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PUBLIC PERSONS BROUGHT TO ADMINISTRATIVE RESPONSIBILITY UNDER ARTICLES OF CHAPTERS 8, 9 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 8 and 9 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 the basis of separate regulation of tort legal relations with different types of entities – public and private persons.

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

In continuation of the initiated study of administrative violations of the CAO RF [1] for the presence in them subjects of administrative responsibility – public persons [3], and in accordance with the determined earlier categories of public persons [2], are of particular interest chapters 8 and 9 of the CAO RF, which, at first sight (by name of chapters), can create a false impression that they contain only private actors administrative responsibility. However, the results of analysis of norms in the mentioned chapters of the CAO RF, in conjunction with the legislation that defines a regulating effect of the state on the spheres of protection of the environment and exploitation of nature, industry, construction and energy, indicate the presence of public persons among the subjects of administrative responsibility.

Unfortunately, the legislative technique of writing the CAO RF does not promote rapid determination of guilty delinquents, and the legal category of an official, as rightly pointed out by V. V. Kizilov [4], contains a large number of real subjects of responsibility, with different administrative and legal status. Therefore, the identification of public persons was carried out by us under a legislation regulating certain public legal relations. The results of original author's research of chapters 8 and 9 of the CAO RF are summarized in the table below.

Article of the CAO RF	Object of offence	Subjects of administrative responsibility – public persons	
		Individual subjects	Collective subjects
8.1	public relations in the field of environmental protection and exploitation of nature	officials of public authorities, local self-government bodies, state and municipal organizations and institutions related to town planning activity	public authorities, local self-government bodies, state and municipal organizations and institutions related to town planning activity
8.3	public relations in the field of agricultural production, forestry and ensuring the safety of means used in them	officials of state organizations and institutions involved in the production and testing of pesticides and agrochemicals	state organizations and institutions involved in the production and testing of pesticides and agrochemicals
8.4	public relations in the field of ecological legal order, legitimacy and environmental safety	under part 3 officials of local self-government bodies exercising state registration of applications on carrying out public environmental expert review	
8.5	public relations in the field of environmental security, ensuring population with environmental information	officials of state organizations and institutions (state corporations), for example: companies of extraction and processing of minerals, enterprises in the energy sphere,	

Continuation of the table

Article of the CAO RF	Object of offence	Subjects of administrative responsibility – public persons	
		Individual subjects	Collective subjects
		Rosatom, hydroelectric power stations, etc.	
8.6	public relations in the area of land (soil) protection	officials of state organizations and institutions involved in the production and testing of pesticides and agrochemicals and other hazardous production, including mining minerals, etc.	state organizations and institutions involved in hazardous production
8.7	public relations in the field of temporary land use, environmental protection and exploitation of nature	officials of state organizations and institutions (state corporations), for example: companies of extraction and processing of minerals, enterprises in the energy sphere	state organizations and institutions, to which, under the law or orders of the supervising authorities, is imputed responsibility for land recultivation, mandatory measures to improvement of lands and soil protection
8.9	public relations in the field of environmental protection and exploitation of nature	officials of state organizations and institutions using subsoil and hydromineral resources, for example: companies of extraction and processing of minerals, as well as departmental hospitals	state organizations and institutions using subsoil and hydromineral resources
8.10	public relations in the field of environ-mental protection and exploitation of nature	officials of state organizations and institutions using subsoil	state organizations and institutions using subsoil

Continuation of the table

Article of the CAO RF	Object of offence	Subjects of administrative responsibility – public persons	
		Individual subjects	Collective subjects
8.11	public relations in the field of environmental protection and exploitation of nature	officials of state organizations and institutions engaged in geological study of subsurface resources	specialized state organizations and institutions conducting geological subsoil study (various SRI of hydro and subsoil geology (Gidronedrogeologiya in Russian), State Corporations such as Rosneft and others engaged in both research, development, and extraction of minerals)
8.12	public relations in the use and protection of water resources.	under part 1 officials of a local self-government body authorized to resolve issues of allocation of land (the committee, bureau of land management)	
8.13	public relations in the use and protection of water resources.	officials of a local self-government body (for example: the committee, bureau of land management) in cases of land allocation for a landfill, burial place and so on near the water protection zones), departmental health care facilities located in the area of water protection zones	local self-government bodies, departmental health care facilities
8.14	public relations in the field of environmental	officials of state organizations and institutions, for	state organizations and institutions, for example: companies of

Continuation of the table

Article of the CAO RF	Object of offence	Subjects of administrative responsibility – public persons	
		Individual subjects	Collective subjects
	protection and water management	example: companies of extraction of minerals, departmental health care facilities located near to water objects, companies implementing activity of navigation, etc.	extraction of minerals, departmental health care facilities located near to water objects, companies implementing activity of navigation, etc.
8.15	public relations in the field of environmental protection and water management	officials of state organizations and institutions, for example: enterprises of hydropower sector, municipal unitary enterprise "Vodokanal", etc.	state organizations and institutions that use structures and equipment of water management and water protection
8.18	public relations in the area of the continental shelf protection, exclusive economic zone and the marine environment, and the protection of the exclusive right of the RF to conduct resource and marine research in the territory of continental shelf and the exclusive economic zone of the Russian Federation	officials of state organizations and institutions carrying out resource and marine scientific researches	specialized state organizations and institutions carrying out resource and marine scientific researches (various scientific research institutes)
8.19	public relations in the field of environ-mental protection and the procedure of exploitation of nature	officials of state bodies (Ministry of Defense, Air Force, Navy), state organizations and institutions engaged in work in the inland	state bodies (Ministry of Defense, Air Force, Navy), state organizations and institutions engaged in work in the inland

Continuation of the table

Article of the CAO RF	Object of offence	Subjects of administrative responsibility – public persons	
		Individual subjects	Collective subjects
		waters, territorial sea, continental shelf and (or) in the exclusive economic zone of the Russian Federation	waters, territorial sea, continental shelf and (or) in the exclusive economic zone of the Russian Federation
8.22	public relations in the field of environmental protection	officials of state and municipal enterprises, institutions and organizations, the duties of which include putting into operation transport vehicles	
8.24	public relations in the field of environmental protection and the procedure of exploitation of nature	officials of a state body, local self-government, authorized to resolve the issues of allocation forests	
8.27	public relations in the field of environmental protection	officials of the state body authorized in this sphere, for example, forestry	a state body authorized in the considered sphere
8.31	public relations in the field of environmental protection	officials of state organizations and institutions involved in production, including hazardous industrial facilities	state organizations and institutions polluting forests
8.38	public relations in the field of environmental protection and the procedure of exploitation of nature	officials of state organizations and institutions, for example: enterprises of hydropower sector, MES, municipal unitary enterprise "Vodokanal", etc.	state organizations and institutions that use structures and equipment of water management and water protection
8.40	public relations in the field of	officials of state bodies, state organizations	state bodies, state organizations and

Continuation of the table

Article of the CAO RF	Object of offence	Subjects of administrative responsibility – public persons	
		Individual subjects	Collective subjects
	environmental protection and the procedure of exploitation of nature	and agencies working in the field of hydrometeorology, monitoring of condition and pollution of environment and the active impacts on meteorological and other geophysical processes	agencies working in the considered sphere
8.41	public relations in the field of environmental protection	officials of state bodies, state organizations and institutions, which have allowed a negative impact on the environment	state bodies, state organizations and institutions, which have allowed a negative impact on the environment
8.42	public relations in the field of environmental protection, in particular water bodies	officials of state organizations and institutions working within a water protection zone, for example: companies of extraction and processing of minerals, as well as departmental hospitals	state organizations and institutions that use subsoil and hydromineral resources
9.1	public relations in the field of sanitary and epidemiological welfare of population, environmental protection, ecological safety, fire safety, health and safety	officials of state organizations and institutions, such as the state corporation Rosatom, state-owned hydroelectric stations and so on	state organizations and institutions operating a hazardous production facility
9.2	public relations in the sphere of functioning of hydraulic structures	officials of state bodies of the subjects of the Russian Federation, bodies of local	state bodies, state organizations and agencies working in the considered sphere

Continuation of the table

Article of the CAO RF	Object of offence	Subjects of administrative responsibility – public persons	
		Individual subjects	Collective subjects
		self-government at taking a hydraulic structure into use; officials of state organizations and institutions, such as the state corporation Rosatom, hydroelectric stations, etc.	
9.3	public relations in the field of safety in the use of machinery and equipment, supervision of technical conditions of which is carried out by authorized bodies, for life, health, property and the natural environment	officials of state organizations and institutions, including the armed forces and law enforcement agencies operating machinery and equipment, supervision of technical conditions of which is carried out by authorized bodies (various SUEs, MUEs ROE in the field of construction, roads and structures maintenance, and etc.)	
9.4	public relations associated with the requirements of the design documentation, technical regulations, mandatory requirements of standards, building codes and regulations, other normative documents in the field of construction	officials of state organizations and institutions, including the armed forces and law enforcement agencies working in the field of construction	state organizations and institutions, military units, leadership (departments) of law enforcement agencies involved in the considered area

Continuation of the table

Article of the CAO RF	Object of offence	Subjects of administrative responsibility – public persons	
		Individual subjects	Collective subjects
9.5	public relations in the field of construction, acceptance, commissioning construction objects	officials of state bodies of the subjects of the Russian Federation, bodies of local self-government at acceptance and commissioning of a construction object; officials of state organizations and institutions violating the order of construction, major repairs, reconstruction	state organizations and institutions, military units, leadership (departments) of law enforcement agencies involved in the considered area
9.5.1	public relations in the field of construction, acceptance, commissioning construction objects		state organizations and institutions, military units, leadership (departments) of law enforcement agencies involved in the considered area
9.6	public relations in the field of nuclear energy, and accounting of nuclear materials and radioactive substances	officials of state organizations and institutions, including the armed forces of the RF, who violate the rules of use of atomic energy, accounting for nuclear materials and radioactive substances	state organizations and institutions, military units involved in the sphere of turnover of nuclear energy and radioactive substances
9.16	public relations in the field of energy supply	under part 3 officials of state organizations and institutions, including the armed forces and law enforcement agencies working in the field of construction	state organizations and institutions, military units, leadership (departments) of law enforcement agencies involved in the sphere of construction; state bodies and local

End of the table

Article of the CAO RF	Object of offence	Subjects of administrative responsibility – public persons	
		Individual subjects	Collective subjects
		under part 10,11 officials of state bodies, local self-government bodies in adopting programs for energy saving and their not accordance to the requirements of energy efficiency	self-government bodies
9.18	public relations in the field of energy saving	officials of state organizations and institutions, owners of facilities for the production of electrical energy and (or) power supply network facilities	state organizations and institutions involved in the considered area
9.20		officials of state organizations and institutions, the armed forces of the Russian Federation, Ministry of Emergencies of Russia, who use the storage facilities of chemical weapons and chemical weapons destruction facilities	state organizations and institutions, the armed forces, Ministry of Emergencies involved in the considered area

It should be noted that identification during proceedings on a case of an administrative offence of specific subjects of administrative responsibility for provided for by the CAO RF administrative offences through regulated by a various sectorial legislations 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, complicates the process of administrative prosecution of offenders by the bodies of administrative jurisdictions and their officials. Seems justified, despite the awkwardness of the construction of norms on administrative responsibility of guilty subjects of law, the complete disclosure within a structure of

an administrative offence of all its elements, forming a hypothesis and dispositions so, that law enforcers do not have to turn to other federal normative legal acts.

