18, in 2006 the number was 28 federal laws. Prior to 2010, the number of laws, that amended the CAO RF, ranged from 17 to 25. However, years 2010 and 2011 presented to jurists surprises in the form of 46 and 48 of the taken legislative amendments to the CAO RF. There have already been taken 17 laws amending the main administrative and tort law of the country during seven months of 2012. Occurs an important for lawmakers and law-enforcers issue of stability of the legislation on administrative responsibility. In 2006, for the first time since the adoption of the CAO RF were introduced more than two dozen new articles, even more articles were set out in new edition, and all in all amendments and additions to some extent affected more than hundreds of articles of the Code. This dynamism remained in subsequent years. Only five federal laws from July 24, 2007 have significantly changed the content of the Code on Administrative Offences of the RF [2; 3; 4; 5; 6]. Unequivocally this trend can hardly be estimated. Of course, stability creates a more comfortable environment for law-enforcers. But it should not be introduced to the detriment of an adequate response of law to the needs of jurisdictional protection of public relations. Package variant of additions to the CAO RF (1-2 times per year) proposed by scientists [14] is enticing, but life goes on. There should not be a gap between a new administrative and legal ban and appropriate sanction, otherwise legal norm does not work. Simultaneous adoption of both the very rules, which need jurisdictional protection, and the relevant norms of administrative responsibility, seems to be optimal. It should be noted that lawmakers increasingly demonstrate this approach (see, for example, Federal laws "On Introduction of the Water and Forest Code of the RF).

Third, the expansion of the scope of administrative and judicial protection of public relations. This process is logical, it is linked to the dynamics of social relations' development, in particular in the sphere of economy, public security, etc.

So, the CAO RF was added by provisions on liability for violation the legislation on Placement of Orders to Supply Goods, Carry out Works and Render Services for Meeting State and Municipal Needs (articles 7.29-7.32); for non-compliance by a carrier with requirements of the Russian Federation legislation on Obligatory Insurance of Civil Liability of the Carrier (articles 11.31); for violation the legislation on Participation in Shared Construction of Multi-family Homes (article 14.28); for violation the established procedure of the collection, storage, protection and processing of information that constitutes a credit history (article 14.30); for violation the legislation of the Russian Federation on Tourist Activities (14.51), etc. But there has been a tendency of excessive, in our view, detailing of the legal and administrative restrictions, which affects the amount of the CAO RF. This is especially typical for chapter 12, "Administrative offenses in sphere of road traffic", to which, it seems, they try to place all the paragraphs of traffic rules. Obviously, there is needed a balance between narrative and blanket designs of administrative-tort norms.

Fourthly, increasing the rigidity of the administrative penalties. This is particularly evident in the changes made to the article 3.5 of the CAO RF "Administrative Fine", addition to the Code a new type of administrative punishment – administrative suspension of activity (article 3.12), increasing the size of penalties in many articles of the Special Part. This trend is due to, on the one hand, the increasing of public danger of a number of administrative offenses (e.g., violations of road traffic) [3], on the other hand to the extensive decriminalization of previously criminal acts (the reform of the criminal law of 2003), the expansion of the number of contiguous offenses and administrative offenses. Such changes in administrative delinquency demanded also the revision of attitude to the nature and volume of rights' restrictions that constitute the content of administrative penalties, which affected a significant increase in the amount of administrative fines, increase in terms of deprivation of the right to drive vehicles, expanding the scope of the administrative suspension of activity, etc. Increasing the size of an administrative fine again actualizes the problem of delimitation of administrative and criminal responsibility. Administrative Code and the Criminal The Code on Administrative Offences and the Criminal Code of the RF sets almost the same maximum size of a penalty set to absolute value (up to one million rubles for legal entities, and in the cases provided for in articles 14.40, 14.42 of the CAO RF – five million), and calculated according to the rules of multiplicity to income, revenue, unpaid taxes, customs fees, etc., that blurs the boundary between two types of legal responsibility. It is clear that the social danger of many administrative offenses sometimes exceeds the threshold of criminal deeds (e.g., violations of the law on the Continental Shelf, Economic

Zone of the Russian Federation, etc.). Apparently it's time to listen to the opinion of leading experts in the field of criminal law (A. V. Naumov, N. F. Kuznetsova, etc.) who offer to provide for responsibility of legal persons in the Criminal Code of the RF. In the draft of the Criminal Code of 1996 was provided for such opportunity, but lawmakers did not consider it necessary to establish criminal responsibility of organizations. A pity!

