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TOWARDS THE ISSUE OF CONCEPTUAL APPARATUS OF ADMINISTRATIVE LAW

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The article analyzes the current problems of conceptual apparatus of administrative law, considers the ratio of concepts and definitions, and discloses the peculiarities of legal doctrines and state doctrines that form the doctrinal and conceptual foundations of state policy in various spheres of society. The author notes that in the absence of a legal interpretation of the concepts of "ensuring of public safety and public order" and "support in ensuring public safety and public order" any actions of authorized subjects listed in paragraph 6 part 1 article 12 of the Law "On Police", in part 3 article 5 of the Law "On meetings ...", if desired, can be interpreted either as proper or as improper performance of their duties.

Here is pointed to the possibility of emergence law-enforcement problems due to the inaccuracy of applying these or those legal structures in the text of a normative act.

Keywords: concepts, definitions, doctrines, public administration, administrative law.

"Mathematicians think by numbers, and lawyers by concepts"
Gottfried Wilhelm Leibniz

Conceptual apparatus of jurisprudence, which is considered as a system of categories, concepts and definitions used in legal science and practice, is not only a tool of knowledge of certain legal phenomena [22, 18-28], but also a means of forming texts of normative-legal acts of various hierarchical levels – from the Constitution of the Russian Federation to job description and Internal regulations of, for example, correctional [8] or municipal educational [24] institutions.

In recent years, due to the development of interdisciplinary research, the interest in the problems of formation of legal term systems – organized set of words or phrases, verbal constructions that are exact designation of certain concepts used in the language of jurisprudence and its branches, has increased [28, 67-71; 22, 18-28]. Realizing the importance of studying the linguistic problems of terminology, we think it is necessary to note that from the point of view of solving emerging problems in the language of administrative-legal science and legislation is important not so much as clarification how, for example, a term is different from a concept, and what does definition reflect – the meaning of the term or the scope of the concept [29, 63], as outlining in administrative-legal science and legislation scientific legal abstractions – concepts, definitions, which need clarification and elaboration.

In this connection, I would like to present a number of assertions, without claiming to their incontestability and exhaustive coverage of the designated issue.

1. Legal concepts are scientific beliefs that arise in the process of understanding by the subject of scientific creativity of the image of the world in general, the role and place of legal theory and practice. A brief specification of this or that legal concept, revealing meaningful, significant qualitative features of a "hidden" behind it phenomenon or object, is a definition.

Against the general backdrop of a correct proposition that "all legal concepts can be considered as a concretizations and rationalization of the idea of law" [19, 167], we find erroneous statement that "... each of them reflects some accident of law..." [19, 167], i.e. random, insubstantial in contrast with the substantial or significant. Of course, legal concepts are not equivalent in terms of reflecting essential characteristics of law, because they have not equivalent roles in the construction of explanatory models and theoretical conceptualizations in understanding, interpretation and implementation of law. However, the majority of legal concepts reflect exactly substantival characteristic of law, what is evidenced, for example, by legal

concepts such as liberty, property, legal capacity, capacity of delict, responsibility, punishment, etc., which form the legal framework of the legal system as a whole, its branches and institutes.

According to the situation, where in the science of law or legislation use the concepts and definitions, they may be of scientific (doctrinal) and legislative (legal) nature, besides there are a significant number of doctrinal concepts and definitions that are not legally enshrined in almost all branches of law, for example, the concept of "law enforcement activity" is widely used in the scientific literature, but its legal definition does not exist.

2. Among a huge number of phenomena of social reality, consolidated in legal theory and legislation in the form of concepts and definitions, majority, according to V. I. Kruss, by their etymology are "legally sterile", that is, borrowed from the thesaurus of natural and engineering sciences, therefore, they are "alien to legal discourse", representing quasi-legal definitions [18, 199].

We cannot agree with such presentation of a problem at least because the concepts and definitions included in the text of a normative legal act can be successful or not successful, accurate or inaccurate, but cannot be quasi-legal, as in this case, the whole legal act becomes quasi-legal, losing its normativity. In addition, there is not and cannot be initially an outlined circle of phenomena of social reality (if we are really talking about its pragmatist, and not the metaphysical sense), which "suggesting legalization" or not suggesting it, otherwise the process of legal regulation would cease to grow with the emergence of new forms of human activities associated, for example, with the getting, recording, storage, use and protection of information, including genomic, protection the public from radiation hazards, ensuring transport security, etc.

3. The variety of spheres of human life and concepts reflecting this diversity, as traditionally used in jurisprudence or involved in its conceptual apparatus through a selection due to the importance of these concepts for legal regulation or the need of shifting legal researches in other fields of scientific knowledge, lead to expansion of the practice of using sectorial, special, specific professional terminology in researches and legislation. This becomes a serious problem in terms of understanding and precision of the phrases and definitions included in the texts of normative acts.

"Borrowing" of the concepts and their adaptation to the subject of legal regulation are common to all branches of law, but the leader is obviously administrative law, the rules of which provide normalization of the functioning of almost all spheres of state and society. This creates an objective need to operate a large

number of general legal, special and specific professional concepts that reflect the essence of a variety of objects, phenomena and processes that fall within the scope of administrative-legal regulation.

It is difficult to give even an approximate list of concepts that 'have "come" to administrative law from the other branches of law, from political science and sociology, conflictology and medicine, geography and informatics, management theory and the theory of security, military affairs and economy, and that have "received registration" in legislative acts, including the Code on Administrative Offences of the RF (for example, the notions of "HIV" and "venereal disease" in article 6.1; "pesticides" in article 8.3; "internal sea waters", "territorial sea", "continental shelf" in articles 8.17, 8.18, 8.19; "fire safety" in article 8.32; "extra-budgetary fund" in article 15.10, "bookkeeping and submitting statements of accounts" in article 15.11, etc.), or in a thematic legislation (for example, the notion of "weapon", "firearm", "cold steel", "Propellant weapon", "pneumatic weapon") [4].

As you can see, the specificity of administrative-legal regulation that covers various aspects of human life often requires lawmakers to not only use special terms and concepts, but also to explain their meaning in the text of a normative legal act. In this connection, the claim that "definitions... in the legislation are unnecessary" is doubtful [30, 34]. Defects of legal definitions, many of which, such as associated with transport security, "cause confusion in the scientific community" [15, 6], are not grounds for excluding them from the texts of normative legal acts. Just do not forget that "definition – it's a kind of scientific invention, which we should searched for, prove and advocate its acceptance" [30, 35]. This means that the appearing of definitions in legislative acts must be preceded by their theoretical designing, and existing notions, if necessary, must be subject to critical scientific analysis to identify and close gaps, inconsistencies and inaccuracies.

So, article of 1 the pre-existing Water Code of the RF contained excessive in their obviousness definitions of the notion of "water" ("a chemical compound of hydrogen and oxygen, which exists in solid, liquid and gaseous states") and "waters" ("all water in water bodies") [1]. The new Water Code [2] does not contain these definitions, a number of not very successful definitions (for example, "water body") have been significantly improved, and the total number of definitions has been reduced from 31 to 19. A different situation arises with the law "On Fire Safety": after being modified more than 30 times, it has kept intact the trivial and therefore excessive definition of fire – "an uncontrolled conflagration, inflicting material losses and causing harm to the citizens' health and life, and to the interests of society and of the state" (article 1) [3].

Excessive definitions are also harmful as their absence where this is necessary. Federal Law "On Police" [6] is one of the samples of the legislator's "stinginess" in terms of determining the most important concepts related to the implementation of police powers, as well as to the definition of the police itself and its "generosity" in terms of saturation of the text with estimating concepts. Of the variety of definitions of the police proposed by the scientific community the legislator chose the most amorphous and vague, having set in part 1 of article 4 of the law, that the police is a part of a unified centralized system of the federal body of executive power in the sphere of internal affairs, depriving it organizational independence and the status of an executive authority. In violation of the principles of management organization and distribution of personal responsibility, the duty of the police management is simultaneously given to various actors: both to the head of a body of internal affairs, and to the heads of the police (part 3 article 4).

Having defined the main directions of the police activities, the legislator, in the absence of qualitative doctrinal definitions, has not introduced legal definition of such concept as "administration of justice in public places" (paragraph 6, part 1 article 2), has not specified the range of persons wanted by the police (paragraph 4 part 1 article 2), without explaining the essence of some concepts has put on the police the duties " to participate in ..." providing the regime of military situation and emergency (paragraph 29 part 1 article 12), providing aviation security (paragraph 33 part 1 article 12), "to provide assistance..." health authorities (paragraph 35 part 1, 1 article 12), state and municipal authorities, deputies... (paragraph 36 part 1 article. 12).

Paragraph 6 part 1 article 12 of the Law "On Police" provides for the responsibility of the police in conjunction with the organizers of public events to ensure public order and safety of citizens, or to provide assistance in these matters to the organizers of mass events. This seemingly innocuous legal construction, actually contains the technical and legal trap: in the absence of a legal interpretation of the concepts of "ensuring public safety and public order" and "providing assistance in ensuring public safety and public order" any actions of authorized subjects listed in paragraph 6 part 1 article 12 of the Law "On Police", in part 3 article 5 of the Law "On meetings ...", if desired, can be interpreted either as proper or as improper performance of their duties.

Law-enforcement problems may arise due to inaccurate use of these or other legal constructions in the text of a normative act. For example, in accordance with paragraph 3 part 4 article 5 of the Federal Law "On meetings, rallies, demonstrations, processions and pickets" [5], public event organizers must "provide, within

its competence, public order and security of citizens...". Legal uncertainty of this requirement is obvious, since no one normative act reveals the concept of "competence in the field of ensuring public order" of such organizers of public events as, for example, a citizen of the Russian Federation, political party, other public associations and religious associations, their regional branches and other structural units listed in part 1 article 5 of the Law "On meetings...".

Another problem – the use of estimating concepts, which are abundant in the Code on Administrative Offences of the RF, for example, the "harmful consequences" (article 2.2); "gross or systematic violation of the procedure of use this right" (part 1 of article 3.8); "materials that can harm the honor, dignity and business reputation" (article 5.13), "intoxicating substances" (article 6.10, part 2. 20.20, article 20.22), "other floatage" (article 16.8), "public places" (article 20.1), "other public places" (articles 20.20, 20.21, 20.22), "immediate proximity" (part 3 article 20.2), "proper notification" (part 2 article 25.1, part 3 article 25.2, part 3 article 25.4), "negative influence" (part 4 article 25.1) "immediately" (part 1 article 28.5, part 2 article 28.7, part 2 and 4 article 28.8, part 1 article 29.11, part 1 article 30.8, article 31.1, part 1 article 32.8, part 1 article 32.11, part 1 article 32.11), etc.

4. Doctrinal beliefs on the law are represented by the various forms of external expression: concepts, doctrines, theories reflecting the process and the result of the nomination and justification of scientific ideas, opinions, hypotheses and beliefs about the essence of law, its interrelation with other phenomena of the world around us. These forms, in their general semantic meaning, are very close to each other, because with this or that degree of completeness and fundamentality with help of various cognitive means (principles, concepts, structures and terms) and logically-epistemological procedures (analysis and synthesis, abduction and deduction) form abstract (intellective) model of positive law.

This model is a doctrine of law – a generic concept that covers all the totality of legal and scientific interpretations and beliefs about positive law, within the framework of which develop and justify legal and cognitive forms of learning of law and legal phenomena, principles, concepts, terms, structures, methods, means and techniques of understanding and interpretation of positive law: its sources, system, structure, operation and application, violation and restoration.

Doctrinal factor of law-making in general and administrative law in particular – is a complex process of mutual movement to each other of scientific thought and the will of legislator that influence on transformation, transition of doctrinal beliefs in legal definitions and vice versa. This "joining bridge between legal doctrine and positive law" [22, 22] is actively being built, as evidenced by the increased

interest of legal scholars to the conceptual build of their science, to understanding the prospects for the consolidation of doctrinal beliefs about the law and their legal interpretations in normative legal acts [12 ; 27; 26, 92-97; 21, 5-41; 14, 112-117]. However, the end of the "building" is far away.

On the one hand, there are no matching interpretations of such fundamental concepts as "executive authority", "public administration", "administrative justice", "administrative legal proceedings", "administrative responsibility" and "administrative procedure" in the administrative-legal science, also there are no formed scientific views about the essence of control and supervision in activities of public administration, the essence, content and subjects of law enforcement activity, specific signs of law enforcement service and many other concepts, on the basis of which forms and develops administrative law as a science, branch of legislation and training discipline. On the other hand, many proposals of the scientific community on the issues of administrative reform, formation of administrative courts, improving the current legislation for the most part remain unclaimed.

It is rather hard to change the attitude of the legislator to the science, especially when different not relevant to science factors often hide behind the failure to accept these or those scientific ideas. It is easier to raise the quality of scientific research.

Taking into account that doctrine is one of the driving forces of the rising from generation to generation diachronic process of accumulation and assimilation of social and regulatory information, improvement the quality of research is connected with the elimination of a certain gap in the continuity of administrative and legal knowledge. So, issues such as "citizen and management apparatus", "public participation in public administration" that were being actively researched in past years [20] "evaporated" from the science of administrative law. This is all the more strange that exactly in Russia in the XIX century formulated the idea of the participation of citizens in public administration [11], formed the concept of "active citizenship" of A. I. Elistratov [16].

The continuity of scientific knowledge is not identical to the mechanical transfer to the present days all the ideas and theories that have emerged in the long history of development of modern administrative law. The fact, that its origins lie in the cameralistics and police law, does not mean that the modern administrative law should be positioned as a set of rules "determining the forms and procedures for police and fiscal activities of the state, enshrining the list of administrative offenses and establishing penalties for them" [25 , 10], reduced to the implementation of

legal regulation solely through peremptory methods "based on the security agencies of the state and on the measures of state coercion" [25, 11].

Scrupulous selection of the ideas, views, forms, and methods of legal regulation that ensure the positive development of administrative law, increasing the efficiency of public administration and the formation of an effective system of control over the activities of administrative bodies and their officials should become an alternative to such theoretical constructs.

5. There are also state doctrines, which are official policy documents (acts) that form the doctrinal and conceptual foundations of state policy in various spheres of society, along with legal doctrines as some abstract models of positive law that, according to L. I. Petrazhitskii, reflect "the right of accepted by science opinions" (communis doctorum opinion) [23, 463]. The situation with such documents (author's note. Currently, there are eight doctrines: Food Supply Security, Maritime Doctrine for the period up to 2020, Information Security Doctrine, the Doctrine of the Development of Russian Science, the National Doctrine of Education, Environmental Doctrine, the Doctrine of Secondary Medical and Pharmaceutical Education), which have recently been added with "concepts", "strategies", "basic directions of policy", "national projects", "programs" (presidential, federal, federal targeted, state, departmental targeted and special ones), can be hardly called otherwise as legal chaos, because against the background of increasing their number the level of requirements for the form, content, and functionality of these documents does not increase:

- they do not correlate to each other, and it is impossible to understand why, in one case accept doctrine, the other – concept, and the third – strategy.

- there is no generally accepted procedure of approval and entry into force of these documents: they can be endorsed or approved by a Decree of the President of the Russian Federation, or simply approved by him without issuing a special act; approved by a Order or Decision of the Government of the Russian Federation, endorsed by it, besides in the texts of a document and order (decision) may refer to the various forms of legal authorization;

- taken at the level of federal departments close in content documents may have differing names (concept, program) and be put into effect (approved, endorsed) by various acts (orders, decrees, decisions of boards).