As supporters of the new codification of the CAO RF, we see its further development by way of allocating from it administrative-tort legislation that distributes its effect on various subjects: private and public ones.

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VIOLATION OF TAX CONTROL PROCEDURES BY EMPLOYEES OF THE FEDERAL TAX SERVICE

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In the context of established by the tax legislation procedures of tax control here are discussed possible and having a place to practice offenses committed by officials of tax bodies in the implementation of these procedures, and are evaluated their administrative and legal misbehavior.

Keywords: tax control, tax control procedures, offences of tax bodies' officials, administrative and legal delinquency of tax bodies' officials, violation the rights of taxpayers.

Under tax control procedures, in the context of this article, we understand the established by the norms of the Tax Code of the RF methods and procedures for actions of tax authorities' officials in the implementation of tax control in all its manifestations, including:

- in the process of attachment of property,
- in the process of seizing documents
- when passing on the territory or premises a taxpayer (tax agent),
- in the process of considering cases on tax offences.

In chapter 14 of the Tax Code of the RF is given a definite specification of the forms and methods of tax control:

- cameral tax audit,
- field tax audit,
- interrogation of witnesses,

- access to territory or premises by tax officials for the purposes of exercising tax control,

- inspection,

- demanding and obtaining documents (information) about a taxpayer, payer of fees and tax agent or information on specific transactions,

- seizing documents and other objects,

- examination,

- recruiting a specialist for assisting in exercising tax control,

- inviting of an interpreter,

- participation of attesting witnesses,

- summoning upon a written notification to the tax authorities of taxpayers, payers of taxes or tax agents to give explanations in connection with their payment (retention and transfer) of taxes and fees,

- compilation of a protocol in the actions on exercising of a tax control,

- registration of results of a tax control (compilation of a warrant, act).

However, according to some authors, tax control may also include preliminary forms. If we agree with the view L. V. Burnysheva about the presence of prior tax control, to which she attributes state registration and account of taxpayers [18], to the list of offenses of tax authorities' employees should be added torts committed by them in the exercise of:

- tax registration and deregistration,

- registration procedures relating to the keeping by the tax authority the register of business entities

Tax procedures, attributed by L. V. Burnyshevoy to a prior tax control, we have previously defined as the procedures of tax administration (but not of tax control), to which included the following:

- changing the terms of payment of taxes and duties,

- collection of taxes, fees, fines and penalties,

- recognition arrears and debts on fines and penalties non-recoverable and their writing off,

- returning and offsetting the amounts of excessively paid (collected) taxes, fees, fines and penalties,

- suspension of operations on the accounts of a taxpayer, fee payer or a tax agent in banks,

- putting property of a taxpayer, fee payer or a tax agent under arrest,

- determination of the amounts of taxes to be paid by taxpayers in the budgetary system of the Russian Federation calculated on the basis of available

information about the taxpayer,

- filing to courts of general jurisdiction or arbitration courts claims (applications),

- filing the petitions of the revocation or suspension of license for the right to carry out certain activities given to legal entities and natural persons.

We have already noted that the norms on the responsibility of a tax authority, which take place in article 103 of the Tax Code of the RF, are clearly limited by framework for action in time and place. Rules of the article determine material responsibility only for infliction damage (losses) at the time of implementing tax control measures. So you need to be clear on which activities belong to tax control and which are not [20].

According to part 1 article 82 of the Tax Code of the RF, tax control is activities of the competent bodies of monitoring compliance with legislation on taxes and fees by taxpayers, tax agents and payers of fees in accordance with the Tax Code of the RF. Moreover with regard to the types of monitoring activities the legislator followed the path of establishing open list of tax authority's powers. Tax control is carried out by means of tax checks, obtaining explanations of tax payers, tax agents and fees payers, *data verification of recording and reporting*, inspection of premises and territories used to generate income (profit), as well as by other means stipulated in the Tax Code of the RF. For example, features of tax control during implementation of production-sharing agreements are determined by chapter 26.4 of the Tax Code of the RF.

Rights of tax authorities and their officials regulated by the Tax Code are implemented in tax control procedures. Violation of these norms, in our opinion, can be characterized as arbitrariness, that is " unauthorized exercise, contrary to a procedure established by a federal law or by any other normative legal act, of one's real or alleged right" (see article 19.1 of the CAO RF).

On the objective side these offenses are usually active actions. These actions are aimed at the implementation of a real or supposed right and do not appropriate to the enshrined procedure of exercising these rights. Consequences of this corpus delicti imply infliction of insignificant harm to citizens or legal entities. The recognition of this or that damage substantial is decided in consideration of each particular case, taking into account the significance of damage caused to victims [21].

Analysis of legal relations, arising during a tax control, allows us to determine the following types of tort actions of tax authorities' officials at their violation of law norms and the legitimate interests of individuals in course of cameral and field tax audits:

- opening of the premises (where are stored documents on the tax payer's income, tax calculations, etc.), with breaking the doors (tearing down of locks, hinges, breakdown of the door leaf, breaking of the door block from the wall) or latches (locks), penetration with destruction of walls, windows, floor rather than waiting till the taxpayer will bring to the place of inspection the keys, will deactivate the alarm;

- violation of alarm, engineering telecommunication networks when the illicit penetration into protected by technical means territory of the audited subjects;

- effraction of a safe deposit, closets, cabinets with documents or property, in cases where there are the keys and no one denies their granting to a tax inspector;

- destruction, damage (disablement), loss of seized documents and objects, as well as the destruction and/or damage of documents and objects during inspection in course of on-site tax check;

- destruction, damage (disablement), the loss of the original documents obtained during cameral tax check;

- retention of items (seized from the taxpayer as a result of withdrawal) needed to the taxpayer for the daily ongoing work (as a rule, it is hardware-software means to ensure accounting, tax accounting, technical programmes for implementation designing and technological developments, planning);

- transfer of documents, containing trade secrets (confidential information) to the expert, who has not made a commitment to preserve the tax, commercial and other secrets protected by the State.

Such activities undertaken in the framework of a tax control as interrogation of witnesses; discovery of documents; engagement specialist, translator, attesting witnesses; invocation to the tax authority; drawing up of a protocol; processing the results of tax check, at first glance, do not contain malicious potential, which in case of illegal (unlawful) implementation of these actions could cause the loss or harm to audited subjects and their representatives.

However, the author is aware of cases where:

- took place the facts of drawing up of two different in terms requested documents of requirements of a tax authority to submit documents (as a result of not submission of "requested" documents according to a copy of a tax authority requirement a taxpayer paid punitive damages under article 126 of the Tax Code of the RF);

- took place the cases of involving by tax inspectors of leaders and founders

of unscrupulous taxpayers to perjury at drawing up records of the interrogation in cases with good-faith taxpayers.

In greater detail we will focus on consideration of those torts of tax authorities' employees, which are performed by them in the exercise of tax control, which may cause damage to the property interests of a taxpayer.

The first worthy of attention torts we consider violations by tax authorities' officials the procedure (order) of attachment of property under article 77 of the Tax Code of the RF.

The Tax Code provides for the following conditions of seizure implementing:

- availability of sanction of procurator,
- taxpayer's failure to fulfill tax payments on time,
- availability of the tax authority's sufficient reason to believe that a taxpayer will take steps to hide or conceal his property [12],
- Arrest can only be applied to ensure the collection of taxes at the expense of the taxpayer's property in accordance with article 47 of the Tax Code of the RF [5; 13],
- subject to seizure only the property that is necessary and sufficient to fulfill tax obligations,
- should be issued a decision on arrest, signed by the head (deputy head) of a tax authority in the form of appropriate ruling,
- a seizure is implemented in presence of attesting witnesses,
- refusal of a taxpayer (its representative) to be absent at attachment of property is not allowed,
- conducting attachment of property at night is not permitted (except in cases of urgency)
- required drawing up a report, inventory of the property attached,
- determination of the place where must locate seized property.

Therefore, failure to perform any of the mentioned procedural aspects will be in violation of the whole procedure of arrest. As we see it, the most likely committed violations are the attachments of property in the absence of the tax authority's sufficient reason to believe that a taxpayer will take steps to hide or conceal his property. However, in practice, any contesting the decision of a tax authority to attach property on this ground is futile, since the law norm in this part envisages for a tax authority, in our opinion, unlimited discretionary powers.

We believe, may be a variant of the following tort – attachment of property in excess of the required level to ensure the fulfillment of the tax obligations of a debtor. This tort may be provoked by a collision of norms in parts 4 and 5 of article

77 of the Tax Code of the RF, which, on the one hand, provide an opportunity to the seizure of all property of a taxpayer, and, on the other hand, limit the seizure of property by the level necessary and sufficient for the implementation of obligation to pay tax, fines and penalties. Misinterpretation of norms of the law may result in tax officials' tortious deeds.

Next violation of tax control procedures by tax authorities' officials we see in tort deeds at seizure of documents that provided for in article 94 of the Tax Code of the RF.

In accordance with the provisions of paragraph 3 of part 1 of article 31 and part 14 of article 89 of the Tax Code of the RF during tax audits tax authorities are entitled to seize from a taxpayer or a tax agent the documents proving the commission of tax offenses, in cases where there are reasonable grounds to believe that these documents will be destroyed, concealed, altered or replaced [9]. The procedure of seizure (withdrawal) by tax authorities of documents and objects from a taxpayer is regulated by article 94 of the Code and the Instruction on the procedure for seizure by an official of the State Tax Inspectorate of documents, proving concealment (decreasing) of profit (income) or other objects concealed from taxation, from enterprises, institutions, organizations and citizens approved by the letter of the Ministry of Finance of the RSFSR No. 16/176 from of 26.07.1991.

