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VERIFICATION OF THE LEGALITY OF TAX BENEFITS USE IN THE COURSE OF A CAMERAL TAX CONTROL

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Problems associated with checking the lawfulness of tax benefits use in the process of a cameral tax control are discussed and analyzed in the article. The author provides a review of the judicial practice in contentious matters.

Keywords: cameral tax control, tax benefits, discovery of documents.

The powers of tax authorities in the course of a cameral tax control have been significantly limited by the legislator since 2007 [2]. Making changes to the Tax Code is quite natural, because cameral tax audits have become little different from on-site audits, at that, tax officials often do not have time to browse huge number of documents requested, and taxpayers do not have any arguments to meet the demands of tax inspectors to document declaration details.

At present, in accordance with paragraph 7 article 88 of the Tax Code of the RF in course of performing a cameral tax audit a tax authority shall not have the right to require a taxpayer to provide additional information and documents unless otherwise provided by this article or unless the Tax Code of the RF requires such documents to be presented together with a tax declaration. The Tax Code provides for only three grounds for discovery of documents during a cameral tax audit:

1) when taxpayer uses tax benefits (paragraph 6 article 88 Tax Code of the RF);

2) upon the submission of a tax declaration for value added tax in which the right to a tax reimbursement is claimed (paragraph 8 article 88 Tax Code of the RF);

3) when audit declarations associated with the use of natural resources (paragraph 9 article 88 Tax Code of the RF).

In other cases in the event that a cameral tax audit reveals errors in a tax declaration and (or) inconsistencies in information contained in documents submitted, or reveals discrepancies between information presented by the taxpayer and information which is contained in documents possessed by the tax authority or which has been obtained by the tax authority in the course of conducting tax control, a taxpayer shall be informed of this and requested to give necessary explanations within five days or to make appropriate adjustments within the established time limit (paragraph 3 article 88 Tax Code of the RF). At that, the taxpayer has a dispositive right to submit the necessary documents in confirmation of reliability of information

It should be noted that tax inspectors often overlook difference in their powers to discover documents under the first three reasons listed above, and the situation when errors or inconsistencies are revealed in declaration, which means that employees of tax authorities are not authorized to demand documents from taxpayers. In this occasion, there are numerous disputes arising from the absence of clear regulation of certain definitions in the tax legislation.

In this article we will focus on the first of these reasons for discovery of documents, consider situations where a taxpayer uses tax benefits. To do this, one need to figure out what are tax benefits in tax law.

According to V. G. Panskov, tax benefits in Russia lead to many problems, first of all, they often do not reach the goal, and secondly, they lead to a large number of tax disputes [26.147].

Many scientific works are devoted to the issues of legal regulation of tax benefits in Russia [16; 18; 19; 21; 23; 24; 28].

Legal scholars, highlighting various authors' classifications of tax benefits, offer to distinguish tax benefits from tax preferences and tax subsidies, and some suggest that almost complete abandonment of the use of tax benefits is typical for the current Tax Code of the RF, at that, there is a more widespread use of tax deductions and tax exemptions [21, 26, 29]. Without going into the theory, let's look at the legal aspect of the matter.

In the tax legislation of Russia the category of tax benefits for the first time appeared in the Federal Law of the RF No. 2118-1 from December 27, 1991 "On the Fundamental Principles of the Taxation System in the Russian Federation", it should be noted that although there was not a definition of tax benefits in the law, but its 10th article contained an open list of tax benefits:

- tax-exempt minimum of an object of taxation;
- exemption from taxation of certain elements of an object of taxation;

- exemption from taxation of certain persons or categories of payers;
- lowering of tax rates;
- deduction from tax assessment (tax payment for a billing period);
- targeted tax benefits, including tax credits (deferred taxation);
- other tax benefits [3].

At present, the Law No 2118-1 is repealed, and the determination of tax benefits is contained in article 56 of the Tax Code of the RF, paragraph 1 of which stipulates that "benefits on taxes and fees shall be understood as **privileges** over other taxpayers and fees payers, which are provided for by tax and fees legislation and are granted to **particular categories** of taxpayers and fees payers, including the right not to pay a tax or fee or to pay a lesser amount thereof", at that, the Tax Code of the RF does not contain the list of tax benefits. However, paragraph 2 of article 56 defines a certain imperative for use of benefits: "taxpayer shall have the right to refrain from using a benefit or to suspend the use thereof for one or more tax periods unless otherwise stipulated by the Tax Code of the RF". On the basis of the literal reading of this paragraph it turns out that tax benefit is not a right, but a duty, from which it is possible to refuse.

Moreover, such a statutory definition is criticized virtually in every study devoted to tax benefits. In particular, among the main complaints to the legislator observed vagueness and blurring of the definition of benefits on taxes and fees: "... those signs that are established in the Tax Code of the RF currently allow representing of tax benefit as any statutory established tax exemption or condition, in respect of which a taxpayer is able to legally minimize the amount of tax payable to the budget" [21].

Also criticized the concept of "category of taxpayers", due to the fact that most of the norms for exemption from specific taxes do not contain the reference to "a category of taxpayers", in addition the Tax Code of the RF does not have definition of this concept. "Any payer, who has circumstances specified in "preferential" norms, has the right to believe that it has been provided a benefit. A different understanding means that exemptions granted to all taxpayers, who actually have the grounds for exemption from payment, are not benefits" [25].

It should be noted that in a special part of the Tax Code of the RF tax benefits directly determine privileges for taxpayers only in three chapters:

- chapter 25.3 of the Tax Code of the RF contains articles 333.35-333.39 that determine benefits on state duties;
- chapter 30 of the Tax Code of the RF by its article 381 determines benefits on tax on property of organizations;

- chapter 31 of the Tax Code of the RF by its article 395 determines benefits on land tax.

Norms of the Tax Code of the RF do not provide for the list of benefits on other taxes. "However, certain categories of taxpayers are provided a variety of privileges on many taxes, in particular VAT and income tax. These, for example, may include the exemption from VAT on revenues from performing certain works or provision of various services in accordance with article 149 of the Tax Code of the RF. Taxmen equate such privileges to tax benefits and because of that in course of cameral audits try additionally to request different documents from a taxpayer. However, this is not always lawful" [17].