Fifth, have been defined two trends of development for the system of administrative jurisdiction subjects: 1) extension of administrative and jurisdictional competence of judges and 2) increasing the range of branch bodies, authorized to consider cases on administrative offenses. The first one deals with the increasing complexity of cases on administrative offences and expansion of administrative penalties, application of which is assigned by law to the competence of judges. Indeed, there has been formed judicial-administrative jurisdiction, and this phenomenon has already attracted the attention of researchers [10]. The second trend has led to the fact that virtually all of the federal bodies of executive power exercising control and supervising functions, have gained also jurisdictional ones. Such merging of functions of one and the same subjects challenge the objectivity of considering cases on administrative offenses, what is evidenced by the results of consideration of complaints on decision on administrative offenses. Canceled or changed every three of five appealed decisions of non-judicial bodies of administrative jurisdiction [12, 39, 7, 45-63].

Sixth, least of all the novelization of the CAO RF has touched its procedural section and this to certain extent, is justified. Rules for consideration of cases on administrative offenses should be stable. Changes in procedural norms of the Code were generally reduced to clarifying the set of officials authorized to take measures to ensure proceedings on cases on administrative offences (delivery, administrative detention, etc.), more precise regulation of certain norms on the rights' guarantees of participants of an administrative and jurisdictional process. But these changes affect only separate norms. It is obviously closely for the fourth section in the CAO RF. Its content, its principles (in addition to general principles of the legislation on administrative offences), the need for a clear definition of the functions and subjects that exercise them, the enshrining of instances in the system of subjects of administrative jurisdiction, and etc. provide a strong reasons for the development and adoption of a separate Administrative-Procedural Jurisdictional Code of the RF, as have long been writing colleagues – scientist studying administrative law.

Seventh, there is a legislative consolidation of the norms on administrative responsibility of public officials and individuals connected with government

institutions. For example, the spread from 22.08.2009 of disqualification for persons holding positions of public civil service (federal or regional), as well as the post of municipal service; the introduction of new administrative offences, including non-compliance by officials of state control (supervision) with the requirements of the legislation on the state control (supervision) (article 19.6.1), violation of the legislation on the organization of rendering public and municipal services (article 5.63). Further design of structures of offences, it seems to us, will be associated with the implementation of anti-corruption policy of the state.

Finally, about some recent innovations of the CAO RF, the substantiation of which is questionable. It is, above all, about the Federal Law No. 210-FL from July 24, 2007 "On Amendments to the Code on Administrative Offences of the RF", which made significant changes to the regulation of administrative responsibility for offenses in the field of traffic safety. Outset that we do not in any way question the need for greater accountability for these offences, the effects of which have become truly a national disaster (each year more than 30 thousand people die on the roads). But normative solution to this important problem of the said Federal Law cannot but cause reasonable concern. Most amendments to the CAO RF, introduced by the Federal Law No. 210-FZ from July 24, 2007, are tied to a new kind of fixing traffic violations – through working in automatic mode special technical means which have the functions of photography and filming, video (part 3 article 28.6 of the CAO RF). Many countries have such norms, and they are successfully applied in the practice of supervision in the field of road safety. But this, we emphasize, private innovation has led to adjustments in principles of administrative-tort legislation. First, has been "adjusted" the principle of presumption of innocence. From Part 3 of article 1.5 of the CAO RF, which enshrines the provision that the person brought to administrative responsibility is not required to prove his innocence, has been made an exception. To article 1.5 of the Administrative Code has been added a note under which the provisions of part 3 of the article must not be applied to administrative offenses provided for by chapter 12 of the Code, in the case of fixation by operating in automatic mode special technical devices having functions of photography and filming, video, or by means of photography and filming. This normative decision is regrettable. It is hardly necessary to prove that the content of the norms of the CAO RF shall comply with the principles of administrative-tort legislation, and not vice versa. And "amendment" in the principle of presumption of innocence, which is based on the provisions of article 49 of the Constitution of the Russian Federation, was unwise. Second, the innovation under consideration has caused adjustment of general rules of imposition an administrative penalty. Article 4.1 of the CAO RF is