It is almost impossible to count the exact number of such documents, functioning at different levels, from federal to municipal. Note, that there are five strategies adopted only by the Decree of the President of the Russian Federation ("On the National Strategy on Actions for Children for 2012-2017", "On the Strategy of

the State Ethnic Policy of the Russian Federation for the period up to 2025", "On Approval of the Strategy of the State Anti-Drug Policy of the Russian Federation up to 2020", "On the National Anti-corruption Strategy and the National Anti-corruption Plan for 2010-2011"," On the Strategy of National Security of the Russian Federation until 2020").

Noteworthy is the fact that the process of developing and approving strategic, program documents of the doctrinal level focused on ensuring national security does not involve Parliament, when, in fact, this is a legislative and representative body of state power.

At first glance, the above-mentioned nuances of creating doctrinal documents are not so significant and relate primarily to technical and legal aspects. In fact, this situation not only violates the rules of legislative technique, the procedures for preparing and approving acts of government, but also interferes with the normal functioning of public-law institutes of government, especially executive authority, forcing officials of the managerial apparatus to engage in preparing documents with names of "obscure etymology".

Recently, the existing types of "strategic-oriented" acts of "obscure etymology" have been enriched with so-called "road maps". As follows from a number of normative legal acts of the federal and regional level, "road map" is a plan for solving various problems, including in the field of public and municipal administration [7; 9; 10], economics and business [17, 24 - 34]. The question is: what for traditional algorithmic methods of administrative-legal control (strategic, current and long-term plans) to name by new terms without explaining their essence? May be for replacing real programs of actions by "protocols of intent"? Sometimes it seems that in the field of public administration, administrative-legal regulation, for various reasons, emerges a fashion for a particular term, concept or organizational-legal form that gives rise among the leaders of various authorities – from a Federal Ministry up to a municipal formation – for a hardly-suppressed urge to conform it.

We again repeat after Vladimir Putin's assessment of the programmes for the resettlement of dilapidated housing [13]: "What for to adopt such documents? To deceive ourselves and lead to ambiguousness?" Perhaps, in order to stop "deceive ourselves and lead to ambiguousness " it is advisable to establish a kind of moratorium on such passion for fashion that conceals the danger of substituting the inner content of administrative-legal regulation by external respectability of decisions.

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Bashlakov-Nikolaev I. V.

ABOUT THE MODEL OF ADMINISTRATIVE RESPONSIBILITY OF INDIVIDUAL ENTREPRENEURS IN PROTECTION OF COMPETITION

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Here are considered the legal foundations for administrative prosecution of an individual entrepreneur or other individual associated with the violation of the prohibitions established by the Law on Protection of Competition on the grounds of committing administrative offences by these persons. The author substantiates the referring of the mentioned persons in the event of different administrative offences to the different categories of subjects of administrative responsibility – legal persons or officials.

Keywords: administrative and legal protection of competition, administrative responsibility, individual entrepreneur, administrative responsibility of an individual entrepreneur.

In accordance with part 1 article 37 of the Federal Law No. 135-FL from 26.07.2006 "On Protection of Competition" [3] (hereinafter – the Law on Protection of Competition) commercial and non-profit organizations and their officials, individuals, including individual entrepreneurs, are liable for violation of antitrust legislation under the legislation of the Russian Federation.

For violation of antitrust legislation provide for preclusive [13, 146] (restorative justice [10, 679]) responsibility in the form of execution of the requirements of antimonopoly body (article 23 of the Law on Protection of Competition), penalty responsibility in accordance with the Code on Administrative Offences of the Russian Federation [2] (hereinafter – CAO RF), as well as penalty responsibility in the form of transfer to the federal budget of income received as a result of antimonopoly legislation violation [9] (subparagraph "j" paragraph 2 part 1 article 23 of the Law on Protection of Competition).

In accordance with paragraph 5 article 4 of the Law on Protection of Competition, economic units are: a commercial organization; a non-commercial organization involved in an income-generating activity; an individual entrepreneur; another physical person that is not registered as an individual entrepreneur, but is involved in a professional income-generating activity, in accordance with the federal laws on the basis of state registration and (or) a license as well as due to membership in a self-regulated organization.

Economic units that are legal entities, whether they are commercial or non-profit organizations, are subject to administrative responsibility in accordance with the provisions of article 2.1 of the CAO RF. If an economic unit is an individual entrepreneur, it is brought to administrative responsibility as an official (in accordance with the last sentence of the note to article 2.4 of the CAO RF), unless CAO RF provides otherwise (for the sphere of protection of competition CAO RF does not provide otherwise). If an economic unit is another individual who is not registered as an individual entrepreneur, but performing activities that generate income, such person shall also be subject to administrative responsibility as an official.

CAO RF specially does not regulate the rules of bringing such persons to administrative responsibility. However, the last sentence of the note to article 2.4 of the CAO RF contains a wordings, according to which all persons engaged in entrepreneurial activities without forming a legal entity that have committed administrative offenses bear administrative responsibility as officials, if CAO RF does not provide otherwise.

Consequently, the rules of CAO RF do not differentiate regulation of responsibility of persons engaged in entrepreneurial activities without forming a legal entity, depending on whether a person registered as an entrepreneur or not , or it operates on other grounds, such as on the basis of a license, membership in self-regulatory organizations and etc.

It should be noted that all the restrictions in the sphere of protection of competition, including those, infringement of which leads to administrative responsibility

pursuant to CAO RF, are established for economic units without dividing them into categories. These are the bans established by the following articles of the Law on Protection of Competition: Prohibition of Abuse of Dominant Position by an Economic Entity (article 10); Prohibition on Competition-Restricting Agreements between Economic Entities (article 11); Prohibition on Competition-Restricting Concerted Actions of Economic Entities (article 11.1); Prohibition of Unfair Competition (article 14); Prohibition on Actions Carried out on Biddings and in Request for Quotes, Which can Lead to Restriction of Competition (article 17); Prohibition of Competition-Restrictive Agreements between Economic Entities and Public Authorities (article 16).

Articles of CAO RF, in which penalties are imposed for violations of antitrust legislation, named also after antitrust prohibitions: article 14.31 "Abuse of the dominating position on the commodity market", 14.31.1 "Abuse of the dominating position by an economic entity whose share in the market for a particular commodity is less than 35 percent", 14.32 "Conclusion of a competition-restricting agreement, carrying out of competition-restricting actions, coordination of economic activity", 14.33 "Unfair competition". These prohibitions are addressed to economic entities.

However, not economic entities are mentioned as the subjects of administrative responsibility provided for violation of antitrust legislation in accordance with CAO RF, but legal entities and officials, what corresponds to the model of administrative responsibility established by CAO RF. Moreover, economic entities that are not legal persons, on the basis of the note to article 2.4 of CAO RF, are given the status equal to officials.

Thus, persons engaged in entrepreneurial activity or income generating activity in relations regulated by the Law on Protection of Competition have the rights and responsibilities of an economic entity, and in relations regulated by CAO RF – of an official.

Also it should be noted that the Law on Protection of Competition refers an individual entrepreneur to individuals in all cases when it comes to the duties and rights of individual entrepreneurs, as well as the powers of antimonopoly bodies. Exceptions are made only in a few cases, when the Law on Protection of Competition puts in the foreground not affiliation of an individual entrepreneur to individuals, but the fact of its engagement in business activities or professional income-generating activity.

This approach is used in the definition of an economic entity (paragraph 5 article 4 of the Law on Protection of Competition). In addition, in paragraph 2 of article 25.1 of the Law on Protection of Competition indicate on the basis of inspec-

tion of an individual entrepreneur – expiration of three years from the date of state registration of an individual entrepreneur.

In paragraphs 16 and 17 part 5 article 32 of the Law on Protection of Competition establish different approaches applied for inclusion in the group of persons of individual entrepreneurs and individuals who are not individual entrepreneurs. The difference in approaches is exactly associated with relation towards entrepreneurship.

For violation of the prohibitions in the sphere of protection of competition, in accordance with article 3.2 of CAO RF, the following administrative penalties may be provided for:

for legal entities – warning, an administrative fine; for individual entrepreneurs – warning, administrative fine and disqualification.

Disqualification, in accordance with part 1 article 3.11, is a depriving of the right to hold positions in the executive body of a legal person management, carry out entrepreneurial activity for management of a legal person, as well as to manage a legal person in other cases stipulated by the legislation of the Russian Federation. Disqualification pursuant to part 3 article 3.11 of CAO RF is applied to an individual entrepreneur, as well as to persons engaged in business without forming a legal entity.

It should be noted that an individual entrepreneur, on the one hand, is an entity carrying out entrepreneurial activity, but without forming a legal entity. I.e. individual entrepreneur is a form of realization of enterprise activity. On the other hand, the individual entrepreneur at the same time exercises organizational and instructive functions when carrying out entrepreneurial activity, just like the head of a legal entity. Disqualification as an administrative penalty is expressed in the procedure of deprivation just a right to manage the business, but must not affect property rights of a person engaged in entrepreneurial activity.

For a legal entity that is exactly what is happening. Deprivation of a legal entity's head of the right to exercise leadership in this legal entity does not affect the property rights of the legal entity. Due to the fact that an individual entrepreneur combines property origin and management function, application to an individual entrepreneur disqualification procedure leads to the impossibility of their engagement in business in the form of an individual entrepreneur. Analogy of disqualification applied to an individual entrepreneur, for a legal entity would be the procedure of prohibition activity of the legal person.

Thus, in the field of protection of competition for the two types of economic entities – legal entities and individual entrepreneurs we have different models of

bringing to administrative responsibility, and, in addition, disqualification can be applied to individual entrepreneurs.

A. V. Kirin [8, 287] believes that individual entrepreneurs have been equated with officials for simplification the design of sanctions of offenses, where possible subjects may be also legal entities and officials. In the opinion of this author, the equating sanctions for individual entrepreneurs with sanctions of officials, increased in comparison with individuals, is due to the need of revival the class of small entrepreneurs after 70 years of repression and subsequent oblivion.

P. P. Serkov believes that the inclusion of an individual entrepreneur in the category of officials and refusing of independent differentiation of such category of persons as a subject of administrative offense was fully justified [12, 85].

In accordance with CAO RF, in a number of cases individual entrepreneurs are brought to administrative responsibility not as officials, but as legal entities. Such a possibility is provided for in the norm of the last sentence of the note to article 2.4 of CAO RF. So, according to this norm, persons engaged in entrepreneurial activity without forming a legal entity, who have committed administrative offences, shall be brought to administrative responsibility as officials, if CAO RF does not provide otherwise. Moreover, exceptions in the model of responsibility of an individual entrepreneur as an official and the transition to responsibility of a legal entity were made by the Federal Law No. 160-FL from July 17, 2009 [4]. For example, in accordance with note 1 to article 7.34 of CAO RF, it is stated that citizens carrying out entrepreneur activity without formation of a legal entity shall bear administrative responsibility as legal entities.

It should be noted that at present in the field of protection of competition CAO RF does not establishes cases of application administrative responsibility to individual entrepreneurs, which is applied to legal persons. I.e. in the field of protection of competition otherwise is not stipulated.

Referring to the retreat of the legislator from the responsibility of an individual entrepreneur as an official to its responsibility as of a legal entity, B. V. Rossinskii believes that this concept will be developing [11, 625].

A. V. Kirin [8, 288] points to the inconsistency of the status of an individual entrepreneur in administrative-legal relations, who is, on the one hand, equated to the officials under article 2.4 CAO RF, with the possibility of applying such a sanction as disqualification. On the other hand, under the provisions of article 3.12 of CAO RF and under the sanctions of many articles of CAO RF, is equated to legal entities, with the possibility to apply a special type of punishment – an administrative suspension of activities.

In the light of the foregoing A. V. Kirin believes that ultimately the concept of an official and an individual entrepreneur must be meaningfully and structurally separated in CAO RF [8, 290].

Necessary to set goals and the reason why the legislator in the model of administrative responsibility started to retreat from equating an individual entrepreneur with an official to equating with a legal entity. Whether such a departure is connected only with the increased sanction or with all elements of administrative responsibility, including with the foundations of responsibility?

For legal entities and individual entrepreneurs, as physical entities, different presumptions have been established. For an individual entrepreneur who has traits of an individual, under article 1.5 of CAO RF provide for the presumption of innocence. In conformity with article 2.1 of CAO RF a legal person is considered guilty of an administrative offense if it is established that it had the possibility to comply with the rules and regulations, for violation of which CAO RF provides for administrative responsibility, but the person did not take all the measures to comply with them, it moves away from the presumption of innocence.

A. V. Kirin believes that the Civil Code of the RF enshrines the presumption of guilt of a legal entity for the improper performance of its obligations, but this position allows the entity to rebut the presumption if the subjective aspect of an offense has been determined [8, 296].

It should be noted that for the actions of a legal entity and an individual entrepreneur establish different limits of civil responsibility. This difference may cause that the aggregate liability of an individual entrepreneur may exceed the amount of the property belonging to him, unlike a legal person.

In accordance with part 1 article 23 of the Civil Code of the Russian Federation [1] (hereinafter – CC RF), a citizen shall have the right to engage in entrepreneurial activities without forming a legal entity from the moment of its state registration in the capacity of an individual entrepreneur. According to article 24 of CC RF, a citizen shall bear responsibility for its obligations with its entire property, with the exception of that property, upon which, in conformity with the law, no penalty may be imposed. Under part 1 article 25 of CC RF, an individual entrepreneur, who is incapable of satisfying its creditors' claims, related to performance of its business activities, may be recognized as insolvent (bankrupt) by court decision.

In accordance with article 48 of CC RF, legal person may have separate property in its ownership, economic management or operative management, is answerable for its obligations with this property, may on its own behalf acquire

and exercise property and the personal non-property rights, bear duties and perform as a plaintiff and as a defendant in court.

The difference in the models of administrative responsibility of an individual entrepreneur and legal entity is due to the fact that an individual entrepreneur shall be liable for its obligations with all its assets, and a legal entity just with its separate property.

These features define the fact that at bringing to civil-law responsibility, which may follow after bringing to administrative responsibility, individual entrepreneurs, except penalty sanction, may be subject to an exaction in civil-law procedure. At that, the amount of exaction can range up to the amount of the value of all the property of an individual businessman.

This feature can also be the basis of different approaches when setting the model of administrative responsibility and the amount of sanctions for individual entrepreneurs and legal entities.

Assumption on the difference of magnitude of the harm that may be inflicted by an individual entrepreneur and a legal person in the commission of an administrative offense can be the justification of the establishment of different models of administrative responsibility for legal persons and individual entrepreneurs.

For legal persons articles 14.31-14.33 of CAO RF establish sanctions in the form of turnover-based fine (paragraph 3 part 1 article 3.5 CAO RF), and for individual entrepreneurs apply penalties established for officials in the form of a fixed fine.

There is established a differentiated approach to punishment in the sanctions enshrined in the form of a turnover-based fine for legal persons, depending on the turnover of an economic entity in the market, in which the infringement of antitrust legislation occurred. This approach is justified economically and looks fair. However, in the event when a violation of the antimonopoly legislation has been committed by an individual entrepreneur, the sanction, to be applied to it, depends on its generic affiliation to an physical person, not related to its economic activity and not related to its turnover on the commodity market, where the infringement of antitrust legislation took place. Such an approach seems not quite fair.