For example, chapter 21 of the Tax Code of the RF enshrining basic provisions for the calculation of VAT, does not mention about benefits, at the same the chapter contains certain advantages to taxpayers:

- Exemption from the Fulfillment of Taxpayer Obligations (article 145 TC RF)
- operations that are not recognized as the objects of taxation (paragraph 2 article 146 TC RF)
- Non-Taxable (Tax-Exempt) Operations (article 149 TC RF)

In the latter two cases these operations should be reflected in section 7 of the VAT tax return. "As soon as a taxpayer reflects non-taxable transactions in this section, the tax authorities, referring to article 56 of the Tax Code of the RF (hereinafter TC RF), and considering them as benefits, request from the taxpayer documents confirming the right to these tax benefits. To date this issue is very controversial" [27].

A point in a long-term dispute related to transactions that are not objects to VAT (paragraph 2 of article 146 TC RF) was put by the Presidium of the Higher Arbitration Court of the Russian Federation [10]. The essence of the matter was that a taxpayer having sold a land plot has not submitted documents proving this transaction at the request of inspections that carries out cameral tax audit, , referring in support of its refusal to the absence of the object of taxation. Tax inspection after not having received the requested documents has imposed additional accrual of VAT and brought the taxpayer to responsibility under article 126 TC RF. The courts of cassation and appellate instance abolished the additional tax due to the fact that the taxpayer actually sold the land plot, but the fine under article 126 TC RF was upheld, thus confirming the obligation of the taxpayer to submit documents.

However, the HAC RF in the above Decision has concluded that the absence of the taxpayer's obligation to calculate and pay the VAT regarding the transactions on sale of land plots is directly provided for by the norms of tax legislation

and by virtue of article 56 TC RF is not a benefit. Consequently, the tax inspection had no right to send to the taxpayer the requirement to provide the documents and to bring it to justice under article 126 TC RF.

Thus, in the opinion of the HAC RF, transactions reflected in paragraph 2 article 146 TC RF are not benefits. In addition, the text of the Decision No. 4517/12 contains a reference that judicial acts of arbitration courts with similar factual circumstances, which came into force, may be reviewed on the basis of paragraph 5 part 3 article 311 Administrative Procedural Code of the RF [8].

Next it was the turn for resolving situations regarding transactions, which are not subject to taxation (tax-exempt), defined by article 149 TC RF. Up to 2012 judicial practice was controversial because in a number of decisions of the Higher Arbitration Court and Constitutional Court of the RF transactions described in article 149 TC RF in a particular context were referred to as benefits, [4; 5; 7; 8], however, in arbitration practice there were decisions, in which courts denied tax authorities the right to request supporting documents in the case if taxpayers used article 149 TC RF [31].

The above-mentioned Decision of the Presidium of the HAC RF No. 4517/12 from 18.09.2012, as it often happens in the tax legal relations, filled a gap in the legislation and became a kind of norm of law for lower courts. In this dispute, LLC "Techno Nicole – Building Systems" similar to the above dispute under article 146 TC RF did not provide documents confirming the right to benefits under subparagraph 26 paragraph 2 article 149 TC RF. Three levels of courts refused to meet the demands of the taxpayer. Further the case was transferred to the Presidium of the HAC RF for supervisory review, at that, the proceedings were suspended until the appearance of the motivation part of the Decision of the Presidium of the HAC RF No. 4517/12. Then, the company was denied to transfer to the Presidium of the HAC RF with a recommendation to go to court in the prescribed manner with the application for review of judicial acts in accordance with new circumstances. And now the courts of three instances, having revised the case under the new circumstances, decided the dispute in favor of the taxpayer, explaining their decision that the new circumstance is the change in the decision of the Presidium of the HAC RF of the practice of application of articles 146, 149 of the Tax Code of the Russian Federation. At that, the courts have rejected the reference of the inspection to the fact that in the case were requested documents for the transactions listed in article 149 of the Code, with the assertion that the given by the Presidium interpretation of article 56 of the Code applies not only to article 146, but equally to article 149 of the Code [32].

Equally relevant are such disputes related to the calculation of income tax. In Chapter 25, which regulates the calculation of income tax, also does not have a direct mention about tax benefits. However, tax authorities repeatedly in their clarifications called benefits:

- possibility to apply bonus depreciation (clause 2 paragraph 9 article 258 TC RF). (Though in later explanations referred to the fact that tax benefits are not provided for by chapter 25 TC RF);

- possibility of transferring into future a loss from previous years (article 283 TC RF);

- application of raising coefficients to the basic rate of depreciation for particular types of assets (article 259.3 TC RF);

- exemption from income tax of revenue in the form of property obtained by a Russian organization free from its founder, member or shareholder who owns more than 50% of its nominal capital (subparagraph 11 paragraph 1 article 251 TC RF), etc. [11-15].

Another very interesting tax dispute began in 2009. The reason for the dispute was filling of a revised tax declaration for income tax, in which the taxpayer in accordance with article 275.1 TC RF stated previously not reflected losses of the current tax period for the activities associated with the use of the objects of servicing industries and enterprises, including objects of housing-communal and social-cultural spheres. Not reflection of the loss resulted in, in the opinion of the taxpayer, the overstatement of income tax to be paid more than 16 million rubles. The tax authorities in the course of a cameral tax audit in accordance with article 88 TC RF required to document the loss, having assessed the situation as the use by the taxpayer of a preferential order of tax calculating.

In view of the fact that the documents were not submitted within the prescribed period, the tax authority took a decision on the illegality of the reduction of profits tax. Three levels of courts refused to meet the claim of the taxpayer, but the Presidium of the HAC RF sent the case for a new consideration [9].

And judicial machinery began to work in reverse order. And the first court instance issued a verdict that the argument of the tax authority on the use by the taxpayer of benefits in the disputed tax return for income tax and the discovery of documents in the course of cameral tax audit had been illegal. The established by article 275.1 TC RF features of determining the tax base by taxpayers engaged in activities related to the use objects of servicing industries and enterprises are not tax benefits in the sense of paragraph 1 article 56 of the Code. It was the turn of the tax authority to challenge the decisions of the courts.

The dispute lasted for four years, a lot of time and money was spent. At that, as in the above debates on VAT, the same scenario took place – the taxpayer appealing a decision of the tax authority, came to the highest court instance (three levels of courts had denied the complaint). Then the Presidium of the HAC RF directed the case for a new trial, and the vector of judicial decisions began to work in the opposite direction and three levels of courts recognized the rightfulness of the taxpayer. Thus, today, tax authorities have no right to demand in the course of a cameral tax audit the documents that confirm the use of benefits by taxpayers under articles 146, 149, 275.1 TC RF.