supplemented by part 3, according to which in the cases provided for in part 3 of article 28.6 of the CAO RF is imposed an administrative fine, the amount of which should be the smallest in the range of sanctions of the Special Part CAO RF, that is, essentially the choice the size of an administrative fine (and only it) does not depend on the nature of an offense and identity of an offender (see part 2 article 4.1 of the CAO RF), but on the method of fixation violations of the traffic rules! Moreover, the reducing the size of an administrative fine is presumed in respect of persons committing the most dangerous traffic violations (exceeding the set speed, driving, when traffic lights prohibit it, etc.). Exactly for fixation of such violations is planned to install operating in automatic mode special technical means which have the function of photography and filming, video recording. It should be added that the principle of individualization of punishment is hardly applicable to many articles of chapter 12 of the CAO RF, as they set an absolutely certain amount of an administrative fine.

Reformation of principles of administrative-tort legislation continues. One can only hope that the Russian Constitutional Court will give its assessment to such reform of principles of the legislation on administrative offenses and Basic Law of the country.

References:

1. Code on Administrative Offences of the Russian Federation of December 30, 2001, No. 195-FZ [Kodeks Rossijskoj Federatsii ob administrativnyh pravonarushenijah ot 30 dekabrja 2001 g. № 195-FZ]. *System GARANT* [Electronic resource], Moscow: 2012.

2. Federal Law No. 204-FL of July 24, 2007 "On Amendments to Article 17.2 of the Code on Administrative Offences of the Russian Federation" [Federal'nyi zakon ot 24 iyulya 2007 g. № 204-FZ «O vnesenii izmeneniya v stat'yu 17.2 Kodeksa Rossiiskoi Federatsii ob administrativnykh pravonarusheniyakh»]. *SZ RF – Collection of Laws of the Russian Federation*, July 30, 2007, no. 31, article 4001.

3. Federal Law No. 210-FL of July 24, 2007 "On Amendments to the Code on Administrative Offences of the Russian Federation" [Federal'nyi zakon ot 24 iyulya 2007 g. № 210-FZ «O vnesenii izmenenii v Kodeks Rossiiskoi Federatsii ob administrativnykh pravonarusheniyakh»]. *SZ RF – Collection of Laws of the Russian Federation*, July 30, 2007, no. 31, article 4007.

4. Federal Law No. 211-FL of July 24, 2007 "On Amendments to Separate Legislative Acts of the Russian Federation due to the Improvement of Public Administration in the Field of Combating Extremism" [Federal'nyi zakon ot 24 iyulya 2007 g. № 211-FZ «O vnesenii izmenenii v otdel'nye zakonodatel'nye akty Rossiiskoi Federatsii v svyazi s sovershenstvovaniem gosudarstvennogo upravleniya v oblasti protivodeistviya ekstremizmu»]. *SZ RF – Collection of Laws of the Russian Federation*, July 30, 2007, no. 31, article 4008.