According to article 94 of the Tax code of the RF The seizure of documents and items shall take place on the basis of a substantiated order of the tax authority official carrying out an on-site tax audit (ruling on seizure must be approved by the director (deputy director) of the relevant tax authority). Moreover, this article established a number of mandatory requirements for seizure procedure, the violation of which can be used by the audited entity for appealing against actions of an official of the tax authority. Mandatory requirements include:

- issuing of a reasoned decision on a seizure, including in the case of delay by a taxpayer the period of their provision, under article 93 of the Tax Code of the RF [11; 15];

- not allowing the seizure of documents and items at night-time;

- documents and items shall be seized in the presence of attesting witnesses and the persons whose documents and items are being seized (where necessary, a specialist shall be invited to participate in the seizure);

- before the seizure commences, the tax authority official shall present the order to carry out the seizure and shall explain to the persons present their rights and obligations;

- a tax authority official shall request the person whose documents and items

are to be seized to hand them over voluntarily;

- opening premises or other places where the documents and items, which are to be seized, may be kept avoiding unnecessary damage to locks, doors and other objects;

- a report on the seizure of documents and items shall be drawn up;

- documents and items which have been seized shall be listed and described in the seizure report or in attached lists with an exact indication of the name, quantity and individual characteristics of the items and, where possible, the value of the items;

- all documents and items which are seized shall be shown to the attesting witnesses and other persons participating in the seizure;

- a copy of the report on the seizure of documents and items shall be delivered against receipt to the person from whom the documents or items were seized [19].

Besides, the article establishes that documents and items which are not relevant to the subject of the tax audit may not be seized.

Violation of any of these requirements constitutes a violation by tax authorities' officials the procedure for seizure of documents established by article 94 of the Tax Code of the RF. Usually a tax authority seizes all the documentation relating to financial and tax accounting. The author does not know any case of "targeted" seizure of documents. Contextual search in reference-legal system "GARANT" by reference to article 94 of the Tax Code of the RF in judicial acts of the FAC of Counties finds 389 documents, that indicates the existence of tax disputes between taxpayers and the tax authorities on the procedure for seizure of documents and items, including with recognized by the courts facts of tortious deeds of tax authorities' employees [14].

Numerous violations at carrying out tax audit, in our opinion, are due to violation of the time terms of tax audits.

Part 2 of article 88 of the Tax Code of the RF establishes that cameral tax audit must be carried out within three months from the date of the taxpayer's submission of the tax declaration (calculation) and the documents attached to this declaration (calculation), except for cases in which the Tax Code may provide for other time terms (for example, at reimbursement of VAT).

A field tax audit can be conducted for both two and four, and in exceptional cases six months (see part 6 of article 89 of the Tax Code of the RF). The grounds of prolonging a field tax audit up to four and (or) six months can be:

1) carrying out audits of a taxpayer, which is classified as the largest;

2) obtaining during a field tax audit of information from law enforcement,

regulatory bodies or other sources, which evidences on the existence of tax legislation violations of a taxpayer, fee payer, tax agent, and requires additional audit;

3) the existence of force majeure (flooding, flood, fire, etc.) in the area where an audit is being carried out;

4) conducting audits of organizations that are composed of several separate subdivisions, namely:

four or more separate subdivisions – up to four months;

less than four separate subdivisions – up to four months, if the share of taxes paid attributable to these separate subdivisions is not less than 50 percent of the total amount of taxes paid by the organization, and (or) the share of assets on the balance of separate subdivisions is at least 50 percent of the total assets of the organization;

ten or more separate subdivisions – up to six months;

5) failure to submit by a taxpayer, fee payer, tax agent in established in accordance with paragraph 3 of article 93 of the Code time term of the documents necessary for a field inspection;

6) other circumstances. In this case, the need for and timing of the extension of a field tax audit are determined on the basis of the duration of the audited period, the volume of documents scanned and analyzed, the amount of taxes and fees to be checked, the number of ongoing activities of the audited entity, sophistication of organizational and economic structure of the audited entity, the complexity of technological processes and other circumstances [17].

Moreover, the taxpayer (tax agent) has no means in any way influence the adoption (rejection) of the decision on the extension of a field tax audit.

During the independent field tax inspection of branches and representative offices of a taxpayer time terms of the audit may not exceed one month.

Due to the fact that breaks take place during a field tax audit, only the very checking days are taken into account.

Head (deputy head) of a tax authority has the right to suspend a field tax audit for the purpose of:

1) requesting and obtaining documents (information) in accordance with article 93.1 of the Tax Code of the Russian Federation;

2) obtaining information from foreign State bodies under the terms of international agreements of the Russian Federation;

3) the performance of expert examinations;

4) the translation into Russian of documents presented by a taxpayer in a foreign language (see part 9 of article 89 of the Tax Code of the RF).

The total period of time for which the conducting of an on-site tax audit is suspended may not exceed six months. However, if a tax authority has been unable for six months to obtain requested information from foreign State bodies under the terms of international agreements of the Russian Federation, the period of the suspension of that audit may be increased by three months.

So, if you calculate the maximum calendar period from the start date of a field tax audit up to compiling by a tax authority the warrant of its completion, it may reach fifteen months. Moreover, according to the decision of the Constitutional Court of the Russian Federation No. 14-P from July 16, 2004 [4], the duration of the on-site tax inspection is a sum of the periods, during of which inspectors are in the territory of an audited taxpayer, which means a real authorization by the legislative and highest judicial body of the country "dimensionless" timing of field tax audit.

Violation by tax authorities' officials of deadlines of tax audits, unfortunately, cannot be the basis of recognition the results of these audits invalid. Law enforcement practice does not restrict a tax authority in the right of taking decision on the results of cameral audits outside of the established by the Tax Code deadlines for their implementation [16]. However, everything is not so simple. Dissenting opinion of judges of the Constitutional Court of the Russian Federation indicates that there are two estimations of the constitutionality of the tax legislation provisions regarding the timing of tax audits [4]. We deem it duty to represent in this work the basic aspects of dissenting opinion of a judge of the Constitutional Court of the RF Kononov A. P.:

"...Obviously, that a tax audit as tool of power for administrative control, detection and suppression of tax offenses substantially affect the rights or interests of a taxpayer, creates for him a problematic situation, in a certain way interferes in its economic activities, burdens him with a number of additional obligations to a tax authority, that is especially true for field tax audits directly in the taxpayer's territory.

Given the presence of these encumbrances and the possibility of adverse for a taxpayer consequences of tax audits, on the basis of general criteria of legal responsibility and proportionality of the required restrictions of rights to constitutionally protected values (article 55, part 3 of the Constitution of the Russian Federation), the legislator should give tax authorities clear powers to regulate their duties and to provide for such a procedure for their implementation, which would ensure the effective protection of the rights and interests of taxpayers as a weaker party in such public relations.

One of these procedural guarantees is an establishment the limit of duration of a tax audit, because indefinite duration and not time-limited intervention of the control authorities to the economic activities of a taxpayer may be a threat to its business reputation,

credibility, relations with partners, stability and planning of business transactions, creates unacceptable uncertainty of its legal position, which can become quite comparable to that of a suspect in the commission of an offense. Obviously, such a position cannot continue indefinitely long time, that has been actually recognized by the Constitutional Court, which has formulated the principle of the "inadmissibility of excessive or unlimited in duration tax control measures and substantiation the deadlines of conduction for field tax audits".

That is why the legislator has established deadlines for tax audits.

Meanwhile, these clear and strictly formulated by the legislator demands on the timing and duration of a field tax audit have been questioned in law enforcement practice through unjustified assigning to the uncertain and controversial provisions of the same article 89 of the Tax Code of the Russian Federation about that "period of inspection includes the time of the actual location of auditors in the territory of a taxpayer".

In tax and judicial practice these provisions have become to be seen as an opportunity of interruption (including repeated) or suspension of the two-three-month preclusive periods of a field tax audit, that actually allowed tax authorities (as in the cases of applicants), having done some actions "in the territory of an audited taxpayer" and obtained the necessary documents, to continue control activities in office mode for indefinitely long time, defining terms of drawing up the final warrant in its sole discretion and without being bound to any procedure.

This uncertainty of the legal norm, which implies the possibility of its arbitrary interpretation and application to the detriment of the constitutional rights and freedoms and, as in this case, affects the freedom of entrepreneurial activity of applicants (article 34, part 1 of the Constitution of the Russian Federation), in accordance with the position of the Constitutional Court of the Russian Federation contradicts to article 19 (part 1) of the Constitution of the Russian Federation.

Based on the uncertainty and divergence of the contested provision of article 89 of the Tax Code of the Russian Federation, the tax authorities at carrying out field tax audits have arbitrarily introduced suspend of audit in respect of the taxpayer, citing the need to conducting counter audits and other circumstances. The term "suspension" was legalized by the instructions of the Ministry of Taxation of the Russian Federation No. 60 from April 10, 2000 "On the procedure of drawing up the protocol of a field tax audit and case proceedings on violation of the legislation on taxes and duties". At the same time neither Article 89 of the Tax Code of the Russian Federation nor any other provisions of the tax legislation contain references to the tax authorities' powers to suspend field tax audits and, thus, arbitrary extend the limits on their duration. Second part of article 4 of the Tax Code of the Russian Federation defines normative acts of the Ministry of Taxation of the Russian Federation as mandatory only for its units and does not relate them to the acts of legislation on taxes

and duties. Meanwhile, the suspension of field tax audits materially affects the interests of taxpayers.

In a number of court's judgments, including in the cases of applicants on the present case, the facts of the suspension of tax audits are not considered as a violation of the law, because the tax legislation does not contain such prohibitions. Constitutional foundations of a legal democratic state (article 1, part 1 of the Constitution of the RF) define binding the executive power to the law, responsibility and predictability of its activity, which is possible only under the condition, that the powers of managerial bodies are based on the law. Therefore, in contrast to the principle of optionality underlying private-legal relations, the definition of the powers of public authorities in the sphere of public law does not allow their own discretion and should be governed by the principle of "allowed only what is permitted by law", which is a necessary guarantee against arbitrariness and abuse of power. In accordance with article 55 (part 3) of the Constitution of the Russian Federation any limitation of constitutional rights and freedoms may be only on the basis of a federal law.

Characteristically, that there is in general no mention of the suspension of tax audits, which is a major motive in the applicant's complaints, in the Decision of the Constitutional Court. This position eliminates the need to assess the legal competence of tax authorities, the analysis of which would inevitably lead to negative conclusions. However, the Constitutional Court went a step further by providing, in fact, the tax authorities carte blanche to determine the timing and duration of a field tax audit and release them even from the formalities of an act of suspension. In search for the constitutional sense (?) The Constitutional Court without any justification overturned for this case the general order of calendar calculation of terms established by article 6.1 of the Tax Code of the Russian Federation, and have come to identification the timing of a field tax audit solely with the sum of the periods of inspection on the territory of the taxpayer. From its point of view, these terms must not include periods of conducting cross-audits and periods of completing formalities in respect of the results of inspection. Why, indeed, must not, if it is obvious that a cross-audit and presentation of results is the essential components of a tax audit? There is no any argument given, must not - that's all. Meanwhile the legislator clearly does not identify the concept of "deadlines of a tax audit" and "the period when a tax authority is in the territory of a taxpayer" when establishes that the duration of an audit includes the time of actual location of inspection in the territory of a checked entity. It is clear that the time of an audit is wider than the time of "actual location". Otherwise, such an audit would have no meaning.