Disputes concerning benefits for other taxes are not so relevant. Yet, the requirement of the tax authorities in the framework of a cameral tax control to document the right to standard, social and property tax deductions for tax on income of physical persons is virtually unquestionable, and as for the professional tax deductions for tax on income of physical persons, there have been disagreements among both theoreticians and practitioners.

According to R. K. Kostanyan, "Article 221 TC RF applies only to those expenses that are directly related to the deriving revenue of individuals within their special legal personality, that is, this deduction is available only for certain categories of taxpayers. In addition, the right to obtain this deduction is delegated to the taxpayer's discretion and depends on the willingness of the last" [23].

In our opinion more convincing is the position of S. D. Shatalov that "professional tax deductions cannot be treated as tax benefits, because they are directed to proper organization of taxation, which allows to reduce the incomes of certain categories of self-employed persons for the costs associated with obtaining these incomes" [22].

This position is consistent with the opinion of the Presidium of the HAC RF, which has envisaged in its Decision that "the providing to a taxpayer of tax on income of physical persons the right for obtaining professional tax deductions, specified in paragraph 1 article 221 TC RF, does not meet the signs of benefits for taxes and fees in accordance with article 56 TC RF, therefore, does not assume as a condition for obtaining deduction a preliminary audit of primary documents within the framework of a cameral tax audit" [6].

It should be noted that in this case arbitration courts use the position of the Presidium of the HAC RF as a norm of law [30].

All of the above problems are not relevant for taxpayers who use special types of tax treatment in view of the fact that the organization in this case are exempt from VAT and income tax, and entrepreneurs from paying tax on income of

physical persons. But the very use of special regime tax authorities often treat as a tax benefit, that is why in the course of cameral tax audits they require taxpayers to provide ledger of income and expenditure and other documents. We believe that these actions are also illegal, because special types of tax treatment can hardly be uniquely considered as benefits. "Through the use of individual types of tax treatment the taxpayers that correspond to the signs, which are required for their use, can significantly reduce tax burden in comparison to other taxpayers. But the special types of tax treatment for the most part bind the granting of any tax advantages not to the features of the legal status of taxpayers. As a rule, as basis here is also laid the nature of the activities they carry out" [21].

However, tax authorities' strenuous aspiration to control tax benefits is understandable, given that the tax advantages are often used by taxpayers for taxation minimization, and often to avoid paying taxes. Not very long ago the legislation has established a lot of benefits for handicapped, however, many organizations have not even scrupled to use handicapped as "dead souls", and even now "handicapped's privilege" is actual for the calculation of VAT. In order to reduce income tax some organizations illegally use higher rates of depreciation or create pseudo non-profit organizations. So, checking such possible abuses is needed and important, but in the course of a field tax control, where the powers of tax authorities are much wider than within the framework of a cameral control.

Regarding the considered by us problematic situations that arise in checking the validity of the use of tax benefits in the course of a cameral tax control, of course, it can be argued that the cause of controversy is the lack of a clear statutory definition of the notion of tax benefit, as well as multivariance of the terminological use of taxpayers' advantage in the various chapters of the Special Part of the Tax Code RF.

Sharing the view of O. P. Grishina, about that it is necessary to establish "specific normative mechanism of implementation that would ensure effective control of the state over the use of tax benefits, countering possible abuse by taxpayers, as well as protection of the rights, freedoms and legitimate interests of organizations involved in a multi-step process of payment and transfer of taxes to the budget" [20], we believe that it needs to develop clear classification principles of the notion of "tax benefit", adding them to article 56 TC RF. In addition, in our opinion, paragraph 6 article 88 TC RF must contain a specific list of articles, under which the use of benefits by taxpayers will give the right to tax authorities to carry out cameral tax audit with the discovery of supporting documents.

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Chernov Yu. I.

THE INTERRELATION OF THE PRINCIPLES OF ADMINISTRATIVE-TORT AND CRIMINAL PROCESSES[1]

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The author notes the presence of commonality, mutual dependence and conditionality between administrative-tort and criminal processes, including as a result of the nature of penalties both criminal and administrative.

Interrelation of administrative and criminal responsibility is manifested in the main areas of related and border compositions of administrative offences and crimes.

Here is stated about the apparent lack of adjustedness and coherence between administrative-tort and criminal policies of the state, as well as about the presence of gaps in the coherence of administrative-tort and criminal processes.

Keywords: administrative law, administrative-tort law, criminal process, principles of administrative-tort law, principles of criminal process, principles of administrative-tort process.

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The most important element that characterizes the content, as well as predetermines the structure and functions of any process, it is the system of its principles. Under legal principles in the theory of law understand the guidelines (ideas, beginnings) enshrined in legal norms. They characterize its content, enshrine the patterns of development and define the mechanism of legal regulation [28, 32-33]. Principles of law are "ideological spring" [4, 225] of the whole mechanism of legal regulation, fundamental principles that characterize the content of the norms of law-enforcement acts, show the major directions of their functional effect on public relations [3, 261-262].

In this regard, it is positive that the theoretical problem of developing an optimal system of principles of the Russian administrative-tort process, which has not yet received a full-fledged comprehensive resolving both in legislation and in doctrinal scientific interpretation, in some volume has been analyzed in a number of studies [5; 8; 16; 17; 23; 7-10; 26; 6; 29]. Indeed, "the assertion of the need for complete, consistent and accurate legislative regulation of the principles of administrative and jurisdictional process, which, unfortunately, is not observed in the legal norms of the Code on Administrative Offences of Russia, deserves support" [9, 74-75].

A. P. Shergin analyzing administrative and jurisdictional process as a procedural component of the legal regulation of administrative responsibility and an independent kind of legal process, convincingly justifies the need for an independent codification of the procedural form of administrative responsibility (Administrative-jurisdictional Code of the RF) [26, 4-5], what "involves reference to the fundamental characteristics of legal process. In the procedural science these include principles, functions, and stages. They are the girders of any legal process, form its normative model" [5, 26].

The most authoritative Russian legal scholar very aptly points out that at present can be only offered a model system consisting of the following principles of proceedings on cases of administrative offences: legality, language of the process, presumption of innocence, adversarial proceedings, level arrangement, right to appeal against the decision on a case. A. P. Shergin emphasizes that for constructing of this type of legal process the principles of adversarial proceedings and level arrangement are of special significance.

At that, the principle of adversarial proceedings essentially determines the functional orientation of proceedings on cases of administrative offences. The functions of this type of legal process, in accordance with this principle, are administrative prosecution and protection of the rights and legitimate interests of the participants of proceedings on cases of administrative offences.