5. Federal Law No. 212-FL of July 24, 2007 "On Amendments to Legislative Acts of the Russian Federation in Part of Specification of Terms and Procedure for Acquisition of Rights on Lands Constituting State or Municipal Ownership" [Federal'nyi zakon ot 24 iyulya 2007 g. № 212-FZ «O vnesenii izmenenii v zakonodatel'nye akty Rossiiskoi Federatsii v chasti utochneniya uslovii i poryadka priobreteniya prav na zemel'nye uchastki, nakhodyashchiesya v gosudarstvennoi ili munitsipal'noi sobstvennosti»]. *SZ RF – Collection of Laws of the Russian Federation*, July 30, 2007, no. 31, article 4009.

6. Federal Law No. 218-FL of July 24, 2007 "On Amendments to the Federal Law "On Placement of Orders to Supply Goods, Carry Out Works and Render Services for Meeting State and Municipal Needs" [Federal'nyi zakon ot 24 iyulya 2007 g. № 218-FZ «O vnesenii izmenenii v Federal'nyi zakon «O razmeshchenii zakazov na postavki tovarov, vypolnenie rabot, okazanie uslug dlya gosudarstvennykh i munitsipal'nykh nuzhd» i otdel›nye zakonodatel'nye

akty Rossiiskoi Federatsii»]. *SZ RF – Collection of Laws of the Russian Federation*, July 30, 2007, no. 31, article 4015.

7. Kizilov V. V. Paradoxes and Irrational in the Activity of Subjects of Administrative Jurisdiction of Russia [Paradoksy i irratsional'noe v deyatel'nosti sub"ektov administrativnoi yurisdiktsii Rossii]. *Aktual'nye voprosy publichnogo prava – The Topical Issues of Publi Law*, 2012, no. 3.

8. Klepikov S. N. *Legislative Activity of the Subjects of the Russian Federation in the Field of Establishment of Administrative Responsibility*: thesis of candidate of legal sciences [Zakonodatel'naya deyatel'nost' sub"ektov Rossiiskoi Federatsii v oblasti ustanovleniya administrativnoi otvetstvennosti: Diss... kand. yurid. Nauk]. Voronezh: 2003.

9. Maslennikov M. Ya. *Regional Legislation on Administrative Responsibility: Educational and practical guide* [Regional'noe zakonodatel'stvo ob administrativnoi otvetstvennosti: Uchebno-prakticheskoe posobie]. Moscow: All-Russian Research Institute of the Russian MIA, 2006.

10. Petruhin A. A. *Forensic-administrative Jurisdiction*: thesis of candidate of legal sciences [Sudebno-administrativnaya yurisdiktsiya: Diss... kand. yurid. Nauk]. Moscow: 2005.

11. Pospelova L. I. *The Problems of the Codification of Administrative and Tort Legislation* [Problemy kodifikatsii administrativno-deliktnogo zakonodatel'stva]. Moscow: 2001.

12. *Rossijskaja justicija – Russian Justice*, 2006, no. 1.

13. Studenikina M. S. *Legislation on Administrative Responsibility and the Issues of its Codification*: thesis of candidate of legal sciences [Zakonodatel'stvo ob administrativnoi otvetstvennosti i problemy ego kodifikatsii: Diss... kand. yurid. Nauk]. Moscow: 1967.

14. Tatarjan V. G. *Codification Issues of Administrative and Tort Legislation in States Participants of Commonwealth of Independent States*: thesis of Doctor of law [Problemy kodifikatsii administrativno-deliktnogo zakonodatel'stva gosudarstv-uchastnikov Sodruzhestva Nezavisimykh Gosudarstv: Diss... dokt. yurid. Nauk]. Moscow: 2005.

15. Ustinov V. V. *Legislation on Administrative Offences is rapidly progressing in accordance with the requirements of life: the Code on Administrative Offences of the Russian Federation* [Zakonodatel'stvo ob administrativnykh pravonarusheniyakh dinamichno sovershenstvuetsya v sootvetstvii s trebovaniyami zhizni: Kodeks Rossiiskoi Federatsii ob administrativnykh pravonarusheniyakh]. Article-by-article scientifically-practical comment of Honored scientist of the RF, Doctor of law, Professor Shergin A. P., Moscow: 2007.