The interpretation of the duration of a tax inspection as "the sum of periods" of a tax authority location in the taxpayer territory is completely unacceptable both in its content and by the objectives and legal consequences. Such an interpretation is, in fact, a justification of arbitrariness, because it allows tax authorities repeatedly and at any time

to interrupt the period of an audit and renew it at their own discretion almost indefinitely, thus covering the sluggishness of tax services and the possibility of abuse on their part. Who and how will clock their actions? The declared balance of private and public interests is clearly absent. Taxpayer is actually deprived of legal guarantees of stability and certainty of his position, constantly staying at the mercy of a tax authority, under the pressure of suspicion and the threat of responsibility. The possibility of judicial protection seems to be a poor consolation, since courts are deprived of a formally defined legislative framework for a decision in the absence of objective criteria for assessing the discretion of tax authorities and excessiveness of an audit period.

The need for rigidly defined timing of tax audit has one more important procedural aspect of protection from unwarranted bringing to responsibility on the results of an audit.

In its decisions, the Constitutional Court stated that enshrined in the Constitution of the Russian Federation procedural guarantees of judicial protection against unwarranted bringing to legal responsibility have a generally-legal nature and are applied to all types of court proceedings (Decision from May 28, 1999). These principles, certainly, include the presumption of innocence (Article 49) and the rule of admissibility of evidence: at administration of justice is not allowed to use evidence obtained in violation of federal law (Article 50, paragraph 2).

The Tax Code of the Russian Federation proceeds from similar grounds. Thus, in accordance with part 7 of its article 3 all unresolvable doubts, contradictions and ambiguities in acts of tax and levy legislation shall be interpreted in favor of the taxpayer (levy payer). In accordance with part six of article 101 of the Code, failure of tax authority officials' to comply with procedural requirements at the proceedings and issuing judgment on the case of tax offense committed by a taxpayer may be a reason for cancellation of the tax authority's decision by a superior tax authority or court.

Proceeding from the aforesaid, it is inadmissible to bring taxpayers to the tax responsibility on the basis of evidence obtained in violation of terms for site inspection stipulated by the article 89 of the Tax Code of the Russian Federation.

Proceeding from the aforesaid, it is inadmissible to bring taxpayers to the tax responsibility on the basis of evidence obtained in violation of terms of a field tax audit stipulated by the article 89 of the Tax Code of the Russian Federation. Otherwise, the established by the legislator limits of duration of such an audit lose legal sense as a taxpayer guarantee against arbitrariness and excessive intervention by a tax authority in his economic activities, what deprives the taxpayer of protection against such violations.

Thus, the provisions of the second part of article 89 of the Tax Code of the Russian Federation in the meaning, attributed to them by the current law enforcement practice, of permitting the interruption or suspension of the deadline for a tax inspection or identifying

with these time terms only the time of the actual location of inspectors in the taxpayer's territory do not comply with articles 1 (part 1), 19 (part 1), 34 (part 1) and 55 (part 3) of the Constitution of the Russian Federation".

Despite the fact that, since the adoption of judgment of the Constitutional Court of the Russian Federation No. 14-P from July 16, 2004, article 89 of the Tax Code has evolved, its norms, in our opinion, allow tax authorities to abuse their rights. The author knows cases of the direction a taxpayer at the time of a field tax audit requirements for documents calculated in the range of ten thousand copies. At such times, the taxpayer's accounting office was simply paralyzed and was not fulfilling its functions of accounting and tax accounting.

As we see it, the facts of misconduct of a tax authority, expressed in excess of time terms for a tax audit can be used by taxpayers to the extent, that recognition of the illegal suspension of the field tax audit (extension of inspection) will lead to the fact, that the act of tax audit will be made up outside of terms established by the Tax Code, what, in turn, will enable the formal basis of its appeal, as well as of the issued by the Act decision of the tax authority.

It is our opinion, deserves consideration such an offense as a tax authority's failure to draw up the results of a tax audit.

The Tax Code of the Russian Federation establishes two types of tax check – cameral and on-site ones. If on the results of an on-site check drawing-up a document of prescribed form (act or warrant) was always provided for, then this obligation in the process of cameral audits legislator had not being provided for up to January 01, 2007. On the basis of the results of an on-site tax audit a tax audit report must be drawn up within two months from the day on which a certificate of the performance of an on-site tax audit is drawn up (see part 1 of article 100 TC RF).

Since January 2007, the legislator has established obligation of a tax authority to draw up an act on the results of an on-site audit, if inspection has revealed violations of legislation on taxes and fees (see part 5, article 88 of the Tax Code of the RF). The very procedure for drawing up an act is provided for in article 100 of the Tax Code of the RF. In contrast to the deadlines for drawing up acts of an on-site inspection, drawing up an act on the results of a cameral tax check has lesser term – just ten days.

The author is not aware of cases of failure to prepare acts on the results of an on-site inspection, however, the practice of participation in representing the interests of a taxpayer at field tax audits shows non-compliance with obligations under paragraph 15 of article 89 of the Tax Code of the RF, which prescribes drawing up of a certificate of public officer about the conducted inspection at the last day of

the inspection, in nine out of ten cases of tax inspections. Non-fulfillment of this obligation, it would seem, does not carry property risks and does not affect the rights of taxpayers. However, according to Article 100 of the Tax Code of the RF from the date of the certificate begins the period of two months preclusive term, stipulated by the legislator for drawing up an act of an on-site tax inspection.

Legislation establishes a list of mandatory information that must be specified in the act, but the consequences of non-compliance with established form of a tax audit act and completeness of information are not determined. The required information includes:

1) the date of the tax audit report. That date shall be understood to be the date on which the report is signed by the persons who performed the audit;

2) the full and abbreviated name or surname, first name and patronymic of the audited person. Where an audit of an organization is performed at the location of an economically autonomous subdivision of the organization, in addition to the name of the organization there shall be entered the full and abbreviated name of the audited economically autonomous subdivision and the location of that subdivision;

3) the surnames, first names and patronymics of the persons who performed the audit and their titles, stating the name of the tax authority which they represent;

4) the date and number of the decision of the director (deputy director) of the tax authority on the performance of the on-site tax audit (in the case of an on-site tax audit);

5) the date of the submission to the tax authority of the tax declaration and other documents (in the case of an in-house tax audit);

6) a list of documents presented by the audited person in the course of the tax audit;

7) the period in respect of which the audit was performed;

8) the name of the tax in respect of which the tax audit was performed;

9) the dates of the commencement and completion of the tax audit;

10) the address of the location of the organization or of the place of residence of the physical person;

11) information concerning tax control measures conducted when carrying out the tax audit;

12) documented violations of tax and levy legislation which were found in the course of the audit, or a note to the effect that none were found;

13) conclusions and recommendations of the inspectors with respect to the rectification of violations and references to articles of the Tax Code in the event that

this Code prescribes responsibility for the violations of tax and levy legislation in question (see part 3 of article 100 of the Tax Code of the RF).

In addition, the legislator ordered a tax authority to attach to a tax audit report the documents confirming violations of tax and levy legislation which were discovered in the course of an audit (see part 3.1 of article 100 of the Tax Code of the RF).

The absence of a taxpayer's act of a tax audit creates the risk that next tax authority may take a decision to bring the taxpayer to responsibility for a tax offense, without the opportunity for the taxpayer to submit the full evidence of his innocence and the lack of offense.

However, the lack of drawing up of the results of tax audits by a tax authority, allows taxpayers to use an additional ground for invalidating the decisions of tax authorities made on the results of audits. In our opinion, failure to draw up must be considered both as a lack of acts and their inconsistency in the content to requirements of article 100 of the Tax Code of the RF, which is confirmed by court practice. For example, if:

- if there are no references to the document that confirms the conclusion on commission of the tax offenses by the taxpayer in the act, the decision in a tax dispute can be taken in favor of the taxpayer [8];
- The results of an additional check of the taxpayer by the tax authority are not drawn up, and the taxpayer has not been familiarized with the obtained information, and therefore, the taxpayer has been denied the opportunity to present his explanations and objections, what has violated his legal rights [6].

The following considered by us violation of tax control procedures is a violation by tax authorities' officials of the established order (procedure) of access on the territory or premises of a taxpayer.

The Tax Code establishes that officials of tax authorities who are directly involved in carrying out a tax audit shall be allowed access to the site or premises of the taxpayer, levy payer or tax agent upon presentation of their official identity cards and the decision of the director (deputy director) of a tax authority concerning an on-site tax audit of that taxpayer, levy payer or tax agent (see article 91 of the Tax Code of the RF). A taxpayer, in our opinion, may, without any consequences for himself, not allow to his territory a tax authority official in the absence of any of the documents: service certificate or order on conducting an on-site tax audit.

Remarkable the fact that the CAO RF has an administrative offense for which a tax authority's official may be held administratively liable. It is an unauthorized

penetration into an object guarded in the established procedure, which shall entail the imposition of an administrative fine in the amount of from three hundred rubles to five hundred rubles (article 20.17 of the CAO RF). As a protected object can be an enterprise (or its individual items) relating to military-industrial complex (MIC), nuclear industry, strategic objects that make up the property subject to tax control (inspection) of a taxpayer (tax agent).

According to the Federal Law from April14, 1999 "On the Departmental Security Service" *protected objects* are buildings, structures, buildings, adjacent land and water areas, vehicles, and cargo, including during transportation, cash and other property subject to protection from unlawful infringements.

The list of protected objects is determined by the federal executive authorities, which have the right to establish a departmental security service, and approved in accordance with the procedure established by the Government of the Russian Federation [3].

On the basis of article 11 of the Law employees of departmental security service are entitled to:

- to require officials of tax authorities engaged in tax control in protected facilities compliance with access mode and internal security policy;

- to check on protected objects identity documents of tax authorities' officials, as well as documents that entitle them to enter (exit), entry (exit) of vehicles, importation (taking away) of the property to protected sites and from protected sites;

- to perform administrative detention and bringing to a departmental security office or internal affairs body of persons who commit crimes or administrative offenses in protected sites, as well as perform personal examination of individuals and things, seizure of objects and documents that are instrument or a direct object of the offense, provide protection of the place of incident and the safety of the mentioned objects and documents;

- to use physical force, special means and firearms (in the cases and manner prescribed by article 13, 14, 15, 16 of the Law);

- to enter to the premises of the protected sites and examine them without restriction during the prosecution of individuals who have illegally infiltrated into secured facilities, and for the detention of persons suspected of committing a crime or administrative offenses.