At the same time, "the principle of level arrangement reflects the duration of the procedural activity on cases of administrative offences… a clear definition in the Code on Administrative Offences of the RF (hereinafter CAO RF) of all the instances of the considered kind of legal process is needed" [26, 6]. Introduction of supervisory procedure gave a certain impetus to the development of this principle [12].

It seems that the principles and other quality features of the Russian administrative-tort process are most clearly revealed when it is compared with other procedural forms of domestic legal system. Such studies contribute to the disclosure of the essence of administrative-tort process, search for the faces of interaction and cross-fertilization of procedural industries and institutes, standardization of terminology.

Administrative -tort process is most closely interacts with administrative-tort law, as well as: 1) with arbitration proceedings in part of a large block of the procedural norms governing the exercising of administrative responsibility [22]; 2) with criminal proceedings [25].

An important substantive-legal prerequisite of existence commonality, mutual interdependence and interconditionality between administrative-tort and criminal processes is the relationship of administrative and criminal responsibility.

O. E. Leist, on the basis of law-enforcement nature of sanctions, divides them into two main types: justice restorative and punitory punitive ones [14, 62]. First ones are aimed at elimination of direct injury to the rule of law. The task of the second ones is the general and private prevention of offences, the correction and re-education of delinquents.

Exactly to punitive sanctions usually refer both criminal-legal and administrative sanctions [14, 63]. Since the measures of administrative and criminal responsibility often seek to protect the same objects of legal protection, enforcement tasks of administrative responsibility, enshrined in article 1.2. CAO RF and tasks of criminal law, provided for in part 1 article 2 of the Criminal Code of the RF, are similar in many ways.

Institute of administrative responsibility in Russia was formed and began to develop in the second half of the XIX century [18, 151-152], interacting with criminal responsibility. A. I. Elistratov analyzing the relevant legal sanctions, noted that "the study of the peculiarities of administrative torts that consist in violation of administrative orders leads some scientists to an attempt to create special "administrative-criminal law" on the verge of criminal and administrative law [10, 434]. The ratio of misconduct and crimes according to Russian Imperial Law has been sufficiently enough analyzed by A. B. Agapov [1, 141-200; 2, 74-135].

In modern Russia, the relationship between administrative and criminal responsibility is manifested in the following key directions.

First, as in the Soviet period, there is a vast array of related and border compositions of administrative offences and crimes [15, 245-249]. In this case, due to the decriminalization of many previously criminally punishable offenses the social danger of a number of administrative offenses has increased, the structure of their legal compositions has become more complex [26, 5].

Second, in the criminal law of Russia revive compositions of offenses with administrative prejudice that are unique only to the Soviet period [11]. It seems that this "novation" evidences the erosion of clear boundaries between administrative offenses and criminal deeds: "Repeated administrative offense remains exactly an offense. … disjunction of two administrative offenses cannot make a single crime. Each of them separately does not possess the necessary level of social danger. Also, the danger is not formed through disjunction of the mentioned offences [6, 79].

Third, according to part 3 article 2.1. CAO RF, should be applied interrelation of administrative and criminal responsibility that has appeared in our country in the early 1990s and is characteristic to the Soviet period. We are talking about the cases where for committing the same wrongful acts individuals are brought to criminal responsibility, and legal entities – to administrative responsibility.

Given plane of interrelation of administrative and criminal responsibility, alongside with the institute of administrative responsibility for the commission of one and the same offense of individuals and legal entities, in view of the obvious fiscal interest of the state to expand the circle of persons who are imposed an administrative fine, has been subjected to severe criticism in administrative and legal literature.

Really, "what is it: a kind of dual responsibility or a two-pronged responsibility? Maybe, this is a sort of enshrined in civil law joint and several responsibility or subsidiary responsibility? … It is clear that splitting of responsibility leads to irresponsibility" [7, 105-107].

There is a clear lack of adjustedness and coherence between the administrative-tort and criminal-legal policy of the state. As a result, "the tightening of sanctions of administrative-legal norms "draws near" administrative responsibility to criminal responsibility ... for a significant number of persons brought to administrative responsibility an amount of fine, even minimal, established for the commission of an appropriate administrative offense is "unsupportable" and, therefore, becomes not a measure of responsibility, but measure of the financial and psychological pressure on these persons" [18, 6]. Paradoxically in terms of the elementary

requirements of the quality of legislative technique, but the maximum term of imposed "compulsory works" under article 3.13. CAO RF (up to 200 hours) may be an order of magnitude greater than the minimum term of serving "compulsory works" under article 49 of the Criminal Code of the RF (from 60 hours). The names of these measures of administrative and criminal responsibility in CAO RF and Criminal Code of the RF are identical.

However, it seems that the internal coherency of legal policy of the state in the sphere of interaction of administrative-tort and criminal processes is even worse. July 1, 2012 marked 10 years since the entry into force as of the CAO RF and the Code of Criminal Procedure of the RF. But so far, both of these Federal Codes still have not been filled with the norms required for a full procedural-legal implementation of interrelation of administrative and criminal responsibility.

Thus, in the Code of Criminal Procedure of the RF, and now, in spite of the often shortened limitation periods for bringing to administrative responsibility, there are no norms on transfer of materials of pre-investigation checks or copies of materials of criminal cases to bodies (officials) authorized to carry out proceedings on cases of administrative offences.

Meanwhile, exactly 10 years ago, the legislator was proposed, for example, the following option to resolve this gap:

1. Supplement article 148 of the Code of Criminal Procedure of the RF by new fourth part read as follows:

"If check materials contain data on an administrative offense, the prosecutor, within five days from the date of the judgment on refusing to institute criminal proceedings considers the issue on institution an administrative case and (or) on the transfer of materials for resolution in administrative proceedings to an appropriate body or official".

2. Add sixth part to article 213 of the Code of Criminal Procedure of the RF:

"If investigation detects the facts requiring application of measures of administrative punishment, the investigator indicates this in the decision to dismiss the criminal proceedings and prosecution, and the prosecutor within five days from the date of issuance of this decision considers the issue on institution an administrative case and (or) on the transfer of copies of materials of the criminal case for resolution in administrative proceedings to an appropriate body or official" [25, 20].

Simultaneously, in CAO RF there are no provisions requiring body (official), which conducts proceedings on a case concerning an administrative offense, in the case of evidence of a crime *immediately* to transfer the case materials to the prosecutor, investigator or body of inquiry.