The issues of compliance with the principles of fairness in imposing penalties are repeatedly considered by the Constitutional Court of the Russian Federation. So, in paragraph 4 of the Decision No. 1-P from 17.01.2013 [7] the Constitutional Court of the Russian Federation referring to the legal position of the Constitutional Court of the Russian Federation, which has been articulated in the Decision No. 11-P from July 15, 1999 [5], has pointed out that the constitutional requirements

of fairness and proportionality predetermine differentiation of public-law responsibility depending on the severity of an offense, the amount and nature of the damage caused, the degree of culpability of the offender and other important factors that determine individualization and application of these or other measures of state coercion.

In addition, in furtherance of this legal position the Constitutional Court of the Russian Federation in its Decision No. 8-P from May 27, 2008 [6] has pointed out that the measures established in the criminal law in order to protect the constitutionally significant values should be defined on the basis of the requirements of adequacy of generated by them consequences (including the person against whom they are applied) to the harm that is inflicted by a criminal act, for the purpose of ensuring: the proportionality of measures of criminal punishment to a committed crime, as well as the balance of the basic rights of an individual and the general interest, which consists of protection of personality and society against criminal encroachments. The mentioned legal position of the Constitutional Court of the Russian Federation, in accordance with the instruction contained in the Decision No. 1-P from 17.01.2013 [7], is applied to the administrative responsibility of legal persons, however, taking into account their specificity as subjects of law.

Based on the above, as well as on the specified by the Constitutional Court of the Russian Federation principle of adequacy of the measures of impact to the harm inflicted by a deed, it seems appropriate that administrative responsibility in the field of protection of competition for individual entrepreneurs has been changed.

Thus, for abuse of dominant position by an economic entity at market, competition-restrictive agreements between economic entities and public authorities at market, as well as for unfair competition individual entrepreneurs must be brought to responsibility:

as legal persons, if a "turnover-based" fine is provided for as a sanction (which is calculated as a percentage);

as officials, if a "fixed" fine is provided for as a sanction.

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THE TOPICAL ISSUES OF LEGAL REGULATION OF THE PRINCIPLES OF PROCEEDINGS ON ADMINISTRATIVE OFFENCES

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The author considers the implementation of fundamental principles of law in the norms of administrative and tort legislation. Here is noted the problems of compliance with these principles in mind of their incomplete regulation in administrative and tort legislation. The article provides author's list of principles of proceedings on administrative offences and substantiation of their enshrining in the Code on Administrative Offences of the Russian Federation.

Keywords: proceedings on administrative offences, principles of legal regulation, principle of legality, principle of publicity, principle of the presumption of innocence, principle of promptness, principle of the right to defense, principle of equality of everyone before the law, principle of national language, adversarial principle, principle of objectivity and impartiality.

In a State governed by the rule of law the principles of legal regulation of these or those social relations are of particular importance. Proceedings on cases of administrative offences, which have a number of fundamental principles, are not an exception. However, at present there is an incomplete legal regulation of these principles. This, in turn, gives rise to the problem of their non-compliance.

The origins of the considered problem, in our view, lie in the absence of a legal definition of the very proceedings on cases of administrative offences. Without entering into a scientific debate regarding this category, by proceedings on cases of administrative offences within this article we will recognize a set of procedural actions aimed at consideration and resolving of particular cases of administrative offenses and at enforcement of a taken decision.

In addition, the main normative-legal document that contains administrative and procedural norms – Code on Administrative Offences of the Russian Federation (hereinafter CAO RF) – does not include the full list of principles of proceedings on administrative offences. This leads to the appearance in the science of administrative-procedural law of set of various principles, as well as their ambiguous interpretation.

In this context, we focus on the analysis of legal regulation and the practice of application of some basic principles of proceedings on cases of administrative offences.

Principle of legality. Being a constitutional and pervading the whole system of social relations that occur in various legal fields, this principle is rightly occupies a central place in all classifications. Briefly, but concisely D. V. Tetkin defined the principle of legality "legality – is such a state of public and state life, which protects an individual from arbitrary power, a lot of people – from anarchy, society as a whole – from violence, the state – from disorganization" [7, 10].

The relevance of the principle of legality for proceedings on cases of administrative offences is due primarily to the authoritative nature of administrative responsibility, which sometimes restricts human rights and freedoms.

The principle of legality is not directly mentioned in the Constitution of the RF, however, it follows from the essence of articles 4, 15, 19, 27, 34, 57 and others. So, part 2 article 4 establishes that the Russian Constitution and Federal Laws have supremacy throughout the Russian Federation. And part 2 article 15 obliges public authorities, local self-government bodies, officials, citizens and their associations to comply with the Constitution of the Russian Federation and laws.

The Constitution contains a number of such wordings, where compliance with the law definitely comes first. For example, in part 1 article 27 the legality of stay within the territory of the Russian Federation is established as a condition of exercising the right to move freely and choose the place of stay and residence.

In CAO RF this principle is reflected in article 1.6, according to which a person held administratively responsible may not be subject to an administrative penalty and to measures for ensuring proceedings in respect of a case concerning

an administrative offence otherwise than for the reasons and in the procedure established by law, exclusively within the competence of a relevant body or official. Loose interpretation of the powers of state bodies and officials is not allowed.

In this regard, it is important to comply with not only the rules of the jurisdiction of cases on administrative offences, but also of the territorial jurisdiction. So, the Russian Supreme Court overturned the verdict of inferior courts, handed down with respect to P. on the case of administrative offence under part 1 article 12.8 CAO RF [2]. Case materials show that P. drove a vehicle while intoxicated. By decision of a justice of peace P. was found guilty. The case was considered at the place of residence of P., however, case materials do not contain a petition of P. on consideration the case at the place of residence. Therefore, the case had to be considered at the place of the administrative offence. In violation of articles 1.6, 29.1, 29.5 and other of CAO RF, the case was considered in violation of the rules of territorial jurisdiction, which resulted in violation of the order of bringing P. to administrative responsibility. "According to the legal position set out in the rulings of the Constitutional Court of the Russian Federation No. 623-O-P from 03.07.2007 and No. 144-O-P from 15.01.2009, a decision taken in violation of jurisdiction rules cannot be regarded as correct, since in contradiction to part 1 article 47 and part 3 article 56 of the Constitution of the Russian Federation it is taken by the court, which is not authorized by law for the consideration of the case, what is an essential (fundamental) violation affecting the outcome of the case and distorting the very essence of justice" [3].

Thus, being the main principle of the functioning of bodies of state power and local self-government, the principle of legality is getting particular importance in administrative and jurisdictional area.

Principle of publicity. This principle is enshrined in article 24.3 of CAO RF under the name "Public hearing of cases concerning administrative offences". Principle of publicity also has a constitutional basis, however, there can be highlighted its features within proceedings on cases of administrative offences.

Because of the principle of publicity cases of administrative offenses under general rule are subject to public hearing. The exception is when an administrative offense, provided for by chapter 12 of CAO RF, has been identified and recorded using automatically operating special technical equipment, which have features of photographing and filming, videotaping, or means of photographing and filming, video recording.

In these cases provide for other procedure for instituting and hearing a case. CAO RF states that in this case the protocol of an administrative offence is not

drawn up, and the decision on a case of an administrative offense shall be taken without participation of the person against whom institute the case on administrative offence and implemented in the manner prescribed by article 29.10 of CAO RF.

Other exceptions to the principle of publicity are if, first, a public hearing of cases on administrative offences may lead to disclosure of state, military, commercial or other secrets protected by law, and, secondly, in cases where it is necessary for safety of persons participating in the proceedings on a case of an administrative offense, their families, their loved ones, and for protection the honor and dignity of these persons.

The law regulates the procedure of recording of consideration of a case on an administrative offence. For example, persons involved in the proceedings on a case of an administrative offense, and the citizens who present at the public hearing concerning an administrative offense shall have the right in writing, as well as by means of audio record to record the course of the proceedings of a case on an administrative offense. Photography, video, broadcast of the public hearing of a case on an administrative offence on radio and television are allowed with the permission of judge or official, who reviews this case of administrative offence.

Principle of presumption of innocence. As a constitutional principle in proceedings on cases of administrative offences the principle acquires new meaning.

So, under general rule, a person brought to administrative responsibility shall be presumed innocent until its guilt is proven in accordance with law. The burden of proof in this case is on the accuser, and the brought to administrative responsibility person is not required to prove its innocence, though it has that right. In case when doubts about the guilt of the person have not been eliminated in the course of proceedings, the decision shall be taken in favor of this person. In other words, any doubt is interpreted in favor of the person brought to administrative responsibility. This conclusion is confirmed by the provisions of the Ruling of the Plenum of the Supreme Court of the Russian Federation [1].

On the other hand, with the development of science and technology, the introduction of information technologies into new spheres of public administration, the situation in respect to the principle of presumption of innocence has changed. After the introduction into control and supervisory activity of Traffic Police of special technical equipment, you can accurately determine the vehicle brand and number plate of the car, whose driver has violated traffic rules. The rule that a person, who has been called to administrative responsibility, is not obliged to prove its innocence does not apply to such cases.

In note to article 1.5 of CAO RF enshrine that the provision of part 3 of this article shall not apply to administrative offences provided for in chapter 12 of CAO RF, if they have been recorded by automatically operating special technical equipment, which have features of photographing and filming, videotaping, or means of photographing and filming, video recording.

But here comes the problem of the following nature. In the case of transfer the right to control vehicle to another person, for example, by power of attorney, the administrative responsibility for offenses in the field of road traffic that is identified by technical means, operating in automatic mode, is imposed on the owner, and not the driver that actually drove the car at the time. In this case, the owner of the car bears the burden of proving its innocence.

Additional workload on administrative jurisdiction bodies is created by cases arising between the Traffic Police and special services, such as ambulance, Fire Department and others.

The drivers of the mentioned special services, in certain circumstances, have the right to violate road rules. With the introduction of technical means of documenting violations they bear the burden of proof the existence of such circumstances.

Principle of promptness. This principle is disclosed, first of all, in timelines of proceedings from the stage of initiation to execution of the decision on a case. This definitely "allows reducing of the time between the moment of commission of an offence and its legal evaluation" [5].

So, for example, the protocol of inspection of place of an administrative offense is drawn up immediately after the detection of the administrative offense (part 2 article 28.1.1), the maximum period of drawing up a protocol on administrative offence, unless an administrative investigation is needed, is two days from the date of detection the administrative offence (article 28.5), the term of conducting an administrative investigation may not exceed one month as of the moment of instituting proceedings on a case concerning an administrative offence (article 28.7). In exceptional cases the said term may be extended, but no longer than 6 months.

The term of consideration of a case on an administrative offence is also fairly concise. So, by virtue of article 29.6 of CAO RF, a case concerning an administrative offence shall be considered within a fifteen-day term by a body or an official authorized to consider the case, and within two months by a judge. Extremely tight deadlines are set for consideration of certain categories of cases.

Terms of execution of decisions on a case are also short. For example, an administrative fine must be paid by the person brought to administrative responsibility, not later than thirty days from the date of entering into legal force of the decision

to impose the administrative fine. Postponement of execution of the decision may be granted for a period not exceeding one month, and installment of payment – up to three months.

Principle of the right to defense. This principle ensures realization of constitutional rights of a person brought to administrative responsibility. The principle of the right of defense is implemented through the possibility of providing evidence of your innocence or providing circumstances mitigating responsibility, the possibility to get acquainted with case materials, to file petitions and demurs, to use in proceedings the assistance of an attorney or other representative.

At that, these rights may be applied not only at the stage of case consideration, but also at the stage of its initiation. In this regard, the Higher Arbitration Court of the RF ordered that: "Procedural actions undertaken in the framework of administrative proceedings involve in their implementation participation of certain persons, to which the current legislation provides a certain amount of procedural rights – not only at the stage of consideration of an administrative case, but also at the stage of drawing up the protocol... Protocol is a basic procedural document that records the fact of an administrative offense and supporting evidences. The obligation of administrative body to notify legal and physical persons about the intention to draw up against them a protocol of an administrative offense and, therefore, the right of such persons to participate in its drawing are due to the value of this stage of the procedure of bringing to administrative responsibility, which as a rule settles the issue of initiation of proceedings on a case of an administrative offence with taking into account submitted explanation, evidences, objections and declared petitions"[4].

Unfortunately, in enforcement practice take place violations of that principle. Illustrative is a case of administrative offence against one legal person of the city of Samara. From the case file is seen that the Territorial Administration of the Federal Service for Financial and Budgetary Oversight in the Samara region, in violation of the right to defense, did not consider the application of the legal entity about postponing the drawing up a protocol on administrative offense, which was motivated by the lack of time to prepare for participation in the drawing of the protocol and also by the fact of location of the head outside of the Samara region. The protocol on administrative offense provided for by part 6 article 15.25 of CAO RF was drawn up in the absence of a representative of the legal entity. HAC RF agreed that these circumstances indicated significant violations of the procedure of bringing the legal entity to administrative responsibility, because administrative body after admission of the petition about postponement of the drawing up the protocol, according

to article 25.1 of CAO RF, was obliged to consider such a petition concerning reasonableness and basing on the results of consideration to take reasoned decision about its satisfaction or the abandonment without satisfaction.

The principle of the right to defense also applies to the victim, who shall be entitled to familiarize itself with all the materials of a case concerning an administrative offence, to give explanations, to present evidence, to file petitions and demurs, to use the legal assistance of a representative, to appeal against a decision on this case, and to enjoy other procedural rights in compliance with CAO RF (article 25.2 CAO RF).

Principle of equality of everyone before the law. The RF Constitution establishes: "Everyone is equal before the law", which means equality of rights and freedoms of man and citizen regardless of gender, race, nationality, language, origin, property and official status, place of residence, attitude to religion, convictions, affiliation to public associations, as well as other circumstances. Any forms of restriction of the rights of citizens on the grounds of social, racial, national, language or religious affiliation are prohibited" (article 19).

This principle also means the equality of all legal persons, regardless of location, organizational and legal forms, subordination, as well as other circumstances.

Due to the nature of proceedings on administrative offences, this principle should be understood as the equality of all before the law and subject of administrative jurisdiction who considers the case.

And yet, there is an exception in the provisions of this principle, which relates to the establishment of special conditions of application the measures to ensure proceedings and to bring to administrative responsibility officials who perform certain public functions (deputies, prosecutors, judges and other persons).

Principle of national language. CAO RF establishes the principle of national language (article 24.2). This principle means that proceedings in cases concerning administrative offenses shall be carried out in the Russian language, as the state language of the Russian Federation. There is an exception for the republics of the Russian Federation – judges, bodies, officials empowered to consider cases on administrative offences are granted the right to conduct proceedings on administrative offences in the state language of the Republic, on whose territory they are situated.

Another aspect of this principle is the right of persons participating in proceedings on a case concerning an administrative offence and having no command of the language, in which the proceedings on the case are carried out, to speak and to give explanations, to file petitions and demurs, and to make complaints in native

language or in any other language freely chosen by the said persons, as well as to use the services of a translator.

Adversarial principle. This principle is not enshrined in the CAO RF, but it follows from the essence of proceedings on cases of administrative offences, that is why scientists call it one of the most important.

For example, there is a note in the literature that "CAO RF does not contain provisions on the fact that consideration and resolution of cases on administrative offences is carried out on the basis of competitiveness, what, of course, should be seen as a gap. And yet we cannot ignore the fact that CAO RF provides the persons involved in a case a significant scope of rights to defend their position in consideration and resolution of an administrative case, what lets us talk about the presence of an adversarial principle in administrative and jurisdictional process".