Thus, an official of a tax authority, which has arrived for a check on the protected area, must have a service certificate, an order to conduct a tax audit, in some cases, a certificate of admission to the State Secrets. Internal security policy can stipulate the pass into the territory of protected sites accompanied by Security Officer

and/or the making of an appropriate permit at the time of a tax audit on protected objects. A tax authority official also must observe these rules.

The events of violations the procedure of consideration of cases on tax offenses deserves special attention.

Despite the fact that the procedures for consideration of cases on tax offences has been completely prescribed in articles 101 and 101.4 of the Tax Code of the RF, even here, officials of tax authorities manage to commit a number of offenses. In our opinion, the offenses are committed fully realized, because employees of tax authorities seek a quicker way to make a decision based on checks' materials with additionally charged to a taxpayer tax payments and penal sanctions in those cases, when they realize that it is not possible for them in the future more convincingly justify tax claims presented to a taxpayer.

However, depriving the taxpayer the opportunity to participate in the process of consideration tax inspection materials entails the abolition of a tax authority's decision without participation of the taxpayer [10].

One of taking place in practice offenses committed by a tax authority is a making the decision on bringing a taxpayer to tax responsibility prior to the scheduled date of consideration tax inspection materials, which is, as a rule, specified in a notification addressed to the taxpayer or at all without any notification of the taxpayer [7]. The author in his practice had the opportunity to see it. So, in making the tax authorities decision on the results of the cameral audit of one of VAT returns in 2007, submitted by LLC "Leasing Company "ENAKS" to the Interregional Inspectorate of the Federal Tax Service of the Saratov region No. 7, the chief accountant of the taxpayer was notified by phone, and in consequence was received a notification on the appointment the date of consideration of inspection materials on January 18, 2007, but the decision was made without the participation of the taxpayer January 17, 2007.

The position of the taxpayer in this tax dispute was so strong, that it was not needed to resort to the argumentation based on the violation by the tax body the provisions of article 101 of the Tax Code of the RF, the case was resolved in favor of the taxpayer.

It is surprising that some of the leaders of the tax authorities disregard the provisions of part 14 of article 101 of the Tax Code of the RF, which states that a violation of significant terms of the procedure of consideration tax inspection materials is a ground for cancellation of the tax authority decision on bringing to responsibility for a tax offense by a higher tax authority or court. These essential terms under the Tax Code of the RF include:

- ensuring possibility of the person, against which has been conducted an audit, to participate in the process of consideration tax inspection materials in person and (or) through its representative, and

- ensuring possibility of the taxpayer to submit explanations.

The next type of offense committed by tax authorities is an obstruction of a taxpayer in exercising the right to submit an explanation in his defense. This obstruction is implemented by hiding from a taxpayer the materials of counter audits regarding counter parties of the taxpayer, audits in respect of counter parties of the taxpayer conducted by MIA bodies for the presence of criminal corpus delicti in the economic activities. As a rule, a tax authority practices providing a taxpayer only a tax authority act with the calculations of penalties accrued by tax inspectors on the results of their own interpretation of the tax consequences of transactions made with counterparties of the audited entity, and at this they forget to provide for the taxpayer the results of counter audits of these counter parties.

So in the tax dispute which has arisen on the result of a field tax audit of LLC "Teploenergopribor", tax authority (Interregional Inspectorate of the Federal Tax Service of the Saratov region No. 7) by referring to the results of the counter audits of counter parties made a note in the act, and subsequently, in its decision about the obligation of the taxpayer to pay VAT, as deductions claimed by LLC "Teploenergopribor", according to the tax authority, was calculated on the base of commercial invoices signed by unidentified persons. Evidences of the tax authority's position were reduced to availability of copies of documents received in respect of the taxpayer counterparty at the counter audit of this counterparty in business transaction with a third party. Before the appointment of the review date of field tax audit materials the taxpayer's request of the following content was sent to the tax authority:

"To prepare objections on the act of the field tax audit of LLC "Teploenergopribor" (ITN 6449033002/KPP 644901001) No. 13/117 dated 27.12.2007, we request you to provide the materials of counter audits regarding the specified act".

However, the taxpayer was unable to obtain from the tax authority the copies of requested documents on the counter check of counterparties. Only under the petition that had been satisfied by the arbitration court, these documents were demanded from the tax authority to the court, but were not represented to the taxpayer. Thus, there was a fact of obstruction to the taxpayer in the realization of the right to a defense.

The provisions of the Tax Code provide a number of guarantees to protect the rights of taxpayers in respect of which the decision on tax audits is taken. Legislator enshrined these guarantees not only in article 101 of the Tax Code, but also

introduced to the Tax Code of the RF a special article 101.4 (effective from January 01, 2007) "Legal Proceedings in Respect of Tax Offences Envisaged by This Code", part 12 of which establishes that: "…failure by officials of tax authorities to comply with requirements established by this Code may constitute a basis for a decision of a tax authority to be rescinded by a higher tax authority or a court.

A violation of significant conditions of procedures for the examination of a report and other materials relating to tax control measures shall constitute a basis for a tax authority's decision to be rescinded by a higher tax authority or a court. Such significant conditions shall include ensuring that a person in relation to whom a report has been prepared has the opportunity to participate in the process of the examination of the materials in person and (or) through his representative and ensuring that the person concerned has an opportunity to present explanations.

Other violations of the procedures for the examination of materials may serve as grounds for the rescission of the above-mentioned decision of a tax authority if those violations have resulted or may result in the adoption of an incorrect decision".

In our view, such an emphasis of the legislator on compliance with the procedural norms is connected with the awareness of the need to do something to strengthen the elements of legitimacy in the actions of officials of a tax authority, and to contribute to forming a constitutional state.

However, there are both positive for a taxpayer judicial acts on this ground, and negative ones in arbitration practice. In our view, a negative outcome for a taxpayer occurred in the cases where its representatives could not prove in court that a violation of the procedure for bringing the taxpayer to tax responsibility involved a substantial violation of the taxpayer's rights, that the observance of this procedure could lead to other tax consequences and other decision of the tax authority.

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Kositsina L. A.

DETERMINATION THE GUILT OF A LEGAL ENTITY AT COMMITTING BY HIM AN ADMINISTRATIVE OFFENCE IN THE FIELD OF CUSTOMS AFFAIRS

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Considered problematic issues of the subjective aspect of administrative offenses committed by legal persons in the field of customs. In the article is provided an analysis of scientific views on the determination of guilt of a legal entity in the context of considered legal relations. Here are suggested author's definitions of a legal entity's forms of guilt for administrative violations in the field of customs.

Keywords: administrative offences, administrative offences in the field of customs affairs, guilt of a legal entity, forms of guilt, subjective aspect of an administrative offence.

After 10 years of the Code on Administrative Offences of the Russian Federation scientists with particular interest continue the study of the subjective side of an administrative offense committed by a legal entity [12, 59-67; 10, 48,49; 11, 58,59; 24, 21], paying close attention to the determination of guilt in delicts committed in the area of customs affairs [14].

In the customs legislation the institute of administrative responsibility was first enshrined in the Customs Code of the RF in 1993, article 230 of which defined the concept of violation of customs regulations, which by its nature is a kind of administrative offense. According to this article a violation of customs norms was recognized as a wrongful action or omission of a person, which violated the order established by the Customs Code of the Russian Federation, the Law of the Russian Federation No. 5003-I from May 21, 1993 "On Customs Tariff" [1], other laws of the Russian Federation in the field of customs affairs and international treaties of our country, the control over the execution of which was the responsibility

of the customs bodies of the Russian Federation. It should be noted that in formulating the definition of a customs offense, the legislator did not indicate such an important sign of an offense as guilt. Moreover, in accordance with articles 230, 231, 320 of the Customs Code of the Russian Federation of 1993, at bringing legal persons and individual entrepreneurs to responsibility the guilt was of no importance and not a subject to proof. Only the fact of violation of customs rules by legal entities and individuals engaged in entrepreneurial activity was a subject to proving

In the current scientific literature, there are several approaches to determination of guilt of a legal entity and feasibility of introducing the named institute in the concept of an administrative offense.

According to one of them is suggested not to consider guilt as an indispensable element of an administrative offense committed by a legal person. So, D. N. Bakhrakh said that, if to responsibility was brought an organization, in many cases, the presence or absence of the guilt had no legal value. Moreover, in his view, there are no signs of the subjective aspect in the administrative offense committed by a legal person; there are not four, but three elements [4, 285-292]. In our opinion it is difficult to agree with the reduction in the number of elements of an offense, as it ignores the most important principle of legal responsibility – the principle of responsibility for a guilty deed. In his writings I. A. Galagan uphold the presence of this principle [8, 229].

The second approach is to determine the guilt of a legal entity in terms of objective imputation [19, 13]. Articles 231 and 320 of the Labor Code of the RF of 1993 envisaged, that legal entities are legally responsible for violation of customs rules equally, regardless of the form of ownership and departmental affiliation, and, at this, for making them liable it was needed to prove only the fact of violation of customs regulations, i.e. when there were objective signs of customs offense the guilt of a legal entity was presumed. This approach to determining the guilt of a legal entity is not very different from the previous one, because it also does not take into account the content of the subjective aspect of an offense committed by a legal entity.

The third approach is characterized by the fact that guilt is considered as an indispensable element of offense. While some scholars argue the existence of a particular form of legal entity's guilt [3, 347-349; 7, 46-47], others believe that guilt of a legal entity must be linked to the guilt of its officials [20, 9].

Other scientists suggest to clarify the concept of legal entity's guilt [9], using a special form of legal entity's guilt, which was first formulated by the Russian Constitutional Court in its decision No. 7-P from April 27, 2001 [2], where

was indicated the duty of subjects of customs relations to justify in proper way, that the violation of customs rules was caused by extraordinary, objectively unavoidable circumstances and other unforeseen, insurmountable obstacles that are beyond their control, at their compliance with the degree of care and diligence, what was required of them for the proper execution of customs duties. This definition is almost identical to the norm contained in part 3 of article 401 of the Civil Code of the RF.

It is of interest the statement, that guilt of a legal entity is determined through the collective guilt of workers or guilt of individuals in leadership positions of a legal entity, belonging to the board of directors (supervisory board) or exercising special powers under the job description, and, therefore, responsible for its implementation [22; 5, 68]. Similar conclusion is also made by A. Nikiforov, after an analysis of legislations of U.S.A, Britain, FRG, France and other countries. Any corporation is responsible through its governing body (individual or collective). Performing concrete actions, a physical person does not speak or act instead of its company. It acts as a company, and his mind, guiding his behavior, is a mind of the company. If this is a guilty mind, this guilt is an essence of a company's guilt [15, 124].

It should be noted that in some scientific papers the guilt of a legal entity is considered through its characteristic as a single personalized unity with independent will and incurring self-responsibility. It is noted that an offense is committed, as a rule, by "hands" of one of the members of a collective acting with intent or through negligence. However, the will of each member of the team is not formed by itself; in the interaction of team members in the framework of organizational interrelations it is affected by the collective. If the organizational interrelations between team members adjusted properly, the offense committed only by one of its members is actually excluded [13].