These and other gaps in the coherence of administrative-tort and criminal processes have much deeper reasons than it may seem at first. Despite the simultaneous entry into force of CAO RF and the Code of Criminal Procedure of the RF, in the first one the codification of administrative-tort process in a number of key parameters is much closer to the procedural model of the Code of the Criminal Procedure of the RSFSR rather than the Code of Criminal Procedure of the RF.

Thus, the definition of evidence on a case of administrative offence in part 1 article 26.2. CAO RF as *any actual data*, on the basis of which a judge, body, or official in charge of the case determines the presence or absence of an administrative offense, guiltiness of a person brought to administrative responsibility, as well as other circumstances that are important for the proper resolving of the case, is concordant with the definition of evidence on a criminal case under part 1 article 69 of the Code of Criminal Procedure of the RSFSR.. The definition of criminal-procedural evidence contained in article 74 of the Code of the Criminal Procedure of the RF, discloses them like *any information*, and not as *any actual data*.

Meanwhile, the definition of criminal-procedural evidence under the Code of the Criminal Procedure of the RF contributes to the strengthening of adversarial nature criminal proceedings, and according to Code of Criminal Procedure of the RSFSR – strengthening the principle of objective truth of process.

One should agree with assertion of A. P. Shergin that "it would be hardly possible effectively implement the existing norms on administrative responsibility under the old simplified procedure. Cannot be ignored the experience of the separated codification of substantive and procedural norms on administrative responsibility of other countries (Poland, the Republic of Belarus, the Republic of Ukraine, etc.)" [26, 5].

By developing a completely new theoretical model of stages, functions and principles of Administrative-tort Procedural Code of Russia the theoretical and practical lessons of 10 years of application of the Code of Criminal Procedure of the RF should also be taken into account. Particularly fruitful this analysis can be when thinking about the system of principles of the future updated Russian administrative-tort process.

Thus, it is positive that the principles of criminal proceedings do not "dissolve" in the chapter devoted to general provisions, as it used to be in the Code of Criminal Procedure of the RSFSR, and concentrated in chapter 2 of the Code of Criminal Procedure of the RF, which is specifically dedicated to them. This shows an improvement in the standard of legislative technique.

Compared with the Code of Criminal Procedure of the RSFSR in the Code of Criminal Procedure of the RF the regulation of the principles of criminal proceedings contains very serious changes that require, as a fairly approves A. P. Kruglikov, deep special analysis [13, 56]. However, such analysis is not possible in the present work, due to the limited scope of research. Describing the contained in the Code of Criminal Procedure of the RF separate the most significant changes in the system of principles of the criminal process, we note the following.

According to the Code of Criminal Procedure of the RF in a number of principles of criminal process there are not mentioned comprehensiveness, completeness and objectivity of the investigation of the circumstances of a case (objective truth), formerly provided for by article 20 to the Code of Criminal Procedure of the RSFSR. This principle of public criminal process as is emphasized [21, 63-67], and is not emphasized [20] by some authors.

At the same time in the Code of Criminal Procedure of the RF codify the principle of adversarial nature of the parties, provided for by part 3 article 123 of the Constitution of the Russian Federation: "Court procedure shall be conducted on the basis of parties' adversary nature and equality".

In accordance with article 15 of the Code of Criminal Procedure of the RF, in accordance with the principle of adversarial nature of the parties, functions of prosecution, defense and resolving of a criminal case are separated from each other and cannot be assigned to one and the same body or the same official. Court is not a body of criminal prosecution, does not come down on the side of prosecution or defense. Court creates the necessary conditions for the execution by the parties of their procedural obligations and the implementation of their rights. Prosecution and the defense have equal rights before the court.

Significantly, that enshrined in article 15 of the Code of Criminal Procedure of the RF principle of adversarial nature of the parties, in fact, declared Russia's desire for the perfect adversarial type of criminal process, suggesting that "a dispute of equal parties is resolved by an independent court" [19, 19].

Let's note in general much less detailed elaboration of the principles of proceedings on cases of administrative offences, compared to similar principles in criminal court procedure (both in law and theory).

At that, proceedings on cases of administrative offenses is fundamentally different from the criminal process because of availability of the principle of promptness [24, 289-296] that is not typical for the criminal court procedure.

The high quality of criminal-procedural form is predetermined by the key distinguishing feature of the method of criminal-procedural law – special procedural

procedure of institution, investigation, review and resolving of criminal cases, which ensures the compliance of the behavior of participants in a criminal process with the task of criminal procedure, a full, comprehensive and objective study and assessment of evidences, knowledge objective truth , proper application of measures of state impact by the court and the maximum social and educational effect of administration of justice [27, 46]. Improvements in the quality of procedural form of administrative responsibility and the development of the system of its principles are inextricably linked to the problem of rethinking the method of administrative-tort process.

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«DROPPING OUT CONSTRUCTIONS» IN THE CODE ON ADMINISTRATIVE OFFENCES OF THE RF: AN OBJECTIVE INEVITABILITY OR CONSEQUENCE OF FLAWS IN THE LEGISLATIVE THOUGHT AND TECHNIQUE?[1]

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The author considers and criticizes certain provisions of the Russian administrative-tort legislation regarding: presence of non-codified norms; discordance in time of the taken norms of the Code on Administrative Offences of the RF, which are located in different articles; incompleteness of normative defining of guilt of a legal entity; lack of common sense in determining the degree of social danger and corresponding to it administrative penalty for particular administrative offences.

Keywords: administrative-tort law, administrative responsibility, Code on Administrative Offences of the Russian Federation, institute of administrative responsibility of legal persons, administrative penalties, administrative fine.

July 01, 2012 marked the beginning of the second decade of functioning of the Code on Administrative Offences of the Russian Federation (hereinafter CAO RF). Paying tribute to its developers, who have managed in the current codification of the Russian administrative-tort legislation to significantly improve its quality, we should not close our eyes to the problems that either were inherent to the Code at the time of its adoption, and still remain so, or occurred with inclusion in it new novelties.

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Professor V. D. Sorokin, in his famous article "About Two Trends that Destroy the Integrity of the Institute of Administrative Responsibility", wrote that "the concept included in the project (CAO RF) give rise to concern about the fate of the institute of administrative responsibility in its classic form, since the called document is based on the recognition of two trends that are incompatible with the essence of administrative responsibility" [5, 46-54].

The first destructive tendency, according to V. D. Sorokin, manifested itself in a kind of "blurring" of the single legal framework of administrative offenses and, therefore, the integrity of the category of administrative responsibility itself and spawned decodification of the legislation on administrative responsibility – a completely unnatural process that destroys a unified legal substance of this legal institute.