Adversarial principle is inherent in all types of legal proceedings in Russia. It is expressed through the right of a person brought to administrative responsibility to get acquainted with a case file, submit evidence, file petitions, give explanations, appeal against the judgment on a case, and through the duty of bodies (or officials) authorized to consider cases on administrative offenses to accept for consideration and resolution these applications, petitions and complaints filed.

Adversarial principle also suggests the duty of relevant authorities to watch parties to made good use of rights granted to them and their duties in order to protect the interests protected by law [6, 39].

Principle of objectivity and impartiality. This principle guarantees full, comprehensive consideration of a case, and an objective assessment of all the evidences in the case. Despite the fact that evidences in a case are assessed by court (body or official) by inner conviction, the State guarantees their objectivity. And conclusions of a decision taken on a case of an administrative offense should be motivated and based on circumstances and facts identified in the course of case proceedings.

Moreover, a judge, member of a collegiate body, or official, which has received a case concerning an administrative offence, may not review this case, when this person:

1) is a relative of the individual, who is put on trial in connection with an administrative offence, of the victim, of a lawful representative of a natural person or a legal entity, of a defense counsel or of a representative;

2) is personally, directly or indirectly interested in the outcome of the case (article 29.2 CAO RF).

In the science also talk about the other principles of proceedings on cases of administrative offences, such as the principle of direct proceedings, two-step

principle, the principle of the free exercise of material and procedural rights by the parties to legal proceedings, the principle of comprehensive study of case circumstances, the principle of cost-efficiency, the principle of protection the interests of the state and an individual and others.

Thus, the issue of the principles of proceedings on cases of administrative offences is one of the most important, because the observance of principles in administrative and jurisdictional activities largely determines the compliance with basic human rights and freedoms.

In this regard, we consider it necessary to regulate at the legislative level the content of the principles of proceedings on cases of administrative offences through specific amending the Code on Administrative Offences of the RF.

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QUALIFICATION OF SEPARATE COMPOSITIONS OF ADMINISTRATIVE OFFENCES ENCROACHING ON THE INSTITUTES OF STATE POWER IN THE REPUBLIC OF KAZAKHSTAN

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The authors investigate issues related to the interpretation and enforcement of individual administrative-tort norms that contain established order of activities (operation) of the bodies of state power as an object of infringement. They note the regularity of detailed description of the character of objective aspect in the dispositions of articles of the special part of the Administrative Violations Code of the Republic of Kazakhstan. Here is argued that such a legislative technique eliminates a lot of problems in enforcement activity of a huge number of administrative and jurisdictional authorities, officials of which, for the most part, do not have an appropriate legal education and basic skills to determine unlawfulness in a person's conduct.

Keywords: administrative offence, composition of an administrative offence, generic objects of encroachment, objective aspect of an administrative offence, qualification of offences.

Improving the efficiency of rule-making activity is one of the main goals of the Concept of Legal Policy of the Republic of Kazakhstan. The need for further work on the systematization of the current legislation, consolidation by branches of

the legislation, its release from obsolete and duplicating norms, filling gaps in legal regulation, elimination of internal contradictions in the current law are identified in the concept. There is emphasized the relevance of minimization the reference rules in laws and expanding the practice of adoption of directly applicable laws within the range of issues, on which, in accordance with the Constitution, legislative acts can be taken.

These priorities determine the value of studies in the legislation of the Republic of Kazakhstan on Administrative Offences of issues related to the interpretation and enforcement of individual administrative-tort norms and the established procedure for exercising of administrative and jurisdictional activity.

For example, in chapter 29 of the Administrative Violations Code of the Republic of Kazakhstan, on the grounds of generic objects of infringements, combine administrative offences, which threaten to the institutes of state power under articles 513-531 [1].

Objects specified in this chapter are: administration of justice (activity of courts), legitimate activity of a lawyer, prosecutor, investigator, interrogator, bailiff, officer of justice and others.

In the considered chapter of the Code, there are interesting for us articles: 522 – "Obstruction of the lawful activity of a prosecutor, investigator, interrogator, officer of justice, bailiff"; 525 – "Failure to fulfill orders and other legal requirements of an officer of justice, bailiff"; 526 – "Non-informing of an officer of justice about the change of employment and residence of a person from whom child support is collected"; 528 – "Obstruction to an officer of justice, bailiff in execution of the decisions of courts and other bodies".

Analyzing the content of the above formulations, attention should be drawn to article 522 of the Administrative Violations Code of the Republic of Kazakhstan:

- part 1: "Obstruction of the lawful activity of a prosecutor, investigator, interrogator, officer of justice, bailiff, expressed in the refusal to the unimpeded with the presentation of a warrant card access to a building, room or territory of a state body, organization, regardless of ownership, as well as refusal of the submission of the required documents, materials, statistical and other information, inspections, audits, examinations and allocation of specialists – entails a warning or a fine on officials in the amount of up to twenty monthly calculation indices or administrative detention for up to five days".

- part 2: "Willful failure to comply with the requirements of a prosecutor, investigator, interrogator, officer of justice posed on the grounds and in the manner prescribed by law – entails a fine for individuals in the amount of one to three, for

officials – in the amount of ten to fifty monthly calculation indices or administrative detention for up to ten days".

The object of infringement of that article combines a wide range of established order of activity (functioning) of public authorities (prosecutors, investigators, bailiffs and officers of justice).

Objective aspect is expressed through obstructing the legitimate activities of the above-mentioned bodies, which is accomplished by the refusal to the unimpeded with the presentation of a warrant card access to a building, room or territory of a state body, organization, regardless of ownership, as well as refusal of the submission of the required documents, materials, statistical and other information, inspections, audits, examinations and allocation of specialists.

Subjective aspect of part 1 of this article specifies the form of careless fault. Sanction determines an official as a subject.

Part two of the above article, unlike the first one, provides for responsibility for deliberate form of guilt (for the purpose of hiding documents and materials in order to avoid an audit, and so on). Both physical person and official are determined as a subject.

There are some questions. In particular, with regard to the subjects of responsibility determined in sanctions of part 1 and 2 of this article. At that, in article the form of guilt acts as a qualifying feature.

Why does in the first part the legislator indicate as a subject only an official? Or, according to the legislator, physical persons are liable only in the event of deliberate forms of guilt? What does the legislator have in mind under the form of subjective aspect in this article? Is it possible to "carelessly" deny the representative of authorities to exercise its lawful actions? With that, it should be noted that in some cases, the Administrative Violations Code of the Republic of Kazakhstan qualifies the refuse to exercise legitimate orders or requirements of the prosecutors, employees of internal affairs bodies and etc. as "malicious disobedience" (under part 2 article 355 of AVCRK). In addition, in the disposition of part 2 article 522 of the Administrative Violations Code of the Republic of Kazakhstan somehow suddenly "poor bailiffs" fall out of the "glorious State guard"!

Should be noted that in articles 525, 526 and 528 of the Administrative Violations Code of the Republic of Kazakhstan legislator determines object of infringement similar to one in article 522. The difference of the three subsequent formulations mostly deals with the objective aspect.

So, in article 525 of the Administrative Violations Code of the Republic of Kazakhstan it is expressed in non-performance by officials and individuals, without

reasonable excuse, of rulings and lawful requirements of an officer of justice related to the exercising of an executive document, including on the submission in a term designated to them the information about the debtor's place of employment and income, retention under order of the court and other bodies and sending collected sum to the recoverer, on levy of execution on funds and property of the debtor held by other individuals and legal entities, or failure to report information about the dismissal of the debtor, about its new place of work or residence, if it knows (in part one). In the submission to the officer of justice of knowingly false information, including on the income and property status of the debtor. It should be noted that from part 2 article 522 in part 3 article 525 of the Administrative Violations Code of the Republic of Kazakhstan after all gets the "lost" norm on responsibility for failure to comply with the legitimate requirements of a bailiff.

Objective aspect of article 526 of the Administrative Violations Code of the Republic of Kazakhstan is expressed in failing to report without valid excuse by an official of an organization that carries out withholding child support, disabled parents support, wife (husband) support under executive document issued on the ground of a court order within a month to an officer of justice and the person receiving alimony about dismissal from work of the person that shall pay the alimony, as well as about its new place of work and residence, if it knows.

Objective aspect of article 528 of the Administrative Violations Code of the Republic of Kazakhstan is expressed in preventing by individuals and officials of organizations a commission by an officer of justice, bailiff actions for levy of execution on property (inventory, assessment, seizure, and bidding) or refusal, in this regard, to perform its requirements. As we can see, in fact, the above actions are detailed only by the subject of execution proceedings. However, we do not consider it appropriate to merge the articles into one article – 522.

Such a detailed description of the nature of the objective aspect in the dispositions of articles of the special part of the Administrative Violations Code of the Republic of Kazakhstan is not accidental. In practice, this technique removes a lot of problems in enforcement activity of a huge number of administrative and jurisdictional bodies, officials of which, for the most part, do not have the appropriate legal education, basic skills to determine the unlawfulness of person's conduct. For example, similar offences in transport, public roads and communications set out in the AVCRK, where almost every paragraph of violations of Driving Regulations of the Republic of Kazakhstan provides for a separate article – composition of an administrative offence.

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TOWARDS THE ISSUE OF IMPROVEMENT OF LEGAL NORMS THAT REGULATE PROCEEDINGS ON CASES OF ADMINISTRATIVE OFFENCES IN FOREST MANAGEMENT

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The features of proceedings on an administrative offence committed in the field of forest management are considered in the article. Here are noted problematic issues of institution of proceedings on an administrative offense in forest management, including the lack of proper normative legal regulation. Attention is focused on the lack of correlation of the legal norms of administrative-tort legislation with the provisions of the Forest Code of the Russian Federation. The Russian Federation is substantiated as an injured subject in cases on administrative offences in the field of forest management.

Keywords: forest management/use, administrative offences in the field of forest management, state forest supervision, location of an offence, proceedings on a case on administrative offence, measures to ensure proceedings on a case.

Russia is the largest forest state. Forests occupy 779 million hectares, accounting for almost half of Russia territory, and about one-quarter of the world's forest resources. Forest resources have a significant impact on the economy of more than 40 subjects of the Russian Federation, in which forest industry products ranges from 10 to 50% of the overall volume of industrial products. It should be noted that about 94 per cent of the forests grow on the lands of forestry fund.

Statistical data of state bodies exercising state supervision of forest (forest service) show an increase in administrative violations in the field of forest use.

If in 2008-2009 in the first place were violations of fire safety in forests (48-50% of the total number of administrative offences of forest legislation), the second place – illegal felling of trees (26-34%), then in 2010-2011 in the first place – improper use of forests (37%), violations of fire safety in forests amounted 31%, illegal felling of trees – 12%.

In connection with this, the issues of bringing persons to administrative responsibility for administrative offences in the area of forest use are especially relevant.

Realization of administrative responsibility for offences in the sphere of forest management is largely depended on skilled and competent actions of authorized officials at the stage of instituting legal proceedings on administrative offences of this category.

The stage of instituting proceedings on an administrative offence in the sphere of forest management is a set of procedural activities aimed at:

1) the identification of circumstances of the offence;

2) collecting evidences on the case;

3) the procedural implementation of the fact of administrative offence committing.

The stage under consideration creates conditions for an objective, timely and comprehensive case review and application of coercive measures to the offender. It should be noted that in the legal literature the stage of initiation proceedings is divided into four phases:

1) taking decision on the start of proceedings on a case and procedural implementation of such decision;

2) determining of the actual circumstances of a committed administrative offense (including by means of administrative investigation);

3) recording the fact of committing an administrative offense in a procedural document (drawing up a protocol on administrative offence, sentencing verdict to impose punishment);

4) submission of case materials for consideration according to jurisdiction [8, 120; 7, 470; 6, 423].

State forest inspector is an official that has the right to institute proceedings on administrative offences in the field of forest management, its administrative and procedural status is defined by the norms of the Code on Administrative Offences of the RF (CAO RF), article 96 of the Forest Code of the RF [2] and etc.

At the stage of taking decision to initiate proceedings on a case and procedural implementation of this decision, according to part 1 article 28.1 of the Code on Administrative Offences of the RF, the arguments of the institution of proceedings on administrative offences in the field of forest management are:

- direct detection by the officials authorized to draw up protocols on administrative offenses any sufficient data indicating the actual occurrence of an administrative offence;
- materials containing data indicating the actual occurrence of an administrative offence that are received from law enforcement agencies, as well as other state bodies, local self-government bodies and public associations;
- reports and statements of physical and legal entities, as well as reports in the media containing the data that indicate the actual occurrence of an administrative offence (part 1 of article 28.1 of the Code on Administrative Offences of the RF).

The peculiarity of the institution of proceedings on an administrative offence in the field of forest management is determined by the place of the offense – it is forest plot of forestry fund far away from populated areas. So, more often the reason for the institution of proceedings on cases in this category is the direct detection by a state forest inspector during the implementation of state forest supervision and (or) patrolling forests of sufficient evidences indicating the existence of an administrative offense.

With the direct detection of sufficient data indicating the occurrence of an administrative offense, an official authorized to draw up protocols on administrative offenses at the place of detection of the offense conducts preliminary proceedings with the person who has committed (is committing) the wrongful act. As part of the preliminary proceedings, this official shall take the necessary measures to stop the offense, while applying the necessary measures of administrative restraint (requires discontinuation of the offense, applies physical force, special means). Then, having made certain of the availability of statutory signs of an administrative offense and that there are no circumstances that exclude proceedings on an administrative offense (article 24.5 CAO RF), on the basis of the available information it makes the decision to initiate the proceedings on an administrative offense and to draw up the protocol on an administrative offence. And when such a decision has been taken, after that it applies measures providing proceedings on the case, including delivery.

Peculiarity of offenses in the sphere of forest management is a place, in which they occur, – forest plot, forestry fund, which are located at a distance from

settlements. Not everybody who going to go in forest take with them identity documents. There are many cases where an offender in order to evade responsibility represent itself as another citizen, so procedural documents should be drafted on the basis of identification documents of the person who has committed an administrative offense. In the absence of identity documents, the person may be brought not only to a body of internal affairs (police), but also to the premise of the local self-government of a rural settlement for drafting up a protocol on administrative offence (article 27.2 CAO RF). A similar power is provided for by paragraph 14.1 part 3 article 96 of the Forest Code of the Russian Federation (further FC RF), but it provides the ability to deliver offenders only in "law enforcement agencies". But, is not always easy to find them in the countryside and in small by population settlements.

Verification of identity documents is a measure of administrative and procedural coercion. The need for application of this measure follows from the provisions laid down in article 26.1 of the Code on Administrative Offences of the RF, according to which the subject of clarification is a person who has committed illegal actions (inactions) (part 2), circumstances mitigating and aggravating administrative responsibility (part 4) and etc. However, the Russian legislator did not referred the verification of identification documents to a number of measures to ensure proceedings on cases of administrative offenses, despite the fact that one of the purposes of the application of these measures is the establishment of offender's identity [9, 341].

Do state forest inspectors have the right to check identity documents? How can they determine the identity of an offender? None of the regulatory legal acts gives an answer to the raised questions.

In our view, we need:

1) Consolidation in the CAO RF, as a measure to ensure proceedings on an administrative offense, of verifying identity documents by officers authorized to draw up protocols on administrative offenses in presence of reasons for initiating proceedings on an administrative offence;

2) Consolidation in article 96 of the FC RF the right of a state forest inspector to request the establishment of offender's identity at internal affairs agencies (police), local self-government.