With a positive assessment of the above statement, should be noted limited possibility of its application to the customs legal relations, as the actions can be performed far away from the location of the very legal entity and collective. The nature of administrative offences in the field of customs affairs is such, that is not always an action, which constitutes an offense, has been "authorized" by leadership (such as the movement of goods in addition to customs control), and on the other hand, an employee of a legal entity may not always influence the decision of a leader, for example, at violation requirements of regime of export. Taking into account the above, we can assume that in the process of internal control will be corrected not all unintentional errors, as well as suppressed not all deliberate actions of individuals aimed to committing intentional offences.

Indistinctly formulated by legislator definition of legal entity guilt and the uncertainty of its form are the cause of inconsistent decisions of courts. So, in one case of administrative offence in the field of customs affairs court pointed out that the guilt of a legal entity was proved in the case if the entity could not demonstrate that it had taken all possible measures to comply with customs regulations and norms. Thus, the court laid on the person brought to responsibility the obligation to prove his innocence [18]. In another case, the court stated that the customs authorities had not fully investigated the subjective aspect of the administrative offense committed by a company; to the court was not submitted evidence of an intentional offense, intent to violate laws or regulations or constant negligence [17].

It should be noted that the awareness of the wrongfulness of an action or omission – is a psychological process, which cannot be undergone by a legal entity. Deliberate or careless attitude to a wrongful action may show only individuals. Legal entity – is a team of many individuals, therefore, determination of guilt of a legal entity must consider this feature.

We believe that a legal entity must be found guilty of an administrative offense, if the guilt of specific employees performing actions on behalf of the organization as a whole has been determined. Here, it is necessary to establish a cause and effect relationship between the deeds of an employee and the fact of an offense.

As for customs and legal relations, forms of guilt can be illustrated by the following examples.

Mari Customs recognized LLC Production and Commercial Company "Karina" guilty of an administrative offense under part 1 of article 16.17 of the CAO RF – violation of the term of enrollment currency gain on accounts in an authorized bank (now – part 4 of article 15.25 of the CAO RF). Income deficiency is due to partial damage of the exported goods, which occurred due to adverse weather conditions. This circumstance the firm regarded as force-majeur indicating that there was no guilt in the actions of the organization. During the court proceedings it was found that the goods were transported in an open box car, what did not provide its safety, the examination certificate confirming the fact of damage was signed by a person not entitled to do this, there were no documents of extension by the Bank of Russia the time terms of enrollment currency gain on the firm's accounts in an authorized bank and evidence of force majeure. Thus, the court concluded that the legal person was guilty of an administrative offense [16].

In the described situation explicit desire of the leadership of LLC Production and Commercial Company "Karina" to violate the requirements of export conditions is not seen, but, realizing, that the steps taken by the LLC to comply with

customs legislation were insufficient, the leaders in their actions showed indifference to the socially dangerous consequences. Here the indifference meant inappropriate transport conditions, careless paperwork for damaged goods, and the fact that the company neither had the permission of the Central Bank of the RF for the change the period of enrollment currency gain, nor even put it in fame.

The structure of this offense is a mixed – formal and material one. On the one hand, have been violated the rules of observance of the customs regime, on the other – the state treasury received less planned currency funds. If the structure is formal, objective aspect is limited only by socially dangerous action or omission. In these cases the intent formally includes the awareness of public danger of action (or inaction) and the desire to commit it [23, 211].

In another case, during the formation of passenger train Barnaul (Russia) - Leninogorsk (Kazakhstan) in the station Barnaul the wagon for heating was loaded by workers of wagon depot with fuel (wood, coal), which was later moved across the customs border of the Russian Federation. In the course of audit, customs service found that the supplies had been moved without being declared in accordance with the law. By decision No. 10605000-2342/2004 railroad was found guilty of an administrative offense under part 1 of article 16.2 of the CAO RF: failure to declare in the prescribed form goods subject to declaration. In this case, workers, who loaded coal, were not officials of the legal entity, however, as pointed out by A. Nikiforov, referring to the speech of Lord Reid on the case of Tesco Supermarkets, Ltd. v. Natrass: "An individual has a mind mind, which can contain actual knowledge, intent or negligence, and he has hands to carry out his intentions. Corporation has nothing of this. It must act through individuals, though not always through one and the same person" [15, 123].

There are actually three parties that constituted the participants of legal relations in this example: a legal entity (brought to responsibility for failure to declare exported goods), a depot worker, who after the load of fuel did not report an official who had the right to declare goods, customs authorities, which as a result of control found a violation of customs rules. And the customs legal relations arose only for two entities: the legal entity and the customs authority. Depot worker had no authority to submit cargo customs declaration, but because the job description he had to report on the actions performed to an authorized declarant. Thus, violation of the internal job descriptions by the worker caused violation of customs regulations by the legal entity, i.e., here the worker acted as a real tortfeasor.

In our view, in bringing a legal person to administrative responsibility for violation of customs regulations, must be determined and considered primarily

actions and guilt of a real tortfeasor (official, worker or employee of a legal entity), who by virtue of its job description or contract must inform officials about committed or being committed actions. However, given the statement of I. A. Galagan that the collective responsibility of legal persons, on the merits, "results in a collective irresponsibility" [8, 229], we believe it appropriate to bring a real tortfeasor to administrative, disciplinary responsibility, and in the case of signing the contract on full financial liability – to liability for damages.

Bearing in mind the researches of various scientific concepts of determination the guilt of a legal entity of committing an administrative offense, which were carried out by N. Bogaeva [6, 30-38], we believe that the guilt of a legal entity for violation of customs regulations should be determined in a special way. The concepts studied by the author: subjective ("psychological") concept; theory of "collective will", the concept of "dominant will"; behavioral-psychological concept; the concept of "social" guilt, in our opinion, do not fully reflect the guilt of a legal entity for violation of customs rules. The closest in content seems the scheme of bringing to legal responsibility formulated in the Tax Code of the Russian Federation. According to articles 106, 108, 110, 111 of the Tax Code of the RF the guilt of an organization in the commission of a tax offense is determined by the guilt of its officials, or its representatives, actions (inaction) of whom have led to the commission of the tax offense.

We believe that resolving a number of issues related to the bringing of legal entities to administrative responsibility will be promoted by the definition of the concept of legal entity's guilt that will let not just to consider the subjective aspect of an administrative offense, but also to establish the form of guilt.

In other words, at committing by a legal person an administrative offence in the field of customs affairs the guilt should be considered in the form of intent and negligence. Intent may be presented in two forms: direct and indirect. Such a definition, given that the subjective aspect of administrative offence in the field of customs affairs committed by a legal entity is represented by a particular form of guilt, can be formulated as follows.

Guilt of a legal entity of an administrative offense in the field of customs affairs – is a mental relation of a real tortfeasor to the violation of customs regulations by a legal entity.

An offense shall be deemed committed intentionally, if an actual tortfeasor was aware of the illegality of his actions (or inaction), foresaw its harmful effects and wanted such consequences, knowingly admitted them or treated them indifferently.

A legal person is deemed guilty of committing an administrative offence in the field of customs affairs with direct intent, if an actual tortfeasor was aware of the illegality of his actions (or inaction), foresaw its harmful consequences and wanted such consequences.

A legal person is deemed guilty of committing an administrative offence in the field of customs affairs with indirect intent, if an actual tortfeasor was aware of the illegality of his actions (or inaction), foresaw its harmful consequences and deliberately allowed them or treated them indifferently.

A legal person is deemed guilty of committing an administrative offence in the field of customs affairs by negligence, if an actual tortfeasor foresaw the possibility of harmful consequences of his actions (inaction), but without sufficient reason self-confidently expected prevention of such consequences, or did not foresee such consequences, though it had to and could foresee them.

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Mustafin R. F.

JURIDICAL CONSEQUENCES OF REFUSAL TO PERFORM A PUBLIC TREATY

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The author proves the necessity of legal regulation of the failure of a party to execute the transaction on a public treaty. Here are considered the issues of the societal value of particular types of public treaties and inadmissibility of their non-fulfillment by an obligated party.

Keywords: public treaty, fulfillment of a public treaty, unilateral refusal to perform a public contract

The legal regime fulfillment of a treaty is a matter of debate for a theory of civil law. The essence of the discussion is that the fulfillment of a contract can be considered as oppositely directed unilateral deal, or under it should be understood legal action by parties of the contract

In the domestic civil literature the problem of the legal nature of contract fulfillment is studied in three main directions. First, the fulfillment is understood as a legal action [4, 177]. It is opposed by the view that considers fulfillment as several mutually directed transactions [7, 23-24]. Representatives of the third, the most fundamental direction, criticize the very subject of discussion, and refer it to pseudo-problems [5, 97-106].

The question of determining the legal nature of the fulfillment a civil-law treaty, in our opinion, is not idle for civil science. We believe that the fulfillment of a contract consists of mutually directed unilateral deals. Therefore, a proper understanding of this fact helps to determine the moment of fulfillment of a contract, acceptance of performed one and laying claims about the nature of performance. Below we illustrate the conclusion that the performance of a contract is a subject to the rules on transactions, and we point out the importance of such a qualification of obligation fulfillment.

Absence in the Civil Code of the RF of provisions on which of the parties first fulfills its obligation, and their non-mandatory regulation generates a lot of disputes considered by court instances. Legislative recognition of division transactions to real and consensual ones would help to resolve the situation. However, this classification is only implied but formally not enshrined in the Civil Code of the RF. Therefore, the party, which has implemented the actions provided for by the text or essence of a treaty, generates, thus, the obligation to perform counter-actions by the counterparty.

Consequently, the counterparty that has fulfilled its part of a contract, thus, implements a unilateral deal. Other counterparty, having applied to unilateral action on execution of the contract the evaluation category of "proper", takes executed and, in its turn, carries out an inherent unilateral deal, by passing consideration to the counterparty.

The study of procedure for fulfillment of a public treaty, we plan to implement in the context of transactional nature of fulfillment. The main property of this fulfillment we, after V. K. Tolstoy, see in free expression of will to carry out the actions, which provided for by the subject matter of a contract.

In a public treaty under fulfillment is understood the sale of goods, performance of works or rendering services that are required to be implemented by a commercial organization with respect to each person who applies to it. Consequently, as has been noted above, the fulfillment of a public treaty is not based on free will, but on the duties prescribed by law. Thus, in our view, the main problem encountered in the study of the features of fulfillment of public treaties as organizationally-prerequisite agreements, but not as properties of business contracts for sale of goods, performing works or rendering services, is a problem of rejection to perform and the possibility of forcing for fulfillment provided to the creditor by law.