V. D. Sorokin believed that "the solution to this problem is simple enough: we need the will of the legislator, aimed at "putting all departmental administrative offenses", both existing and ones, which may occur, in the relevant chapters of the Special Part of the CAO RF. Compositions of offences will find place in it!". Alas, some compositions have not found their place.

The new CAO RF has been operating already for ten years! And next to the newly built magnificent monumental building of the institute of administrative responsibility chaotically, as before, huddle frilly "huts of responsibility of mysterious nature", or rather "tent with the rules for the recovery of fines". At that, to those "huts"-"tents" that were not demolished during adoption CAO RF (articles 293, 295-306 of the Budget Code of the Russian Federation from 31.07.1998 No. 145-FL (as amended on 28.07.2012 No. 128-FL) (author's note. Hereafter texts of laws are reproduced according to the web-site Konsul'tant Plus – http://www.consultant.ru); articles 116, 118-120, 122, 123, 125, 126, 128, 129, 129.1, 129.2 and some other of part one of the Tax Code of the Russian Federation from 31.07.1998 No. 146-FL; article 19 of the Federal Law No. 125-FL from July 24, 1998 "On Compulsory Social Insurance against Industrial Accidents and Occupational Diseases"; article 27 of the Federal Law No. 167-FL from December 15, 2001 "On Mandatory Pension Insurance in the Russian Federation"), over time, already after the introduction into force of CAO RF, add new ones (article 74 of the Federal Law No. 86-FL from July 10, 2002 "On the Central Bank of the Russian Federation".

Outside of CAO RF there are also articles although not containing compositions of administrative offenses, but regulating, along with CAO RF, the procedure of administrative banishment of a foreign citizen out of the boundaries of

the Russian Federation (article 34 of the Federal Law No. 115-FL from July 25, 2002 "On the Legal Position of Foreign Citizens in the Russian Federation"…

The second trend that destroys the integrity of the institute of administrative responsibility, according to Professor V. D. Sorokin, was associated with the inclusion of the administrative responsibility of legal persons in CAO RSFSR, "the ideology of which in full accordance with the nature of administrative responsibility is intended only for guilty offenses of individuals". The adoption of the new CAO RF broke the process of decodification, where was a great merit of V. D. Sorokin and his associates. As for the second trend, qualitatively destroying the integrity of the institute of administrative responsibility, its legislative resolving in CAO RF is nothing more than a visibility of solving the problem, attempt of artificial joining of diverse, different parts.

Since the connection of dissimilar styles, ideas, and attitudes is described as eclecticism, then the joining in CAO RF the institute of administrative responsibility of legal persons, ambiguously evaluated by legal scholars, with the generally accepted, traditional, classical for administrative-tort legislation institute of administrative responsibility of individuals, I would call a kind of manifestation of *legislative eclecticism in jurisprudence.*

At that eclecticism as an architectural style, combining many different elements and styles, and is usually characteristic for the periods of decadence in art, can give either faceless works of architecture or masterpieces. As an example of a positive nature can serve the developed by Russian architect Konstantin Andreevich Ton "Russian-Byzantine style" of temple architecture, physical embodiments of which can be traced in the facades of the Grand Kremlin Palace and the Cathedral of Christ the Savior.

Therefore, all-in-all, there is nothing unnatural in eclecticism in general and eclecticism of CAO RF in particular, subject to the harmonious combination of its components. However, we cannot avoid unnaturalness regarding the guilt of a legal person. Although part 2 article 2.1 CAO RF contains the scheme of determining guiltiness of a legal person in committing an administrative offense, its content is not only contrary to the principle of fault, but on the contrary, is built on the principle of objective imputation, the application of which is not provided for in administrative law (not yet provided for).

His position on the causes of emergence the institute of administrative responsibility of legal persons and expediency, rather inexpediency, of its placement in CAO RF Professor V. D. Sorokin repeatedly stated to me in the course of our debates in the office of his cozy apartment in St. Petersburg. In short it

was due to the need to establish legal responsibility of economic units that have appeared in large numbers as a result of privatization of state property, and activities of which were increasingly going beyond the applicable legislation. Application of criminal responsibility to legal persons could not be considered as a possible option, as it was clearly contrary to the established canons of Soviet and Russian criminal legislation. Determination of civil responsibility looked the most acceptable option, first of all basing on the fact that the concept of "legal person" had been enshrined it in the Civil Code of the Russian Federation [1]. But against this option was the fact that civil procedure was quite cumbersome. In this regard, the legislator focused on administrative responsibility, the implementation of which was traditionally associated with the promptness of proceedings on cases of administrative offences. Although V. D. Sorokin remained opposed to enshrining the institute of administrative responsibility of legal persons in CAO RF, his position in the course of our debates softened somewhat in the direction of the fact that it was a given, which, unfortunately, we have to accept, subject to the resolution of the problem of establishing the guilt of a legal person under criteria different from ones in respect of physical persons.

In other words, we need new rules, but not exceptions to the rule. In this our positions with Valentin Dmitriyevich Sorokin coincided.

Perhaps, for the pedantic Germans it will look unnatural, but for the Russian people such adages look so familiar: "no man is wise at all times" and "there is an exception for each rule!" But exceptions differ...

In the already old Soviet times, when education in our country was not oriented on questionable principles of the Bologna system, did not bring Unified State Examination to the level of an objective evaluator of knowledge, did not substitute educational process by testing of "residual knowledge", which unfortunately in the original or in the "no-residuum form" left much to be desired, that is, when education was indeed a quality education, and not its imitated appearance, every schoolboy knew that there were many exceptions in the "great, powerful, truthful and free Russian language" [7].

For example, to accurately know 11 verbs-exceptions one had to learn the "zapominalka" (memory exercise):

"The second conjugation includes
All verbs that end with «ить»,
Excluding: to shave, lay (a tablecloth),
Adding: to look, offend, hear, see,

Hate, drive out, breathe, hold, tolerate,
And to depend, and even to twist,
Remember, friends,
They cannot be conjugated with «e».
(rhyme is not respected)

There are also more sophisticated exceptions. And there are even exceptions to exceptions, for example, the adjective "rozisknaya" (investigative) because of the nowadays returned to use adjective "razisknaya" (searching) is itself an exception to the rules of writing prefixes "raz" and "roz" [6]. But one thing is exceptions in grammar and quite another in jurisprudence.