At the stage of finding the actual circumstances of a committed administrative offense, an official that exercises state forest supervision has the right to apply the following measures to ensure proceedings on a case of an administrative offense under chapter 27 of the CAO RF:

1) delivery (article 27.2);

2) examination of personal things and vehicle, which a physical person has with itself (article 27.7);

3) inspection of premises and territories, as well as of things and documents situated therein, which are owned by a legal entity (article 27.8);

4) inspection of a transport vehicle (article 27.9);

5) seizure of things and documents (article 27.10);

6) assessment of the value of confiscated things and of other valuables(article 27.11);

7) arrest of goods, transport vehicles and other items (article 27.14);

These measures are linked by a common procedural orientation; all of them serve the purpose of obtaining information that can be used as a basis for the conclusion on a case of an administrative offense. Their application is intended to provide administrative process any information of evidential significance; they are means of finding and securing evidences. Application of measures to ensure proceedings on administrative offenses provided for by articles 27.8-27.10, 27.14 of the CAO RF requires witnesses, what causes difficulty at the time of detection an administrative offense in forest.

Let us consider the order of institution of a case on an administrative offense under article 8.26 of the CAO RF "Unauthorized use of forests, improper use of forests for agriculture, destruction of forest resources".

In part 2 "Unauthorized harvesting and collection, as well as the destruction of moss, forest litter and other non-timber forest resources" and part 3 "Placing beehives and apiaries, as well as harvesting of forest resources suitable for human consumption (eatable forest resources) and the collection of medicinal plants in lands where forests are located, in places where it is prohibited or through prohibited methods or devices, or in excess of the prescribed amount or with violation of time terms, as well as the collection, harvesting and selling of these resources in respect of which it is forbidden" of this article provide for the following administrative penalties: administrative fines with confiscation of an instrument of administrative offense and products of illegal exploitation of nature, or without such.

For imposing confiscation of the instruments of committing an administrative offense state forest inspector must gather evidence on the use of instruments of committing an administrative offense and illegally harvested forest products. To gather evidences it is necessary to apply such measures of ensuring proceedings on administrative offences as examination of personal things, which are owned to

a physical person, to prove the use of tools (scythes, "harvester" for picking berries, knives, axes, hives and etc.), if necessary, inspection of transport vehicle of any kind, seizure of objects, which were the instruments of committing or the subjects of an administrative offense, which were found at the place of an administrative offense or when carrying out inspection of things and vehicle of a physical person, seizure of goods and other things, which were the instruments of committing or the subjects of an administrative offense. All these measures are to be carried out in the presence of two witnesses. Where to get two witnesses in forest? This problem is very acute.

State forest inspectors should be given a possibility of applying measures of ensuring proceedings on cases of administrative offences in order to provide comprehensive, complete, objective and timely clarification of all the circumstances of each case. To resolve the current situation in practice we offer to supplement article 27.8 of the CAO RF by part 2.1 to read as follows:

"In exceptional cases of revealing an administrative offense in the forestry fund, inspection of owned by a legal entity or individual entrepreneur premises, territories and located there things and documents may be done in the absence of witnesses, but with mandatory recording them by means of video recording. Materials received in carrying out an inspection with the use of videos should be attached to the corresponding protocol".

Articles 27.9, 27.10, 27.14 of the CAO RF must be supplemented by similar paragraphs.

Among all the control and supervisory powers of state forest inspectors, enshrined in article 96 of the FC RF, interesting are the following ones:

- the right to carry out in prescribed manner inspection of vehicles and detention if necessary (paragraph 9 part 3 article 96 FC RF);
- the right to detain in the woods citizens who violated the requirements of forest legislation, and to deliver these offenders to law enforcement agencies (paragraph 14.1 part 3 article 96 FC RF);
- the right to seizure instruments of offenses, vehicles and related documents of citizens who violate the requirements of forest legislation (paragraph 14.2 part 3 article 96 FC RF);

As can be seen from the study of regulatory sources, the procedure of vehicle detention by state forest inspectors in carrying out control and supervisory activity is not provided in normative acts. In accordance with the norms of the CAO RF, detention of a vehicle and prohibition of its operation as a measure to ensure proceedings on cases of administrative offenses is provided for only for

violations the rules of vehicle operation and driving of vehicle (article 27.13 of the CAO RF). State forest inspectors do not have the right of detention of a vehicle and prohibition of its operation as a measure to ensure proceedings on cases of administrative offenses.

The procedure of seizure of a vehicle from citizens who violate the requirements of forest legislation is also not settled. CAO RF provides for as a measure to ensure proceedings on cases of administrative offenses not "seizure of a vehicle", but "arrest of goods, transport vehicles and other things" (article 27.14).

In this regard, there is a need for harmonization of the norms of the FC RF and CAO RF among themselves in terms of consolidation of measures to ensure proceedings on cases of administrative offenses, such as "delivering" (paragraph 14.1 part 3 article 96 FC RF and article 27.2 CAO RF), "detention of transport vehicle" (paragraph 9 part 3 article 96 FC RF and article 27.13 CAO RF), "arrest of goods, vehicles and other things" (paragraph 14.2 part 3 article 96 FC RF and article 27.14 CAO RF).

At the stage of recording the fact of committing an administrative offense in a procedural document draw up a protocol on administrative offense.

Protocol on an administrative offence is drawn up immediately after identifying the administrative offence. In the event that requires additional clarification of case circumstances or data about an individual or a legal entity, in respect of which proceedings are being initiated, the protocol on administrative offence shall be prepared within two days from the detection of the administrative offense.

Protocol is to be signed by its originator and the person against who proceedings on a case of an administrative offense are being conducted (a representative of a legal entity).

A copy of the protocol is given to an individual in respect of who criminal proceedings on a case of an administrative offense have been initiated, as well to the victim (part 6 article 28.2 CAO RF). It is not clear who is the victim in proceedings on cases of administrative offences in the field of forest use; most likely – it is the owner of a forestry fund.

In accordance with the legislation on the natural resources of the Russian Federation, virtually all natural sites (forestry fund, especially protected natural territories, water bodies, underground resources, animal world) are publicly owned [5, article 4; 3, articles 1-2; 1, article 8; 4, articles 6, 12, 22, 25, 28, 31]. The natural environment and its resources located in the territory of Russia are the heritage of the Russian multinational people. Recognition, respect and protection of rights, including the right to healthy environment (article 42 of the RF Constitution), is

a duty of the State (article 2 of the RF Constitution), and the State must take measures to protect and maintain the environment and represent the interests of the people in cases on administrative offenses provided for in section 8 of the Code on Administrative Offences of the RF.

In our opinion, in proceedings on administrative violations in the field of environmental protection and environmental management, including forests use, the victim is the Russian Federation. Civil Code of the RF recognizes the Russian Federation and its subjects as a subject of civil law, and to it apply norms governing the participation of legal entities in relations regulated by civil legislation (part 2 article 124 of the Civil Code RF). Code on Administrative Offences of the RF does not settle the issue of recognition of the State of the Russian Federation in the role of a victim and who should represent its interests in proceedings on cases of administrative offences in the area of forests use.

In accordance with part 3 article 25.2 of the CAO RF a case of administrative offence should be considered in presence of the victim. In the absence thereof the case may be only considered if there is evidence of the proper notification of the aggrieved party about the place and time of consideration of the case, or if the aggrieved party has not made a petition to postpone consideration of the case, or if such petition has been dismissed.

Protection of the rights and legitimate interests of a legal entity, which is a victim, is carried out by its legal representatives – the head, another person recognized by law or by the constituent documents as the body of the legal entity (article 25.4 CAO RF). It seems that in this case, the legal representative of the victim should be the head of the federal executive body, which exercises control over relevant natural resources, his deputies; heads of departments, their deputies; heads of territorial bodies, their deputies; heads of their departments and their deputies.

As rightly M. I. Maslennikov noted, a single mentioning of a victim in the protocol on administrative offence is not enough, the person concerned must be recognized as the victims by the decision of an official in the form of a ruling or decision [10, 84-90].

For recognition the Russian Federation, which is the owner of the natural sites, including forestry fund, which have been harmed as a result of the commission of offenses, as a victim in proceedings on cases of administrative offences in the field of environmental protection and environmental management, we offer:

Firstly, to supplement article 25.2 of the CAO RF by part 1.1 read as follows:

"1.1. The victim in cases of administrative violations in the field of environmental protection and environmental management is the Russian Federation";

Secondly, to supplement chapter 25 of the CAO RF by article 25.4.1 "Legal representatives of the Russian Federation" read as follows:

"1. Protection of rights and legal interests of the Russian Federation, which is a victim, has to be carried out by its legal representatives.

2. Legal representatives of the Russian Federation, in accordance with this Code, are the leader, as well as another person that is recognized, under the law or provision of a state executive authority of the Russian Federation, its territorial body authorized to implement state function of management, protection and use of appropriate natural sites. The powers of a legal representative of the Russian Federation have to be confirmed by the documents verifying its official position".

As a result of legal recognition the Russian Federation, which is the owner of natural sites, including forestry fund, as a victim in the proceedings on administrative cases in the considered field, decisions taken by relevant officials and judges will become legitimate.

Legal effect of a protocol on administrative offence lies in the fact that it captures the required information, characterizing objective and subjective signs of administrative offence. To it are attached the necessary evidences that prove the fact of committing an administrative offense, which allow officials authorized to consider the protocol on an administrative offence also to take a decision on the case.

In practice, a protocol of administrative offence in the field of forest management is the only procedural document at the stage of case initiation, which is: 1) the act of deciding about the initiation of proceedings on a case and procedural implementation of such decision; 2) the act of determination the actual circumstances of a committed administrative offence; 3) the act of recording the moment of committing an administrative offence; 4) the act that lets to complete the stage of case initiation; 5) the document containing all the necessary information of substantial probative value for consideration the case by a judge, body or official.

The last stage of initiation proceedings on a case of an administrative offence in the field of forest use is the transfer of the case for consideration by jurisdiction to an official authorized to consider the materials of cases on administrative offences in the field of forest use and to take a decision basing on them.

Protocol on administrative offence in the field of forest use shall be sent to an official authorized to consider cases on administrative offences within three days from the moment of drawing up the protocol on administrative violation.

Based on the above analysis of the features of institution proceedings on cases of administrative offences by state forest inspectors in the field of forest use, we can

formulate the following proposals to improve the procedural norms of the current administrative-tort legislation:

1. Enshrine in the CAO RF the right to inspect identification documents of the persons who have committed an administrative offense for officials authorized to draw up a protocol on administrative offence.

2. Harmonize among themselves the norms of the FC RF and CAO RF in terms of consolidation of measures to ensure proceedings on cases of administrative offenses, such as "delivering" (paragraph 14.1 part 3 article 96 FC RF and article 27.2 CAO RF), "detention of transport vehicle" (paragraph 9 part 3 article 96 FC RF and article 27.13 CAO RF), "arrest of goods, vehicles and other things" (paragraph 14.2 part 3 article 96 FC RF and article 27.14 CAO RF).

3. In exceptional cases of revealing an administrative offense in the territory of forestry fund, to provide authorized officials the right to inspect the owned by a legal entity or individual entrepreneur premises, territories and located there things and documents in the absence of witnesses, but with mandatory recording them by means of video recording.

4. Enshrine in the CAO RF the norm that the victim in cases of administrative offences in the field of environmental protection and environmental management, including forest use, is the Russian Federation.

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REPORT ON THE INTERNATIONAL SCIENTIFIC-PRACTICAL CONFERENCE "THE TOPICAL ISSUES OF ADMINISTRATIVE AND INFORMATION LAW"

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April 12, 2013, an international scientific-practical conference of scholars and practitioners "The topical issues of administrative and information law" took place at Financial University at the address: Moscow, 4th Veshnyakovsky passage 4, lecture hall No. 3801-A.

The conference is organized by Financial University under the Government of the Russian Federation (Department of "Administrative and information law", head of the department Doctor of law, Professor M. A. Lapina, contact telephone number +7 (499) 796-5320). By the beginning of the conference the Financial University published and awarded all participants the conference information package containing 56 scientific articles. In addition, the editorial staff of the scientific-practical journal "The Topical Issues of Public Law" by the beginning of the conference has published in No. 3 (March) and No. 4 (April) for 2013 20 scientific articles of conference participants who have not been included in the conference information package (in connection with a significant excess of the planned volume of the conference information package).

The number and composition of participants:

- total number of participants – 101 people, including:
- guests – 76 people, of them: foreign guests – 10 people (The Republic Of Armenia, Republic Of Belarus, Republic Of Kazakhstan, The Kyrgyz Republic, The Federal Republic Of Germany);
- academic staff – 80 people (including 31 Doctors of law and 47 candidates of legal science);
- post-graduate students, young scientists – 20 people.

Among the participants of the conference were the leading scientists in the field of administrative and information law, practitioners, including the heads of territorial divisions of the federal executive bodies, who made presentations and participated in discussions on a number of issues related to the administrative-legal regulation of public administration, customs regulation in the Customs Union of EurAsEC. The participants raised the issues of administrative-legal regulation of antitrust legislation, ways to improve the information law and legal regulation of information security, as well as the issues of administrative legal relations in the field of environmental protection and ecological safety.

The aim of the Conference was the development of actual directions to improve administrative and information law.

The main areas of discussion were:

- general issues of the system of administrative law and process;
- legal status of the subjects of administrative law and process;
- administrative-legal ensuring of the safety of the Russian Federation;
- administrative-legal impact on socio-economic processes;
- administrative offences and administrative responsibility;
- topical issues of information law.

Remote participation in the conference was taken by Michael Abdurakhmanovich Eskindarov – Rector of the University of Finance, Honored Scientist of the Russian Federation, Doctor of economic sciences, Professor, corresponding member of the Russian Academy of Education – with a speech to the participants of the conference "The role of science of administrative and information law in the innovative development of Russia".

Welcoming speech at the plenary session of the conference was made by: Gul'nara Flyurovna Ruchkina – Vice Pro-Rector for Research, Head of the Chair "Business Law" at Financial University, Doctor of Law, Professor, Honored Worker of Higher Vocational Education of the Russian Federation, Nikolai Trofimovich Shestaev – Dean of the Faculty of Law, PhD of law, Professor and Marina Afanas'evna Lapina – Head of the Chair "Administrative and information law" at Financial University, Doctor of Law, Professor.

In her report, Gulnara Flyurovna Ruchkina noted the importance of this conference to resolve the problems of administrative and information law in connection with the necessity of innovative development of the Russian Federation in the financial and economic sphere.

Reports at the plenary session were devoted both to the theory of the science of administrative law and process, the science of information law and to the

practical aspects of improving administrative activities in various spheres of public administration. Experts in the field of economic security and in the field of information law paid more attention to the improvement of the training of masters. So, Vladimir Ivanovich Avdiiskii – Dean of the faculty "Risks' Analysis and Economic Security", Doctor of Law, Professor, Honored Worker of the Ministry of Internal Affairs of the USSR, Honored Worker of the Russian Police, Lieutenant General of Police – drew the participants' attention on the importance of science of administrative law in the system of economic safety and offered the chair "Administrative and information law" cooperation in the training of candidates for a master's degree. The experience in training of masters of information law and legal regulation of information security at the Russian Legal Academy of the Russian Ministry of Justice was shared by Andrei Vital'evich Morozov – Head of the Chair "Information Law, Computer Science and Mathematics" at the Russian Legal Academy of the Russian Ministry of Justice, Doctor of law, Professor.