As fairly remarks S. V. Sarbash, legal nature of failure to perform an obligation is not enough investigated in the Russian science of civil law [6, 37]. Juridical properties of refusal to perform a public treaty are not an exception.

Refusal to fulfill at its core is also a transaction, as it appears in the form of expression of will of an appropriate person, in this case the commercial organization that has announced an offer of a public treaty. Refusal is based on the will of a person seeking to achieve through such rejection certain goals. Consequently, as notices S. V. Sarbash, person's actions of refusal to fulfill obligations outwardly manifest in a certain expression of will, which may take a negative or positive form, depending on the nature of an obligation [6, 38].

Refusal to fulfill a contract can be considered as a measure of operational impact. So, the developer of the theory of operational impact measures, V. P. Gribanov believed, that "rejection of a treaty is an operational measure of generality aimed at the full cessation of relations of an authorized person with a defaulting counterparty" [2, 152-153].

However, the scientist specified that statutory cases of unilateral rejection of a treaty are not necessarily measures of operational impact. Rejection of a treaty may be referred to operational impact measures only in cases where it is applied by an authorized person in response to a breach of an obligation by the other party.

In those cases where the law allows the rejection of contract "at any time", that is independent of a breach of a contract by the other party, as well as in other cases not related to the breach of an obligation by the debtor, for example due to impossibility of performance, repudiation of contract should be considered only as a way of unilateral termination of an obligation, but not as a measure of operational impact [2, 152-153].

Differentiation of the cases of repudiation of contract from a practical point of view is important, because if the rejection is in the form of operational impact measure, then the person, to whom it was applied, is obliged to compensate the damage caused by its fault. Unilateral refusal of contract, in the absence of a violation, may be the basis for exaction of damages from the creditor, who rejected the contract.

In accordance with the above criteria, the failure to perform a public treaty should be seen exactly as a unilateral refusal, but not as a measure of operational impact. This is directly related to the public nature of a treaty. Publicity of a contract means not only openness, general availability, but also social demand and importance of the traded goods, performed works, services provided [3, 132-133].

In this regard, the failure to fulfill a public treaty, in those treaties, the subject of which are goods, works or services of high social value, is not permitted and shall result in responsibility, if there are no proven grounds for exempting from it. For example, in case of rendering services of medical nature for categories of people who have privileges in this service sector, the rejection of a contract should be recognized inadmissible.

In our view, we should adjust paragraph 2 of article 782 of the Civil Code of the RF and limit the right of refusal from the fulfillment of services. The grounds for refusal to comply with a contract, in our opinion, can only be a force majeure, the presence of which is must be proven by the performer. And the court must bear

responsibility to evaluate the nature of force majeure and the reality of impossibility to fulfill obligations [1].

Other circumstances that prevent fulfillment of a treaty on provision of services for a fee may not be considered as grounds for refusal to comply with the contract; in the case when a performer refers to them he should be denied the right to engage in this kind of activity for a period determined by the court.

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ADMINISTRATIVE PENALTIES IN THE CODE ON ADMINISTRATIVE OFFENCES OF THE RUSSIAN FEDERATION: SOME ISSUES OF LEGISLATION DEVELOPMENT

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Considers amendments to the norms of the CAO RF regarding the introduction and excluding of types of penalties adopted by the legislator from the moment of adoption of the Code. The focus is on having place collisions in the legislation of the Russian Federation in part of the determination and scope of compulsory labor. Here is given an analysis of the correlation of compulsory labor with administrative penalty in the form of binding works. In the article is raised the question of the constitutionality and compliance with international law of current norms on the application of administrative penalty in the form of binding works.

Keywords: administrative penalties, types of administrative penalties, compulsory labor, binding works.

For more than ten years since the adoption of the Code on Administrative Offences of the Russian Federation (hereinafter CAO RF) this document was repeatedly subjected to various changes that objectively reflects the desire of the legislator not only to optimize the system of administrative responsibility, but also adequately respond to changes in society, which generate the necessity of administrative and legal protection of new areas of public relations.

At the same time, against this background, certain conservatism distinguishes the legislator's approach to the definition of the system of administrative penalties for administrative offenses. Over the past 10 years, list of administrative punishments was changed only three times:

First, the Federal Law No. 45-FL from 09.05.2005 introduced the punishment in the form of an administrative suspension of activity. This punishment, as follows from part 1 of article 12.3 of the CAO RF, is a temporary cessation of the activities of persons engaged in entrepreneurial activities without forming a legal entity, legal entities, their branches, representative offices, structural subdivision, production sites, as well as operating units, facilities, buildings or structures, implementing specific activities (works) , provision of services. This administrative punishment is applied in case of a threat to life or health of people, emergence of epidemic, epizooty, infection (contamination) of under quarantine facilities by quarantine facilities, occurrence of a radiation accident or man-made disaster, infliction significant damage to the state or quality of the environment as well as in many other cases of a threat of significant harm. In fact, it is, first of all, not of punitive, but of administratively-preclusive nature. Specified essence of administrative suspension of activity supported by the fact that part 3 of article 12.3 of the CAO RF permits early termination of its execution.

Second, the Federal Law No. 398-FZ from 28.12.2010 excluded such administrative penalty as payable seizure of instrument or subject of administrative offence. This administrative penalty initially had narrow application in the Code, and was provided for only for committing certain acts relating to a violation of the handling of weapons and ammunition. In practice, it was used even rarer, which was associated with a number of difficulties involved in its execution. This fact was noted as a reason for excluding an administrative penalty in the form of payable seizure of instrument or subject of administrative offence in the explanatory note to the bill [3].

Finally, in the third, the Federal Law No. 65-FZ from 08.06.2012 introduced an administrative penalty in the form of compulsory works. This law, is known, was adopted in record time, which objectively could not facilitate thorough elaboration of all its provisions.

In the explanatory note to the bill submitted by the responsible State Duma Committee on Constitutional Legislation and State Building, it was indicated that compulsory works were proposed to be applied for the commission of administrative offenses as a "soft" form of punishment. Also, it was noted that the penalty of compulsory works in domestic jurisprudence had a broad historical practice.

It is worth noting that the idea of imposing an administrative penalty in the form of compulsory works was repeatedly expressed by many domestic scholars. So, for example, V. N. Vasil'ev suggested establishing mandatory community service as an administrative penalty in the case of non-payment of an administrative fine [6]. A similar proposal was also put forward by A. V. Zhil'cov [7]. T. A. Smagina proposed introducing to the CAO RF an administrative penalty in the form of compulsory works for certain offenses against minors [11]. A. P. Stukanov also attributed to the measures of administrative responsibility compulsory works which consisted of execution free community service by a person found guilty of an administrative offense, in his/her spare time [12, 74].

However, the implementation of these proposals faced a very serious objection. The matter is that the compulsory works representing, as is evident from their names, non-voluntary labor activities of administratively punished persons in their characteristics fall under the concept of forced labor.

In accordance with part 2 of article 37 of the Constitution of the Russian Federation forced labor is prohibited in the Russian Federation. At this, according to article 4 of the Labor Code of the RF: forced labor – is a performance of work under threat of any penalty (forced impact), including:

in order to maintain labor discipline;

as a retributive step for participating in a strike;

as a means of mobilizing and using labor force for the purpose of economic development;

as a penalty for holding or expressing the political beliefs contrary to the established political, social or economic system;

as a discriminatory measure on the grounds of race, social, national or religious status.

But, the same article 4 of the Labor Code of the RF contains a list of cases that are not forced labor (despite the fact that they fall within the definition of forced labor). They are:

the work whose performance is required by the law on military duty and military service or the alternative civil service in lieu of it;

the work, performing of which is conditioned by introduction of emergency

or martial law in accordance with the procedure established by federal constitutional laws;

work performed in cases of emergency, that is, in the case of a disaster or a threat of disaster (fires, floods, hunger, earthquakes, intense epidemics or epizootics) as well as in other situations threatening life or normal living conditions of the whole population or its part;

the work performed pursuant to the final court verdict under supervision of the official state bodies responsible for enforcing legislation in execution of court verdict.

In fact, these cases are also forced labor, but, if I may say so, "approved" forced labor. In any case, it is easy to notice that compulsory works as a measure of administrative punishment does not fall under any of the above exceptions. Closest to them the case of performing work under sentence of court (this exception does not allow to recognize forced labor compulsory works as a measure of criminal sanction), but a sentence, as it is known, is issued only on criminal cases (article 296 of the Criminal Procedural Code of the RF), however administrative punishments (including punishment in the form of compulsory work) are imposed by passing resolutions (article 29.10).

Here it is necessary to say that this circumstance drew attention of opponents of the law in its discussion in the State Duma. So, the deputy G. Gudkov representing a party "Fair Russia" ("Spravedlivaja Rossija" in Russian) said that, in accordance with European legislation, forced labor is prohibited. In response, the Chairman of the committee on constitutional legislation and nation-building, a deputy from the party "United Russia" ("Edinaja Rossija" in Russian) V. N. Pligin said, that according to article 2 of the Convention No. 29 of the International Labor Organization on Forced or Compulsory Labor "the term "forced or compulsory labor" in the sense of this Convention did not include (subparagraph "c ") any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations. Thus, the correlation of these norms indicates the conformity with law of introduction of actually common in the world practice compulsory works" [5].

As is seen, in this case, PhD of jurisprudence, Honored Lawyer of the Russian Federation V. N. Pligin failed to distinguish the concepts of "sentence of a judicial authority" and "decision on the case of an administrative offense".

Meanwhile, the ILO Convention "On Forced or Compulsory Labor" (adopted in Geneva on 06/28/1930 at the 14th session of the General Conference of the ILO), as well as the Labor Code of the Russian Federation, allows forced labor as a criminal punishment only for persons who have committed a criminal offense and have been convicted in connection with this. By the way the Russian Federation committed itself to comply with this Convention as a legal successor of the USSR, which had ratified it in 1956.

Even more severely limits the possibility of imposing sanctions in the form of compulsory works another international legal instrument that is mandatory for observance in the Russian Federation – the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. According to article 4 of the Convention will not be a forced labor, one not simply appointed by a court, but the labor that has to be carried out by a person in prison or person on conditional discharge from such custody. In this sense compulsory works cannot be used even as a separate criminal penalty.

In view of the above, we cannot help but support the opinion I. V. Maximov, who rightly points out that in the entire utility, in the practical sense, of compulsory works, their introduction "has no legitimate macro reason (at international and constitutionally-legal levels)" [9, 239], that, however, did not prevent Russian deputies introduce it in the CAO RF. Inconsistency of an administrative penalty in the form of compulsory works to the Constitution of the Russian Federation and assumed by the Russian Federation international legal obligations was also noticed in their conclusion by members-participants of the Working Group on civil liberties and citizen participation of the Russian Federation President's Council on the development of civil society and human rights, but without a detailed justification of this thesis [16].