At the moment of introducing CAO RF *the top amount of administrative fine* could not exceed five thousand rubles for citizens, fifty thousand – for officials, one million rubles – for legal entities. Thus, the legislator justifiably differentiated measure of administrative responsibility for the various categories of subjects of administrative offences. In addition, it is important that, under no circumstances, the top amount of administrative fine imposed on citizens, could not exceed the upper amount of administrative fine imposed on officials. A similar rule was applied, respectively, in respect of officials and legal persons.

But further the legislator stood up on the path of making exceptions to article 3.5 CAO RF and the current situation with the upper size of administrative fine is radically different. Part 1 article 3.5, as amended by the Federal Law No. 131-FL from July 28, 2012, is as follows: *"An administrative fine is a recovery of monetary assets expressed in rubles and imposed on citizens in an amount which does not exceed five thousand rubles, in cases provided for by article 14.1.2, part 2.1 article 14,16 of this Code – fifty thousand rubles, and in cases provided for by articles 5.38, 20.2, 20.2.2, 20.18, part 4 article 20.25, part 2 article 20.28 of this Code – three hundred thousand rubles; on officials – fifty thousand rubles, in cases provided for by article 14.1.2 of this Code – one hundred thousand rubles, in cases provided for by part 2.1 article 14.6 of this Code – two hundred thousand rubles, and in cases provided for by articles 5.38, 19.34, parts 1-4 article 20.2, articles 20.2.2, 20.18 of this Code – six hundred thousand rubles; on legal persons – one million rubles, and in cases provided for by articles 14.40, 14.42 of this Code – five million rubles or can be expressed in the size that is a multiple of…".*

Thus, in the case of business activity in the field of transport without a license (article 14.1.2), the upper amount of administrative fine that may be imposed on a citizen, comes up with the upper amount of administrative fine, which, under general rule, is provided for officials, and in commission administrative offenses provided for by articles 5.38 , 20.2 , 20.2.2 , 20.18, part 4 article 20.25 the upper amount

of administrative fine imposed on citizens is already 6 times higher than the generally established maximum amount of administrative fine for officials.

It is also unclear why in increasing the amount of administrative fine legislator has used different multipliers: for citizens 10-fold and 60-fold increase, while for officials – respectively 2-fold and 12-fold increase, i.e., five times less.

Sanction under part 1 article. 14.1.2, actually erases originally enshrined in CAO RF criterion of increased in comparison with citizens responsibility of officials, because according to it "exercising of entrepreneurial activity in the field of transport without a license is punishable by an administrative fine on citizens and (italics by V. D.) officials in the amount of fifty thousand rubles".

Article 14.1.2 "Exercising of Entrepreneurial Activity in the Field of Transport without a License" was introduced by the Federal Law No. 131-FL from July 28, 2012 and is correlated with article 14.1 "Exercising of Entrepreneurial Activity without State Registration or without a Special Permit (License)" as a special and general. Most likely, the appearance of article 14.1.2 in CAO RF is a reaction of the legislator to the increasing cases of road traffic accidents with severe consequences with the participation of bus drivers, who are engaged in long-distance transportation, and fixed-route taxi. But if we proceed from the official statistics and publications in the media, the legislator with the same success could and should have been introduce to CAO RF article 14.1.3 "Exercising Entrepreneurial Activity in the Field of Medicine without a License". The appearance in CAO RF of article 14.1.2 is an evidence of not the promptness of the legislator, but its unwillingness or inability to objectively assess the reasons for the growth of the above categories of road-traffic accidents and to propose a specific program to reduce them. Much easier to include in CAO RF a repressive norm. Unfortunately, there is no guarantee that such legislative practice on the carving new compositions of administrative offences out of article 14.1 will stop. As a consequence, article 14.1 and segregated from it articles 14.12-14.1.N will represent the same unsightly spectacle like an orchard, completely overgrown with underbrush or a train of the period of the Civil War, the passengers of which were located not only in the compartment, but also with their belongings occupied roofs of wagons.

Even more difficult to evaluate the increase of the amounts of upper administrative fines imposed on citizens and officials for violation of the legislation on meetings, rallies, demonstrations, processions and pickets (article 5.38), violation the established procedure for arranging or conducting a meeting, rally, demonstration, procession or picket (article 20.2), arrangement of mass simultaneous stay and (or) movement of citizens in public places, which has caused violation of public

order (article 20.2.2), blocking transport lines (article 20.18), evasion of execution an administrative penalty (article 20.25).

From the point of view of a law-abiding taxpayer, it is difficult for me to understand why for the arrangement of mass simultaneous stay and (or) movement of citizens in public places, which has caused violation of public order (article 20.2.2) an official may be imposed administrative punishment in the form of administrative fine in the amount of fifty thousand to one hundred thousand rubles, while for the failure to comply with norms and regulations on the prevention and elimination of emergency situations (article 20.6) the same official is imposed an administrative fine of between ten thousand to twenty thousand rubles!!! Events in July 2012 in the town of Krymsk, Krasnodar region showed, that inaction of officials on alerting the population about the coming flood led to a disproportionately larger losses (flooding in the Krasnodar region, which occurred on the night of July 7, according to the Emergencies Ministry, caused death of more than 170 people, 7.2 thousand houses on the territory of Krymsk, Gelendzhik, Novorossiysk and several villages of the Kuban were flooded. The size of the damage caused by severe flooding in the Krasnodar region was estimated at around 20 billion rubles, said the Head of the region Alexander Tkachev [9]) than taking place in May 2012 in Moscow on Bolotnaya Square events of organization (including by officials) of mass simultaneous stay and (or) movement of citizens in public places, which caused violation of public order (According to the Main Department of MIA, in the course of provocative actions of some participants about 20 police officers were hurt. Three of them were hospitalized with stab cut wounds and serious injuries. Interior Ministry also reported that organizers had exceeded the claimed number of participants; the rally was attended by about 8,000 people instead of declared 5,000. The protesters "provoked crowding, threw stones and water bottles, which fell on the police officers, other protesters and journalists, sprayed tear gas into the crowd". One citizen, who had been set on fire by the protesters needed to be put out by fire extinguishers [10]).