Aleksandr Vladimirovich Melekhin – head of the department of prosecutor's supervision issues and strengthening the rule of law in the sphere of administrative legal relations at Research Institute of the General Prosecutor Office of the Russian Federation, Doctor of law, Professor, Honored Worker of the Russian Interior Ministry – in his speech touched upon the condition, structure and dynamics of administrative delinquency in Russia.

On the problems of the Russian legislation on judicial monitoring over legislative acts of administration and the prospects for its improvement dwelled a young scientist Konstantin Vladimirovich Davydov – Associate professor at Novosibirsk Institute of Law – the branch of Tomsk State University, PhD in law.

Remote participation in the conference was made by Alexey Davidovich Mayle, Doctor of law, Master of administrative sciences of German Higher School of Management (Speyer, Federal Republic of Germany) with a report "Experience of organization judicial system in Germany or how can be useful foreign experience?" Considering the improvement of the judicial system in Russia, the scientist stated the objectives, principles of organization of the judicial system of the German state. Dr. Maile said that, despite the fact that the executive power under the Constitution in the exercise of its activities is bound by the law, that was why its actions were subject to judicial control.

An interesting report-presentation was made by the Head of the Federal Antimonopoly Service in the Moscow region – Igor' Vasil'evich Bashlakov-Nikolaev, about the model of administrative responsibility of individual entrepreneurs in

the field of protection of competition. In controversy with the speaker entered Andrei Borisovich Agapov – Professor of the Chair of Administrative Law at Moscow State Legal Academy named after O. E. Kutafin, Doctor of law, Professor – who touched upon the value of the norm of the Code on Administrative Offences of the RF relating to administrative responsibility of officials, and the problems of its exercising against individual entrepreneurs.

Vyacheslav Vladimirovich Kizilov – Editor-in-chief of the magazine "The Topical Issues of Public Law", Associate professor of the chair of administrative and financial law at PEI HVE "Omsk Law Academy", PhD in law – started a discussion about tort legal relations in the sphere of legal proceedings through the example of the HAC RF decision on the refusal to transfer a case to the Presidium of the HAC RF. In his speech, the scientist-practitioner held a line between tort and lawful conduct of the judicial board of the HAC RF in defining or changing the practice of law norm application.

The plenary session was finished by Aleksei Mikhailovich Voronov – Professor of the chair "Administrative and information law" at Financial University, Doctor of law, Professor – who devoted his report to the essence of administrative-legal regime of the customs authorities' activities in the field of ensuring public safety. As a result, the professor pointed out that the main purpose of this regime is to provide reliable legal and institutional barriers that might prevent and promptly stop the illegal activities of transnational organized crime and other illegal activities in the area of movement of goods and vehicles across the customs border of the Customs Union.

In the second half of the Conference wished publicly to make presentations:

- Issues of correctness of the conceptual apparatus in the administrative rule-making:

Aleksandr Sergeevich Sukharev, managing partner of the law office of Moscow "Sukharev and partners", PhD in law;

- Topical issues of data protection in the exercise of remittances in the national payment system of Russia:

Grigorii Olegovich Krylov, professor at the Financial University, PhD in law, Honored Worker of Higher Education;

- Topical scientific-theoretical issues of sectorial affiliation of legal regulation in state strategic planning:

Ekaterina Valer'evna Kudryashova, Associate professor of the chair of financial law, PhD in law, a lawyer of the Bar Association of the Moscow Region;

- Bankruptcy as a part of the administrative-legal regulation of financial and economic systems:

Igor' Valentinovich Frolov, Associate professor of the chair of labor, land and financial law at Novosibirsk Institute of Law (branch of National Research Tomsk State University), PhD in law;

- Administrative responsibility for violation of the legislation on national payment system:

Mikhail Vladimirovich Dem'yanets, Researcher of the sector of information law at Institute of State and Law of the RAS, PhD in law, Associate professor of the chair of the Theory of Law and Comparative Jurisprudence at the National Research University – Higher School of Economics;

Investment authorized in the federal districts: proetcontra:

Konstantin Valer'evich Cherkasov, Head of the chair of administrative, financial and information law at Nizhny Novgorod Institute of Management – a branch of Federal State Budgetary Educational Institution of Higher Vocational Education "Russian Presidential Academy of National Economy and Public Administration", Doctor of law, Associate professor.

At the end of the conference the head of the chair "Administrative and information law" at University of Finance Marina Afanas'eva Lapina summarized preliminary results of the conference:

- the participants noted that the modern administrative legislation is not of a systemic nature and does not adequately protect the interests of an individual, society and the state. Currently there is no modern theory of administrative law and process in Russia;
- the participants noted a number of pressing problems of information law concerning both the basic institutes of information law and ones related to the development of information and communication technologies;
- the participants took decision to come up with a proactive suggestion to the leadership of the Financial University to allow appeal to the State Duma of the Federal Assembly of the Russian Federation and the Government of the Russian Federation with a suggestion on the formation on the base of Financial University from the membership of the Conference an expert scientific group, the purpose of which is promoting the development of legal regulation public administration, promoting the efficiency and effectiveness of the mechanism of administrative-legal regulation, development of recommendations on the issues of application of normative legal acts on the base of the analysis of administrative and information legislation, analysis of draft Federal Laws and other normative legal acts.

Information resource of the Conference (reports, presentations and publications) will be used in standard-setting activities, in research and teaching activities

by the chair "Administrative and information law" of Financial University, as well as in educational process in the study of disciplines of administrative law, administrative job, public service law, information law, customs law, environmental law, etc., when writing educational materials, in scientific-research work of students.

Conference participants expressed their gratitude to the Organizing Committee of the conference for the good organization of this scientific event, as well as gratitude to the company "Consul'tantPlyus" for informational support of the conference.

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Lebedeva E. A.

LICENSING AND SELF-REGULATION: PROSPECTS OF DEVELOPMENT

Lebedeva Ekaterina Alekseevna,
c.j.s., (PhD in jurisprudence), Senior teacher of the chair of administrative law at Moscow State Juridical University named after O. E. Kutafin.

The author speaks about two groups of norms that regulate relations in the sphere of licensing. Here is noted that when licensing not the very activity of controlled entities and its results are under control, but the availability of its properly completed documents (a license), i.e., the control is implemented at the entrance to market, rather than a current control at the market itself, and this fact, according to the author, even more bureaucratizes the licensing system. The article suggests introducing the principle of "free entry and full responsibility for fraudulent conduct in the market".

It is argued that despite the lack of developed mechanisms for out of court settlement of disputes within self-regulatory organizations, the mechanism of compulsory self-regulation has replaced the ineffective in many cases licensing system.

Keywords: licensing, licensing of certain types of activity, self-regulation, SROs, state management of economy.

State regulation of economy is traditionally perceived as a manifestation of (functions) of public administration, the basic meaning and the content of which lies in the establishment and ensuring by the State of general rules of conduct (activities) of the subjects of social relations and their adjustment according to changing

conditions. The content of state regulation of the economy is rather ambiguously interpreted in the literature. This is either mandatory and mainly administrative-legal ways of regulation or establishment and providing by the State of general rules of conduct (activities) of the subjects of social relations and their adjustment. Licensing and self-regulation can be attributed rather to the second group.

The issue of the legal nature of licensing and the place of the institute of licensing, as well as its correlation with the institute of self-regulation in the legal system of the State is closely connected with the issue of the need for and extent of government intervention in economic processes ongoing in society.

Licensing of any kind of activity is due to not an arbitrary choice, but to an objective necessity to ensure state control over the quality of products, provided services, made works, honesty of entities involved in certain activities, and in some cases, to the need to limit the exercising of any activity in connection with its special character, threatening state security, the health of citizens, etc.

Assigning administrative-legal nature to licensing, we can highlight its following signs:

1) direct implementation and regulation of licensing occurs in the presence of an official state-authoritative body (i.e., licensing authority), whose competence includes unilateral imposition of decisions on emerging issues within the framework of regulated managerial relations (for example, a decision to suspend a license);

2) presence of an unilateral expression of will of one of the subjects of legal relations (licensing authority) in relation to another (license applicant or licensee); imperious nature of the expressed will, entailing mandatory execution;

3) presence of juridical inequality between the parties of legal relations, in which one of them (licensing authority) is a manager and another (licensee) is a controlled one;

4) existence of an established general mandatory procedure of actions, which the participants are required to follow (i.e., enshrined in procedural norms licensing procedure).

As for normative regulation, the norms governing relations in the field of licensing can be roughly grouped into general and special part.

General part brings together norms that define the criteria of selecting objects, the legal status of the subjects of licensing legal relations, including the licensing of powers of licensing authorities, the principles of licensing law, the scope of licensing legislation and law-making rights in the licensing sphere of different entities of power, the ratio of federal and regional principles in the regulation of licensing relations, the basic rules of the validity of licenses in space and time, their types and

documents certifying licenses. The general part also includes procedural norms (on the procedure and timing of taking decisions to grant a license, on the procedure of renewal of documents, on the procedure of suspension and revocation of a license).

The norms of preliminary and current monitoring of activities of license applicants and licensees, as well as the norms on the maintenance of registers of licenses and on the procedure for providing the information contained in them are also general ones. In addition, the general part of licensing law includes norms on licensing responsibility, i.e., the norms determining a licensing offense and punishment for its commission.

The norms of the general part are laid down in the Federal Law No. 99-FL from 04.05.2011 "On Licensing Certain Types of Activities" (hereinafter – the Law on Licensing) [3] and the Decree of the Government of the Russian Federation No. 45 from 26.01.2006 "On the Organization of Licensing of Certain Types of Activities" [4]. The norms of the general part for the most part apply to the whole totality of licensing legal relations and also form the basis for norm-formation and application of law norms within the framework of the special part.

Special part is traditionally formed from the rules on licensing of certain types of activities. At that, it includes norms on licensing of those activities that are also regulated by the general norms of licensing legislation, enshrined in the Law on Licensing. The structure of the special part consists of separate institutes of licensing in economic sphere (economic types of activities), in the field of public security and national defense, public health, environmental, industrial, transportation safety, etc.

The Law on Licensing has become a unique result of development of the institute of licensing in Russia. It has retained the structure of the previous Federal Law No. 128-FL from 08.08.2001 "On Licensing of Certain Types of Activities" [1], and introduced some important innovations.

In particular, the Law on Licensing designates the ability to apply a single unified procedure of licensing.

However, taking into account the specificity of licensing activities in separate spheres, as a transitional period, the new law has retained some provisions to ensure a smoother transition to the general procedure of licensing in these spheres.

It appears that the existence in the Russian legislation of the list of activities, in respect of which establish a specific (special) licensing procedure, is a temporary (transient) phenomenon, a consequence of previously formed in the Soviet legal system practices (traditions) of the special state control regarding the most important (strategic) spheres of activity (education, communications, banking activity,

customs activities, activities related to the protection of state secrets, activities in the field of production and turnover of ethyl alcohol and alcohol-containing products, etc.) and taking into account the interests of the national security of the Soviet period. Seems that the improvement of the general licensing legislation in Russia contributes to the gradual "shifting" from the specific (special) procedure for licensing of certain types of activities, and the general procedure for licensing (for all licensed types of activities) is being unified and will become more "transparent" in terms of state control over the legality of supervisory bodies' actions.

Licensing of separate types of activity today covers more than 50 types of activities.

The modern stage of licensing development is characterized by reduction the number of licensed activities. This is due, primarily, to the fact that excessive licensing creates "administrative barriers" that prevent the development of market economy. In our view, the licensing should not be considered as an instrument to restrict business activity. While licensing the State does not put a barrier between an entrepreneur and a licensed activity. Any entrepreneur that meets the requirements and terms of licensing has the right to engage in the relevant activity. At that, the State establishes just certain requirements that must be observed by an entrepreneur.

The adoption of the Law on licensing reduced the scale of administrative impact associated with licensing on entrepreneurial activity.

On the other hand, now we have the following situation: actually not the activity itself and its results are under control, but the availability of its properly executed documents (license). In other words, monitoring is carried out at the entrance to market, rather than the current monitoring at the very market, what even more bureaucratizes licensing system. The modern Russian practice is in need of introducing the principle of "free entry and full responsibility for careless conduct on the market".

Therefore, it is possible to draw the following conclusions:

- monitoring while entering market must give way to the current monitoring on the market;
- the need for availability and validity of the documents necessary for the implementation of this or that activity should be replaced by the monitoring of activity itself, the actual quality of the goods and the real conduct of entrepreneurs on the market.

Due to the fact that the list of licensed activities still contains types of activities, the regulation of which may be carried out by other forms of regulation (for

example, the activities of legal entities, which is directly related to air safety, is subject to obligatory certification), the list is expected to be reduced by eliminating such types of activities.

Cancellation of licensing will be accompanied by a simultaneous transition to other forms of regulation, including notification procedure of the beginning of entrepreneur activity and self-regulation.

In recent years, more frequently discuss the issues of business self-regulation as a way to improve the regulation of markets and to develop national economy. To a large extent state regulation is gradually replaced by self-regulation. While self-regulation is a new phenomenon for our State.

Issues of self-regulation in Russia have obtained great relevance due to the growing trend of reduction of administrative barriers, which originates from the year 2003 and is associated with conducting of administrative reform in Russia.

Following that, development were received by both voluntary and delegated forms of self-regulation requiring compulsory membership (SRO of court-appointed trustees, appraisers, auditors) or optional membership with exclusive rights (SRO of professional participants of securities market, management companies) or weakening of state regulation (SRO that unify non-state pension funds).

Federal Law No. 315-FL from 01.12.2007 "On Self-regulatory Organizations" [2] (hereinafter – the Law on SROs) was adopted at the time when self-regulatory organizations of various kinds were actively functioning in Russia, including SROs of professional participants of securities market, court-appointed trustees, etc.

With the adoption of this law in the Russian Federation was created a legal and economic basis of self-regulation, defined the procedure of creation and implementation of activities of self-regulatory organizations in various areas of entrepreneurial and professional activities.

According to the Law on SROs, self-regulation refers to an independent and initiative activity exercised by the subjects of entrepreneurial or professional activity, the content of which is the development and establishment of standards and regulations for such activity, as well as the monitoring of compliance with established standards and regulations.

The law defines the basic classification signs of self-regulatory organizations:

1. Principle of sufficient representation of the subjects of entrepreneurial (minimum 25) or professional activity (minimum 100).

2. Availability of standards of entrepreneurial and (or) professional activity mandatory for compliance with by the members of a self-regulatory organization,

and supervision over their observance by the members of the self-regulatory organization.

3. Application of the mechanisms of property responsibility for the harm inflicted to third parties.

Apart from the general law on self-regulatory organizations of the Russian Federation legislation contains a number of normative legal acts dealing with the matters of self-regulation in certain areas of entrepreneurial and professional activity. Provisions of the special (sectorial) laws may define certain features of SROs in certain branches, take into account the specifics of such branches, however, the existing experience of normative regulation shows that the norms of special laws sometimes are so specific that come in direct conflict with the norms of the general law.

Branches, for which in some sectorial laws describe specific requirements for self-regulatory organizations, can be grouped as follows:

1. The fields, in which provide for obligatory membership of participants of professional or entrepreneurial activity in a SRO, including:

- activities of court-appointed trustees; audit activities; credit cooperation; appraisal activities;
- activities of inspection unions of agricultural co-operatives;
- engineering surveys;
- architectural and construction design; construction;
- activities in the field of energy survey; heat supply.