Thus, the current edition of the CAO RF, taking into account the interpretation of forced labor given in article 4 of the Labor Code of the RF is in direct contradiction to part 2 of article 37 of the Constitution of the Russian Federation. And it is impossible to correct this situation by amending the Labor Code of the RF, because, as stated above, these provisions of the labor legislation fully consistent with assumed by the Russian Federation international legal obligations.

Against this background cannot help but surprises that this fact, in principle, has not been seen during the legal review of the draft Law by Legal Administration of the State Duma, which twice gave it a positive opinion without any comments [1, 2].

However, everything falls into place, if take as a basis the words of State

Duma deputy from the party "Fair Russia" A. V. Rudenko, who, during the discussion of the bill explicitly stated that compulsory works – "it is, of course, a certain kind of humiliation for an individual, but we clearly understand that considering compulsory works as a punishment we aim to humiliate the man – to give him a broom" [5]. Actually, the same was said by one of the authors of the bill, the deputy of the faction "United Russia" A. G. Sidjakin, who pointed out in his speech: "Why on earth, tell me please, people who violated the legislation on rallies, who only wants to be detained by police officers in front of TV cameras, must become in the eyes of the international organizations a prisoner of conscience? Will be much more adequate to give them brooms and let him go and clean up after themselves what was left after disturbance during mass events" [4].

Quite "natural", that in presence of specified goals of introduction to the CAO RF compulsory works, their supporters did not pay particular attention to the justification of the legitimacy of this administrative penalty.

Here it is necessary to clarify that the author of this article is not an opponent of the introduction to the Russian administrative legislation such punishment as compulsory works. We fully agree with the fact that in the current economic realities compulsory works (of course, with proper organization) can bring substantial benefits to the organizations in which they are carried out, and for society as a whole. However, their introduction should be done in such a way that norms of the Russian Constitution would not been violated.

In this regard, we see necessary to amend article 3.13 of the CAO RF (as well as corresponding articles of the Special part of the CAO RF) through stating therein that an administrative penalty in the form of compulsory works may be imposed *as an alternative to administrative fine only with the consent of the person brought to administrative responsibility.* In this case, when bringing to administrative responsibility in cases where the sanction of a specific article of the CAO RF will include the *possibility* of imposing compulsory works, the person that has been brought to responsibility will have of real choice: to be subjected to penalties in the form of compulsory works or pay an administrative fine. Of course, in this case, the severity of these punishments must be comparable. Taking into account low income among majority of the population of the Russian Federation, in our opinion, there will be many willing to do socially useful labor instead of paying large fines. Introduction of an alternative punishment in the form of compulsory works would markedly reduce the severity of the problem of imposing and subsequent exaction of administrative fines from unemployed persons. In this form compulsory works could be used widely in the CAO RF, not being limited by the above two articles.

Giving reason the possibility of introducing compulsory works as a punishment applied only with the consent of the person being called to account, it is possible to refer to the experience of other countries. In most countries of the world, to experience of which in relation to the presence of punishment in the form of compulsory works cited many supporters of the adopted law, community service, even applied as a criminal punishment, are not forced and compulsory. It is expressed in the fact that the court may impose such punishment only with the prior consent of the defendant. This rule is typical for almost all countries where community service is applied [14, 113], including non-members of the European Convention on Human Rights [13, 1044], and is usually enshrined in the law (see, for example, article 49 and 83 of the Criminal Code of Spain, article 131-8 of the Criminal Code of France). It must be noted that the Statute of the Russian Empire penalties imposed by Justices of the peace in 1864 providing for this punishment as an alternative to a fine, also provided for, that it was applied to convicted "only in the case of their own request" (the only exceptions were the representatives of the peasant and commoner classes) [8].

But again this is applicable only with respect to criminal punishments – some experts say that such consent is largely a fiction, since a convict in such cases, in fact, have a choice: agree to participate in compulsory works or be subject to the penalty of deprivation of liberty. As rightly pointed out I. A. Klepitsky, "it can hardly be considered as "consent" the defendant's choice between alternatively offered to him punishment in the form of imprisonment and "voluntary" works for the benefit of society. Behind formal voluntariness hides a real coercion" [8]. French parliamentarians, in turn, expressed reasonable doubts about such a deep penetration of "pactional beginnings» (contractualisation) in criminal law that the imposition of punishment requires the harmonization of the state will with the will of a defendant, who himself chooses a sentence [15, 669].

However, European legislation and juridical practice do not known other ways to comply with the prohibitions of the Convention and simultaneously use community service, which is an effective alternative to custody [8].

In addition, if the choice between compulsory works and imprisonment really in most cases looks formal, then, an alternative in the form of compulsory works and administrative fine is more balanced (again, if there are adequate correlation of terms of compulsory works and size of administrative fines).

At this the presence of consent of a person brought to administrative responsibility to imposition a sentence of compulsory work will help to avoid many of the excesses that may well arise in the application of the considered norms in

the present form. For example, judging by the content of article 3.13 and 32.13 of the CAO RF, proponents of compulsory works proceeded from the fact that the compulsory works must be worked out by administratively punished persons, both at the weekend (no more than four hours per day), and during the week – after the end of work, service or study (two hours), at all – at least 12 hours a week. However, the Code does not allow to take fully into account the various challenging life situations. For example, a person with respect of whom has been assigned an administrative penalty in the form of compulsory works, can combine work with study and after a full working day continue his studies up to 9-10 p.m. Of course, it is actually possible to bring him to compulsory works, and after at this time, however, first, not all organizations, where is possible to perform compulsory works, will operate at this time (and not all work can be carried out at this time), second, in accordance with Part 1 of article 35 of the Federal Law "On Execution Proceedings" executive actions are exercised and enforced execution measures are applied on weekdays from 6 a.m. to 22 p.m. Similar problems arise with people working, in addition to the main work, also at inner or outer secondary job and often finish their working day in later time (and, often, they also work on weekends).

In this case, as is typical, the prohibition on the imposition of punishment in the form of compulsory works in respect of the military personnel, citizens called for military training, as well as having special ranks employees of the internal affairs bodies, bodies and institutions of the criminal executive system, the State Fire Service, Bodies for control over the traffic of narcotics and psychotropic substances and customs authorities (part 3 of article 3.13 of the CAO RF) has been explained by the developers by their employment and specific of job [5]. Employment and labor specificity of other citizens, respectively, is not taken into account at all. By the way, this number of other individuals may well include also public civil and municipal servants, many of whom also work in conditions of a non-normalized official (working) day, work at secondary job, combine work and study, etc.

I must say that a number of other provisions of the CAO RF relating to compulsory works, besides the already mentioned, raises questions.

For example, in accordance with the same part 2 of article 3.13 of the CAO RF, in addition to law enforcement officials and military personnel, compulsory works are not applied to pregnant women, women with children under three years old, disabled persons of groups I and II. The question immediately arises: why only for women with children under the age of three? And if it comes to a single father? It turns out that he can be brought to compulsory works after the end of a full day

regardless of the fact whether he has the opportunity to instruct someone to pick up his children from pre-school educational institutions, to sit with them in the evening at home, etc. It is fair to say that the issue of this type of discrimination in respect of other administrative punishment – administrative detention already has been raised before the Constitutional Court of the Russian Federation, whose position (which found it corresponding to the Constitution of the Russian Federation) may only cause immense surprise.

On the other hand, some of the provisions of the Code concerning imposition and execution of the penalty in the form of compulsory works look just uncoordinated. For example, part 7 of article 32.13 of the CAO RF is designed to resolve the situation related to changes in life situation of the person against who have been imposed compulsory works. According to it, the person, who has been assigned an administrative penalty in the form of compulsory works, has the right to apply to the court for release from further serving mandatory works if he/she is recognized invalid of Group I or II, pregnant or a seriously ill that interferes serving of compulsory work. When satisfaction of the petition, the judge shall issue an order to stop execution of the decision on administrative punishment in the form of compulsory works.

However, part 2 of article 3.13 of the CAO RF, which we have already mentioned above, provides a wider range of individuals who may not be imposed such penalty. The question arises: what to do if the person, who is sentenced to compulsory works, conscripted into military service? Or for military training? He cannot continue to serve his punishment in the form of compulsory works, however, release from further serving compulsory works (or the suspension of serving compulsory works) in this case is not provided. It turns out that such a citizen, willy-nilly, will again become an offender. Meanwhile, on the basis of part 12 of article 32.13 and part 4 of article 12.25 of the CAO RF, the punishment for evading compulsory works is an administrative fine in the amount of from one hundred fifty thousand to three hundred thousand rubles or administrative arrest for up to fifteen days.

And – on the contrary – a person struck with a serious illness that interferes serving of compulsory works has the right to apply for exemption from further serving of compulsory works. However, it is quite possible to impose a person, who already has a serious illness, punishment in the form of compulsory works, as part 2 of article 3.13 of the CAO RF does not prohibit it.

Also the very content of such concept as "a serious illness that interferes performing of compulsory works" looks unclear. What diseases should be considered serious? Who should determine their severity? It can be assumed that in

the future the list of diseases that interfere serving of compulsory works will be defined by-law. However, a person called to account, can get sick also with not heavy, in principle, diseases that, however, require compliance with bed rest and are badly combined with work associated with significant physical activity (influenza, SARS, bronchitis, etc.). Unlikely they will appear in such a list. However, the bringing of a sick person with fever and other quite unpleasant symptoms to compulsory works seems, to say the least, inconsistent with the principles of humanism. Perhaps in that case should be provided for the suspension of the execution of the penalty in the form of compulsory works.

Overall, it appears that the institution of compulsory works, in the form in which it was introduced to the CAO RF by the Federal Law No. 65-FL from June 08, 2012 "On Amendments to the Code on Administrative Offences of the Russian Federation and the Federal Law "On Meetings, Rallies, Demonstrations, Processions and Picketing" looks very raw and underdone, which is not surprising, given the conditions in which the law was being drafted and adopted.

Russian President Vladimir Putin, having signed the considered law, at the same time noted that in the future it is possible to adjust it [10]. We believe that with regard to the matter, it is absolutely necessary. Given the high degree of politicization of the whole law considered in this article, it can be assumed with a high degree of probability that in the near future the issue of its compliance with the Constitution of the Russian Federation will be brought before the Constitutional Court of the Russian Federation. And even if the Constitutional Court finds a way to recognize these norms not inconsistent with the Constitution of the Russian Federation or to avoid making a decision, in front of the applicants will be open a direct route to the European Court of Human Rights, which is unlikely to recognize permissible direct violation by Russia of article 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Consequently, Russia will be forced once again to pay large sums in compensation to the victims of application to them of the law norms that are contrary to the Convention for the Protection of Human Rights and Fundamental Freedoms. Whether it is necessary to bring to this – as they say, is a rhetorical question.

All of this, in our view, requires the adoption of operational solutions on improving the administrative legislation on compulsory works.

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