2. The fields, in which special laws provide for possibility of creation a SRO, but membership in such organizations is not compulsory, including:

- professional activities of participants of securities market;
- activities of non-state pension funds;
- cadastral activities;
- promotional activities;
- activities of housing savings co-operatives;
- activities of patent attorneys;
- mediation.

In addition, should be separately noted the spheres of professional activity, in which the current legislation provides for compulsory membership of the participants in specialized associations, but these associations do not have the status of self-regulatory organizations (such as notariate and bar association).

Self-regulation by its nature is a kind of regulation that is contrary to state regulation, and is not a part of the latter. Interaction of state regulation and self-regulation can take place as follows:

- self-regulation is always carried out in the framework of the current legislation and is legitimate;
- self-regulation can actually replace state regulation in certain spheres;
- the norms of self-regulation can complement and concretize the current legislation;
- in some cases, the norms of self-regulation can tighten the requirements for market participants as compared with the requirements of legislation [5, 8].

Self-regulatory organizations represent structures that are endowed with similar to public authorities' functionality, however, not duplicating, but replacing or "auxiliary" ones.

The content of self-regulation is a based on the norms of the federal legislation regulation of relations in certain sectors of economic activity, which is carried out on the basis of self-organization, i.e., without direct state intervention. Operative state intervention is replaced by the normative legal regulation and control over the observance of legislation norms created by self-regulatory organizations. This significantly reduces state expenditures on regulation and monitoring in the respective spheres of activities, increases the overall efficiency of public administration through replacing operative monitoring over entrepreneurial or professional activities by legislative regulation, and through reducing the number of managerial ties – one or several self-regulatory organizations become the subject to regulation and control, instead of countless actors of entrepreneurial and professional activities.

At existence of a fairly limited range of different forms of self-regulation, to the issues of creation of self-regulatory organizations devote a separate "general" law that establishes the basic principles of the creation and operation of self-regulatory organizations, as well as numerous norms of special laws regulating the activities of SROs in certain sectors of economy.

The lack of a unified model of regulation can be called one of the major problems in the regulation of self-regulation.

It seems that the basic principles of creation of a self-regulatory organization, recognition of its status by the state, formation of the internal structure, as well as functionality of the self-regulatory organization must be unified, regardless of the branch, in which the SRO appears.

Recently, more and more increases the trend of transition from licensing to self-regulation.

Since January 01, 2006 five types of licensing have been replaced by compulsory membership in self-regulatory organizations.

The start of applying the mechanisms of self-regulation as an alternative to the institute of state licensing shows that in presence of certain improvements expressed, also, in the getting rid from unfair and not enough qualified participants in a number of branches and in increased transparency of admission procedure to the market, there are also a number of objective disadvantages associated, first of all, with the low efficiency of execution by self-regulatory organizations of functions entrusted to them by the legislation. Efficiency of control exercised by self-regulatory organizations in respect of their members is low, adequate state control (supervision) over the activities of self-regulatory organizations is not exercised, and there are also no tried and tested mechanisms for pre-trial settlement of disputes within the framework of self-regulatory organizations.

The mechanisms of self-regulation should be means to reduce the powers of authority of public authorities and administrative barriers to the development of entrepreneurship, but in some cases the requirement of membership in a self-regulatory organization regarding the subjects of entrepreneurial and professional activities of certain sectors of economy creates onerous conditions for businesses and causes a significant increase in expenditures required for admission to the market. This can be due to excessive high regular and one-time contributions of SROs' members (admission, membership and target contributions).

One cannot say that the efficiency of the institute of self-regulation at the present stage of its development is assessed as sufficient. In some cases, the terms of membership in a SRO hinder the development of small and medium-sized businesses in a certain sphere.

All this requires the improvement of both the system of legislative regulation of creation and activities of self-regulatory organizations in various fields of economic and professional activities, and the improvement of the effectiveness of such organizations.

In summary it can be concluded that the mechanism of compulsory self-control replaced inefficient in many cases licensing system. At that, one of the important objectives of the introduction of self-regulation was the elimination of administrative barriers. However, practice has shown that the use of the mechanisms of self-regulation does not always lead to the removal of all administrative barriers, and sometimes it acts as such.

Certainly, it is inadmissible to transfer all types of activities that subject to licensing at the mercy of self-regulation, because in addition to entrepreneurial sphere they affect national security and national defense, public health, environmental, industrial, transport safety, etc., but in general we should recognize

the positive trend of transfer from licensing of certain types of activities to self-regulation. Without minimizing the role of licensing, we would like to express the hope that self-regulation will be a new alternative and effective way of regulating activities in many areas, and will not become another barrier, including as a financial one, to business development.

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ADMINISTRATIVE-LEGAL ISSUES OF ENSURING TRANSPORT SAFETY

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Ensuring of transport safety as a system, which includes the provision of transport safety, safety of traffic and transport operation, is considered in the article.

Here is noted that a key role of internal affairs bodies in the system of ensuring transport safety is not entirely justified, since many of the issues at stake are of technical, technological, organizational and other nature and go beyond the limits of competence of internal affairs bodies. The author proves that the place and role of internal affairs bodies in ensuring transport safety should be conditioned and limited by protective (police) function.

Argues that there is a gap in the administrative-legal regulation of participation the subjects of ensuring transport safety in assessing the vulnerability of transport infrastructure and vehicles.

The article suggests the study and enshrining of a conceptual apparatus, as well as the consolidation of norms about different types of transport safety in one (basic) legislative act.

Keywords: transport safety, transport security, types of transport safety, subjects of ensuring transport safety, law enforcement activity in transport.

In the Federal Law No. 16-FL "On Transport Safety", transport safety is understood as a state of protection of transport infrastructure facilities and transport vehicles against acts of unlawful interference.

In our opinion, the legislator used extremely general and rather abstract collective term by introducing in administrative turnover obviously meaningful concept without disclosing of its essence and full content. In other words, the general concept that combines several derived concepts and directions of activity is applicable to refer to only the part of the content of the concept of "traffic safety". This content turned out narrowed to technical equipment of transport infrastructure facilities and vehicles, primarily in terms of their anti-terrorism protection and law enforcement activity in this area, in particular administrative and criminal jurisdiction.

In our view, the attempt to combine by a generic concept all types of transport safety would be successful if the "threat of terrorism" does not prevail, if the legislator is not limited to urgent adoption of anti-terrorism measures, and would put in this concept a broader sense. Then the law would not have been such "framework", containing predominantly "charging" norms, and transport security system would acquire additional tasks to ensure technical and technological security, security related to natural phenomena, would be enriched with new actors and their functions.

In essence, the legislator has disseminated the already adapted in the Air Code of the Russian Federation and other normative legal acts specific concept of "air safety" for all types of transport, giving it a generic value. The concept of "air safety" under article 83 of the Air Code of the Russian Federation [1] is defined by the legislator as "a state of aviation security from unlawful interference into activities in the field of aviation". In this formulation the concept correlates to the concept of "transport security" provided for by the analyzed federal law, as a part and the whole. However, article 28 of the Air Code of the RF states that "the purpose of state supervision in the field of civil aviation is ensuring the safety of aircrafts' flights and air safety". So, the legislator in the Air Code distinguishes two diversified concepts – "ensuring the safety of aircrafts' flights" and "air safety", – which, in our view, could be covered by the concept of a more general nature – "safety in air transport".

In addition, we believe that the content of the concept of "transport safety" in broad sense should match the content of the concept of "transportation security". In turn, the concepts of "safety in certain types of transport", 'air safety", "safety in air transport" are derived concepts and should correlate to the concepts of "transport safety" or "transportation security" as a part and the whole.

It should be emphasized that the Law of the Russian Federation No. 2446-I from March 05, 1992 "On Security" [3] contained reference to "safe work practice on transport" (article 12), implying the traffic safety and operation of transport, fire security, industrial safety, etc. Federal Law No. 390-FL from December 28, 2010 "On Security" [5] leaves open the question about the types of security, offering to solve it by using sectorial thematic laws. Consequently, the developers of draft laws and sub-legislative acts on certain types of security will have to agree on the terminology used in them.

Currently, there are several federal laws on sectorial types of security along with codified acts (Merchant Shipping Code of the Russian Federation, Air Code of the Russian Federation, Code of Inland Water Transport of the Russian Federation), in which there are chapters (norm) on the relevant types of security. They are the Laws "On Road Safety", "On Safety of Hydraulic Engineering Structures", "On Fire Safety", "On the Radiation Safety of the Population", "On Industrial Safety of Hazardous Production Facilities" and so on.

It is also noteworthy that in the RF Presidential Decree from March 31, 2010 "On Creation of a Comprehensive System of Ensuring Public Safety in Transport" [6] he uses the term of "transportation security" rather than the term "transport safety". The same term has been perceived by the CIS Model Law "On Transportation Security" adopted October 31, 2007 (i.e., after adoption of the 16-FL from 09.02.2007) by the Interparliamentary Assembly of States-participants of the Commonwealth of Independent States.

Thus, the analysis of current normative legal acts related to ensuring of transportation security leads to the conclusion that, despite the presence of the seemingly basic (in terms of terminology, but not content) Law "On Transport Safety" in them continue to "live their own lives" and be used such concepts as "rail safety", "railway and other technical means' traffic and operation safety", "safe for life and health conditions of passengers travel", "security of cargo, luggage and freight", "environmental safety", "air safety", "flight safety of aircrafts", "air traffic safety", "safety of navigation", "safety of navigation of vessels", "safety of port and shipping waterworks and inland waterways", "safety of marine navigation", "road safety" and many others.

One of the astounding that in chapter 11 of the Code on Administrative offences of the RF [2] "Administrative Offences on Transport" coexist two articles – article 11.3.1. "Violation of air safety requirements" and article 11.15.1. "Failure to comply with the requirements for ensuring transport safety". We stress that among the requirements, for violation of which occurs administrative responsibility under

article 11.15.1, there are requirements for ensuring transport safety that take into account security levels for different categories of transport infrastructure objects and air transport vehicles, approved by the order of the Ministry of Transport of Russia No. 40 from February 08, 2011 [10]. In general in this chapter, the term of "safety" is used in different meanings in names of nine articles.

Two scientific approaches to determination the content of the concept of "transport safety" have developed in the legal literature. Proponents of the first approach agree with the legislator and consider transport safety in narrow sense – as a condition of protection of transport infrastructure objects and vehicles against acts of unlawful interference. It seems that they are in the minority, as most scientists include in the content of the analyzed concept not only protection of transport complex against illegal acts, but also other elements.

As an option, ensuring transportation security can be considered as a system that includes: 1) ensuring transport safety; 2) ensuring the safety of traffic and operation of transport.

Ensuring transport safety is a system that includes technical means, fencing, facilities, specialized services and guard units, law enforcement bodies, legal and organizational measures defining the state of protection of human life and health, property of owners , transportation facilities, communications, vehicles, conveying equipment against acts of unlawful interference.

Ensuring the safety of traffic and operation of transport is a system that includes designing, testing, production (construction), commissioning and maintenance of vehicles, communications, transport equipment, training and professional development of personnel maintaining transport, medical and meteo control, control of communications functioning, functioning of vehicles and their movements, organizational and legal measures, investigations for determination the causes of accidents (internal investigation) and their account, which defines the state of protection of life and health of people, communications, transport equipment and vehicles, environment and property of owners against threats of man-made, natural and another non-social nature.

Taking into account anti-terrorism focus of the Federal Law "On Transport Safety", internal affairs bodies take in the system of ensuring transport safety nearly key place. This is not entirely justified, since many solved within the framework of this law issues are of technical, technical-technological, organizational and another nature, go beyond the "traditional" competence of internal affairs bodies. Moreover, administrative-legal regulation in the sphere of ensuring transport safety is carried out mainly by the Russian Ministry of Transport. Because of shortcomings

in the coordination and harmonization of joint actions of the Russian Interior Ministry, Ministry of Transport of Russia, other interested federal executive authorities and the subjects of transport infrastructure legal gaps and contradictions often emerge in normative acts.

As an illustration, one can point to a gap in the administrative-legal regulation of participation of the subjects of ensuring transport safety in the assessment of the vulnerability of transport infrastructure and vehicles. In accordance with part 2 article 5 of the Federal Law "On Transport Security" vulnerability assessment of transport infrastructure and vehicles is carried out, including, by the institutions and units of the Russian Interior Ministry, with taking into account the requirements to ensure transport safety on the base of a public contract on tariffs set by the Federal Tariff Service of Russia.

Order of the Federal Tariff Service of Russia No. 534-a from November 10, 2010 "On Approval of Administrative Regulations of the Federal Tariff Service on Exercising State Function to Establish Tariffs for the Services of Assessment the Vulnerability of Transport Infrastructure and Vehicles" approved the relevant regulations of state functions execution [9].

The order of the Russian Ministry of Transport No. 87 from April 12, 2010 "On the Procedure for Assessing the Vulnerability of Transport Infrastructure and Vehicles" defines arrangements for this assessment [8].

Charter of the Federal State Unitary Enterprise "Ohrana" of the Russian Ministry of Internal Affairs, approved by Order of the Russian Ministry of Internal Affairs No. 267 from March 16, 2007 "On some issues of activities' organization of the Federal State Unitary Enterprise "Ohrana" of the Ministry of Internal Affairs of the Russian Federation", specified assessment of the vulnerability of transport infrastructure objects of the Russian Federation as one of the activities of the enterprise [7]. However, Charter of the Federal State Unitary Enterprise "Ohrana" of the Russian Ministry of Internal Affairs, approved by Order of the Russian Ministry of Internal Affairs No. 367 from May 13, 2011 "On some issues of activities' organization of the Federal State Unitary Enterprise "Ohrana" of the Ministry of Internal Affairs of the Russian Federation", contains no provisions on assessment of the vulnerability of transport infrastructure objects and vehicles [11].

Thus, at present, the Russian Ministry of Internal Affairs does not have organizations that are authorized to exercise the specified activity. In our opinion, in their determination we must take into account that there are no organizations similar to the FSUE "Ohrana" of the Russian Ministry of Internal Affairs, which are

capable to assess the vulnerability of transport infrastructure object and vehicles, in the system of internal affairs in the rail, water and air transport.

In addition, we believe that the place and role of internal affairs bodies in ensuring transport safety should be conditioned by and limited to protective (police) function, that is, protection of legal norms from violations, including measures of prevention. Since, it is in order to relieve internal affairs bodies from the redundant and extrinsic functions the reform of the Ministry of Internal Affairs of Russia has been implemented.

There is no impenetrable barrier between the concept of "law-enforcement functions" and "functions of control (supervision)", as they correlate as a whole and a part. There is no difference in what sense would be considered "law enforcement activity" – the narrowest, narrow, wide or the widest – always, its key element is jurisdiction, which is implemented by control and oversight bodies, including the bodies of internal affairs.

With regard to the activities of internal affairs bodies, as a central link of law enforcement activity is advisable to consider active monitoring over the compliance with legal norms of the real behavior of participants of protected public relations with subsequent correction where necessary. The monitoring covers all forms of control over compliance with regulations, including supervision, inspection, audits, checks, control in the proper sense of the word, etc. It is inherent for both external and the intradepartmental activities of internal affairs bodies. Monitoring over performance of regulatory requirements by participants of public relations obliges to refrain from violations of the rule of law. This is its social function and significant preventive potential. As examples of the active use of the method of "insider's view" can be represented the activities traffic police, examination officers at airports, squad of police officers for accompanying long-distance trains, etc.

Jurisdictional competence of internal affairs bodies in the area of transport safety is defined by the relevant norms of the Criminal Procedural Code of the RF about investigative jurisdiction of crimes, as well as by the norms of the Code on Administrative Offenses of the RF about investigative jurisdiction of cases on administrative offences. The scope of this competence is huge, and we think that it is impractical to impose any additional jurisdictional powers on internal affairs bodies. In addition, the law enforcement function in this area is implemented by them not only in criminal-procedural and administrative, but also in operational-search activities.

Today, the Russian Ministry of Transport has prepared a draft decree of the Government of the Russian Federation "On Approval of a Provision on the

Federal State Control (Supervision) in the Field of Transport Safety". In accordance with this document, authorized federal executive body for the implementation of the federal state control (supervision) in the field of transport safety defines the Federal Service for Supervision in the field of transport and its territorial bodies. The subject of implementation the federal state control (supervision) in the field of transport safety is the performance of requirements in the area of transport security by the subjects in the course of their work.

No later than one year from the date of adoption of the mentioned decision the Russian Ministry of Transport, the Russian Interior Ministry and the Federal Security Service of Russia are required to approve a joint normative legal act establishing the Procedure of interaction of the Federal Service for Transport Supervision with the Russian Interior Ministry and the Federal Security Service of Russia in conducting scheduled and unscheduled on-site inspections with application of test-items and test-objects and their use.

The Russian Ministry of Transport, upon consultation with the Russian Ministry of Internal Affairs and the Federal Security Service of Russia, is offered no later than one year from the date of adoption of the decision to approve:

list of objects of transport infrastructure and vehicles belonging to the first category in accordance with the Procedure for determination the number of categories and criteria for categorization of objects of transport infrastructure and vehicles by competent authorities in the field of ensuring transport security, which has been approved by the order of the Russian Ministry of Transport No. 62 from 21.02.2011, where the systematic monitoring over the implementation of requirements in the field of transport safety is carried out with the use of audio and video systems;

List of checkpoints (posts), in which conduct activities for control over compliance with the requirements in the field of transport safety during transportation of passengers and goods by road carried out on federal highways.

Without going into details of the draft Provision on the federal state control (supervision) in the field of transport safety, we note that territorial bodies of the Federal Transportation Inspection Service are offered to exercise the majority of monitoring and oversight events together with the bodies of internal affairs.

Conceptual apparatus of normative legal acts relating to ensuring transport security, first of all of legislative ones, must be streamlined and unified. First of all, must be clarified the conceptual apparatus of the "disturber of peace" in this field – the Federal Law "On Transport Safety". Here we see two ways of resolving.

The first way – the abolition of the law and adoption on its basis the law "On Transportation Security" or "On the Safety of Transport Complex", which will

define all types of transportation security, subjects of their providing and their legal status in this area.

In view of the importance of the anti-terrorist protection of the population, can be adopted a separate law "On Anti-terrorist Security of Transport Complex" or "On the Safety of People in Transport". After all, along with plenty of laws on safety, Federal Law "On the Safety of Hydraulic Engineering Structures" also found its place in the legal system of the Russian Federation. The basis for the new law will be made of the Federal Law "On Combating Terrorism", RF Presidential Decree from March 31, 2010 "On Creation of an Comprehensive System of Ensuring Public Safety in Transport", Comprehensive program to ensure public safety in transport approved by the RF Government Decree No. p-1285 from July 30, 2010 and other regulatory legal acts.

The second way – making changes and amendments to the Federal Law "On Transport Safety". The concept of "transport safety" and the very content of the law must be enriched with norms on such types of transportation security as "air safety", "navigation safety", "safety of navigation on inland waterways", "road safety", "railway traffic and operation safety" and etc. Elaboration and consolidation of the conceptual apparatus, as well as the consolidation of the norms about different types of transport safety in one (base) legislative act, will lead to a common denominator the relevant terminology of other laws, including codified and subordinate acts that regulate the issues of ensuring transport safety.

It is possible that the adoption of a basic law on transport safety may be the ground for cancellation of a part of legislative acts on sectorial types of safety. Thus, the legal framework in this area will be optimized, the intensity of terminological disputes will be reduced, and clearness will appear in the tasks and functions of the subjects of ensuring transport safety.

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PECULARITIES OF ADMINISTRATIVE RESPONSIBILITY FOR CERTAIN TYPES OF ADMINISTRATIVE OFFENCES IN CONDITIONS OF FORMATION A CONSTITUTIONAL STATE AND ITS LEGAL SPACE IN RUSSIA

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In the context of the constitutional provisions on Russia as about a democratic state, the article considers the problematic aspects of citizens' administrative responsibility for violation the procedure of official use of state symbols of the Russian Federation: the State flag of the Russian Federation, the State Emblem of the Russian Federation or the national anthem of the Russian Federation.

Keywords: administrative responsibility, administrative offences, state symbols, Russian State flag, Russian State Emblem, Russian national anthem.

As part of the ongoing scientific analysis devoted to the previously considered topic, humanization and modernization of the Russian justice system, it seems possible today to turn to the peculiarity of administrative responsibility for certain types of administrative offenses as an actual problem. In particular, in this perspective, we see not appropriate exercising of the Federal Constitutional Law No. 2-FCL from 25.12.2000 "On the State Emblem of the Russian Federation". It is caused primarily by the fact that this issue needs for serious scientific analysis, for the reason that the judicial practice of almost all courts of the Russian Federation is replete with decisions that are based on the materials that are of collisional nature. We believe that the enforcement of the Federal Constitutional Law of No. 2-FCL from 25.12.2000 "On the State Emblem of the Russian Federation" [2] contradicts the spirit of the law itself.

To proceed directly to the scientific analysis of the given problem we should address the reader to the historical and legal reference on the State Emblem of the Russian Federation, which talks about the metaphysical-legal meaning of state symbols of Russia in the old days. Appeal to the previously published scientific material gives us an opportunity to re-create in full the essence of the problem of the declared and considered issue. All this is confirmed by the fact that according to the results of an opinion poll of the fund "Public opinion", was found the bent of respondents to the pre-revolutionary perception of meaning of the state symbols of Russia.

Within the framework of the mentioned ongoing All-Russian survey of urban and rural residents in 100 settlements of 44 regions, territories and republics of the Russian Federation, where the statistical error does not exceed 3.6%, 1500 respondents were interviewed in each subject of the Russian Federation. The study was conducted during the period from January 12, 2002 till August 28, 2004, using the survey method – interview at place of residence.

It turned out that the "state emblem is strongly associated with the pre-revolutionary Russia and the revolution ("life under Tsar", "all the tsars of the Romanovs' family, the history of Russia", "autocracy", "February Revolution", "capture of the Zimnii", "its (the emblem) overthrow at the time of the revolution of 1917"), [7] as well as the fact that 79% of citizens confidently answered the question "what is depicted on the state emblem of the Russian Federation" [7].

In a scientific article by Mikhail Medvedev "Georgiy Pobedonosets: a holy of icons and hero of a state emblem" on the official website of the Heraldry Council under the President of the Russian Federation said that the name Georgiy means "farmer", and that he deaden a monster by the power of prayer, what conditionally expressed the idea of spiritual victory [5]. When considering the story line we must clearly present the image of the very dragon. Because in one case this is a snake of the underworld Yusha appearing before us depicted as a wingless reptile without legs. Whereas in the other case this is an image that has nothing to do with the previous one, appears before us as a pangolin, which already has legs and wings. And the spear of the rider pokes only the tongue of the pangolin and is not directed to other parts of the body. These differences should be necessarily taken into account in further scientific analysis.

Given the above stated in the text, it can be argued that the citizens of the Russian Federation are not indifferent to this symbol of state power, they are proud of their state emblem, reverently honor it and feel the warmest and the tenderest feelings for it, associating it with personal experiences. However, on this basis between

the State and citizens has occurred a socio-political conflict. Today, this socio-political conflict of the State and citizens has gradually turned into a legal confrontation, generating a legal conflict. Where the legal conflict looks like the problem of selecting the subject of law on the issue of functional features of legal consciousness and interpretation during the process of rights enforcement with taking into account the execution of law-enforcement of repressive or restorative practice in that its part where there rises a question by what to be guided in the first place – by the boundaries of spatial relations or by boundaries of spatial limits of the force of law arising in the public relations of society, and therewith also of the state with its legal system and the system of law in general.

For this reason the solution to the issue of administrative responsibility for non-appropriate exercising of the Federal Constitutional Law № 2-FCL from 25.12.2000 "On the State Emblem of the Russian Federation" is seen not in the area of legal regulation, but in the "degree of social indignation" of citizens, which takes into account the socio-political expression of the will of a subject of law.

In order to confirm or refute this opinion on the matter should be conducted comparative-legal analysis of the parties involved in executive activity on the application of administrative responsibility for violation of the official use of state symbols of the Russian Federation in accordance with article 17.10 of the Code on Administrative Offences of the RF (hereinafter CAO RF).

So, the Heraldry Council under the President of the Russian Federation, approved by the Decree of the President of the Russian Federation no. 856 from 29.06.1999, is concerned about the numerous dissemination of information concerning the use of the State Emblem of the Russian Federation for the personal seals and letterheads by the citizens of the Russian Federation [6].

This concern is being relevant in the part where is an acute problem in respect of officials and legal persons using the state emblem in violation of the official procedure. However, with regards to the citizens who do not apply to these categories of persons, it does not sound uniquely compelling. Due to the fact that in the first section of chapter 1 "The Fundamentals of the Constitutional System" of the Constitution of the Russian Federation [1] in part 1 article 1 is proclaimed that "The Russian Federation – Russia is a democratic federal law-bound State with a republican form of government" and in accordance with part 1 article 3 "The bearer of sovereignty and the only source of power in the Russian Federation shall be its multinational people", for this reason, citizens of the Russian Federation cannot be treated equally together with officials and legal entities regarding violation of the official procedure for the use of the State Emblem of the Russian Federation.

Since, part 2 article 3 of the Constitution of the Russian Federation tells us that "The people shall exercise their power directly, and also through the bodies of state power and local self-government". This should include also part 1 article 32 of the Constitution of the Russian Federation, in accordance with which "Citizens of the Russian Federation shall have the right to participate in managing state affairs both directly and through their representatives". Therefore you should pay attention to the fact that in part 4 article 3 of the Constitution of the Russian Federation stated that "No one may usurp power in the Russian Federation. Seizure of power or usurping state authority shall be prosecuted by federal law". Also it is well known that article 2 of the Constitution specifies that "Man, its rights and freedoms are the supreme value. The recognition, observance and protection of the rights and freedoms of man and citizen shall be the obligation of the State" [1]. For these reasons, there are no arguments to explicitly raise the issue of bringing to administrative responsibility of citizens of the Russian Federation who do not have the status of an official or legal person under article 17.10 of CAO RF for non-compliance with the Federal Constitutional Law No. 2 from 25.12.2000 – FCL "On the State Emblem of the Russian Federation".

This should also be added with the fact that constitutional norms in the legal hierarchy occupy the supreme position and federal laws and regulations may not contrary to the Constitution of the Russian Federation. On the basis of this, the courts in legal proceedings must, in the first place, be completely guided by the Constitution of the Russian Federation.

Due to the fact that according to article 18 of the Constitution, rights and freedoms of man and citizen have direct force. As well as define the meaning, content and application of laws, activities of legislative and executive authorities, local self-government and are also provided by the Russian Justice. And in accordance with part 1 article 15 of the Constitution of the Russian Federation, the Constitution has supreme legal force, direct effect and shall be applied throughout the territory of the Russian Federation as an act of direct action.

"Decrees and orders of the President of the Russian Federation as the head of the State shall be applied by the courts when resolving specific court cases, if they do not contradict the Constitution of the Russian Federation and the federal laws (part 3 article 90 of the Constitution of the Russian Federation)" [4].

Therefore, "if in consideration of a particular case the court finds out that an act of state or other body, which is subject to application, does not comply with the law, it by virtue of part 2 article 120 of the Constitution of the Russian Federation must take a decision in accordance with the law governing these legal relations.

Normative acts of any state or other body are subject to evaluation from the point of view of compliance with the law (normative decrees of the President of the Russian Federation, decisions of the Chambers of the Federal Assembly of the Russian Federation, decisions and orders of the Government of the Russian Federation, acts of the bodies of local self-government, orders and regulations of ministries and departments, heads of institutions, enterprises, organizations, etc.).

In the application of the law instead of the non-conforming it to act of state or other authority the court may make a special ruling (decision) and draw the attention of the body or official, who has issued such an act, to the need to bring it into compliance with the law or to cancel ..." [4].

Thus, part 4 article 125 of the Constitution of the Russian Federation ends the list and indicates that "The Constitution Court of the Russian Federation, upon complaints about violations of constitutional rights and freedoms of citizens and upon court requests shall check, according to the rules fixed by the federal law, the constitutionality of a law applied or subject to be applied in a concrete case".

However, the reviewed and analyzed by us normative material is not sufficient for the considered depth of the studied problem. This is indicated by the conclusions on the study of established practice of exercising the president's power to address to the Federal Assembly of the Russian Federation. The sense of which lies in the fact that there are no proper legal regulation of the implementation procedure in implementation of the proclaimed annual presidential messages, what leads to the need for constant search for the best ways and means of implementation of the very message without distorting the political and legal essence of this document.

The question is what to do in this situation? Should we go further on the path of strict regulation and tightening of repressive practices or get away from this kind of activity towards restorative justice approach and refuse to divide the norms of administrative-procedural law in the three completely independent codes, such as: Code of Civil Procedure of the Russian Federation, Arbitration Procedure Code of the Russian Federation and CAO RF, which do not provide in full the required level of protection of the rights of citizens and organizations, including the annual Message of the President of the Russian Federation from the arbitrariness of government agencies?

We think that it will be more correct to take a decision according to which should apply as soon as possible to the code of administrative court proceedings as to the guarantor of part 4 article 3 of the Constitution of the Russian Federation, which States that "No one may usurp power in the Russian Federation. Seizure of power or usurping state authority shall be prosecuted by federal law".

Thus, it is very problematic to state about clear-cut application of article 17.10 "Violation of the procedure of official use of the National Flag of the Russian Federation, the State Emblem of the Russian Federation or the National Anthem of the Russian Federation" of CAO RF [3] to the citizens of the Russian Federation who are not endowed with any powers of authority. And persons vested with powers of authority or not performing the Federal Constitutional Law No. 2-FCL from 25.12.2000 "On State Emblem of the Russian Federation" or any else law should be brought to administrative responsibility up to the suspension from position held.

In conclusion of our scientific article we take the liberty to refer to that part of article 7 of the Federal Constitutional Law No. 2-FCL, which refers to the cases of use of the State Emblem of the Russian Federation that are "defined by the President of the Russian Federation" [2], and on this basis to propose clear setting out of actions of "a silver rider on a silver horse" having a relationship with a "black dragon", and more accurately pangolin. To coordinate all this with metaphysically-legal content and justifications set out in the draft of official comment of the State Emblem of the Russian Federation.

After that there will be legal basis for the application of administrative responsibility for improper exercising of the Federal Constitutional Law No. 2-FCL from 25.12.2000 "On the State emblem of the Russian Federation". And until this we will be doomed to an administrative and legal collapse with the elements of political conflict between the State and its citizens.

It should be noted also that composition of an administrative offense and penalties must be clearly defined in the very law on administrative responsibility, thus avoiding the vague definition that takes place in the current Code on Administrative Offences (CAO RF) – in article 17.10 "Violation of the procedure of official use of the National Flag of the Russian Federation, the State Emblem of the Russian Federation or the National Anthem of the Russian Federation".

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