And is not it strange , if not absurd, that for organization or conducting of a public event *without filing notice in the prescribed manner* (emphasis by V. D.) about holding a public event (part 2 article 20.2) citizens and officials may be subject to an administrative fine in the amount of twenty thousand to thirty thousand rubles and fifteen thousand to thirty thousand rubles respectively , and for violating the state of emergency (article 20.5) – an administrative fine from five hundred to one thousand rubles for citizens and from one thousand to two thousand rubles for officials. It turns out that filing of a notification, but not in the prescribed

manner, i.e., with procedural violations, basing on the position of the legislator, has a much more significant impact on public safety and public order (common generic objects of administrative offenses provided for by chapter 20 CAO RF), than violation of such requirements of the state of emergency as violation of restraints on the freedom of travel throughout the territory in which the state of emergency is introduced and also the introduction of a special regime of entry into and exit from that territory, including the establishment of restrictions on the entry into and stay within that territory of foreign citizens and persons without citizenship; violation of especial order of sale, purchase and distribution of food and basic necessities; or violation of the requirements associated with the restriction or prohibition of the sale of weapons, ammunition, explosives, special means, poisonous substances, violation of an established special regime of trafficking in medicines, psychotropic substances, potent substances, ethanol, alcohol, alcohol-containing products (see paragraphs "b" and "d" article 11, paragraph "d" article 12 of the Federal Constitutional Law No. 3-FCL from May 30, 2001 "On the State of Emergency" [2]).

The choice of administrative offenses, in which the amounts of administrative fine at times exceed those amounts, which are applied under the general rule, is not legally substantiated, is not justified and can only be explained by the political interests of the ruling party, which has an overwhelming majority in the State Duma. Taking this decision the law-makers, in my opinion, even did not try to save their blushes and did not think about the fact that "every hideousness has its own decency" [3]. Although it is difficult to suspect the majority of deputies of a commitment to liberal ideas, regarding the situation with the decision to increase the amount of administrative fines for selected articles I recall the words of a liberal from the work of M. E. Saltykov-Shchedrin "Cultured People": "I was sitting at home and, as usual, did not know what to do with myself. Something like: either Constitution, or sturgeon with horseradish, or to have the shirt off someone's back. Have the shirt off someone's back first, flashed in my mind, have the shirt off someone's back, but later… And then, having proved myself good-minded, I can dream about constitutions at my leisure" [4].

I am firmly convinced that administrative responsibility should be established for acts that have proliferated and the subject of which can act, as a rule, an indefinite number of persons, whether it is a general or special subject. My position is also not shacked by the rare exceptions when administrative offenses have a strictly defined in quantitative terms range of subjects of administrative offenses, for example, provided for by article 5.25 CAO RF (PEC chairman – part 1, TEC chairman

– part 2, DEC chairman – part 3, Chairman of the Electoral Commission of a subject of the Russian Federation – part 4, Chairman of the Central Election Commission of the Russian Federation – part 5). There is a strictly defined range of subjects bound to posts, but not to personalities, in article 5.25 CAO RF. While the increasing the amounts of administrative fines in existing articles (articles 20.2, 20.18, 20.25) and inclusion in CAO RF of a new article (article 20.2.2) with an increased amount of administrative fine, although does not concretizes personalities, that is, formally oriented to an indefinite number of persons, initially and in fact has been directed against a number of specific most odious members of the opposition.

Another manifestation of the "blind parental love" of the legislator to fanciful designs has been expressed through the inclusion in CAO RF of article 3.12 "Administrative Suspension of Activity", which is directly contrary to the general principles of establishing administrative penalties that are laid down in article 3.1 CAO RF and clearly "falls out" from a general list of other previously established administrative penalties. Oddities of article 3.12 CAO RF begin already from the fact that it was put into effect by the Federal Law No. 45-FL from 09.05.2005. Yes, it is a day of celebration of the 60th anniversary of the Victory in the Great Patriotic War. I think that not only me, but anyone, who remember with what scale was celebrated this anniversary, has serious doubts about the necessity and even the very possibility of signing the law on this day. It could be signed, perhaps, only without reading!

The essence of the fact that article 3.12 CAO RF falls out from the general content of chapter 3 CAO RF is on the surface.

In article 3.1 "Aims of Administrative Punishment" not ambiguously, and namely clearly defined:

"1. An administrative punishment is a punitive measure for *committing* an administrative offence, established by the state, and it shall be administered *for the purpose of preventing the commitment of new offences* either by the offender itself, or by other persons.

2. An administrative punishment may not be aimed at the abasement of human dignity of a natural person who has committed an administrative offence, or at inflicting to it physical suffering, or at damaging business reputation of a legal person" (italics is mine – V. D.).

Contrary to this, in part 1 article 3.12 CAO RF the following is enshrined:

1. Administrative suspension of activity is a temporary cessation of the activities of persons engaged in entrepreneurial activities without forming a legal entity, legal entities, their branches, representative offices, structural units, production

sites, as well as operation of units, facilities, buildings or structures, exercising specific activities (works), rendering services. *Administrative suspension of activities is applied in case of threat* to the life or health of people, threat of epidemic, epizootic, infection (contamination) of quarantined objects by infected (polluted) objects, radiation accident or man-made disaster, causing substantial damage to the quality or state of the environment, *or in the case of an administrative offense in the field of* traffic in narcotic drugs, psychotropic substances and their precursors, plants containing narcotic drugs or psychotropic substances or their precursors, and their parts containing narcotic drugs or psychotropic substances or their precursors, in the field of countering the legalization (laundering) of proceeds from crime and financing terrorism, in the field of established, in accordance with the federal law, restrictions on the exercise of certain activities regarding foreign citizens, stateless persons and foreign organizations, in the field of rules of engagement foreign citizens and stateless persons in labor activities carried out in shopping sites (including in shopping malls), in the field of management procedure, in the sphere of public order and public safety, in the sphere of city planning and in the field of transport security" (italics is mine – V. D.).

And, although, administrative punishment is applied *in order to prevent the commission of further offenses*, but it is applied *for commission of an administrative offense*, that is, certainly not in the case of a threat of harm to the objects of administrative-legal protection. All the more, that a threat may remain just a threat. But imposition of an administrative punishment in the form of an administrative suspension of activity can cause real damage to business reputation of a legal entity, even if the sentence has been handed down, as it will be identified later, on the basis of an imaginary threat.

Negative attitude towards the additionally included in CAO RF punishment in the form of administrative suspension of activity is not changed by the fact that, in accordance with part 3 article 3.12 CAO RF, the judge, body, official, who has appointed administrative punishment in the form of administrative suspension of activity, at the request of a person engaged in entrepreneurial activity without forming a legal entity or a legal person, prematurely terminate the execution of administrative punishment in the form of administrative suspension of activity if it is established that the circumstances specified in part 1 article 3.12, which have given the reason to the imposition of the administrative punishment, have been eliminated. That is, will be eliminated the circumstances that have been evaluated as a potential threat? And then, instead of one subjective judgment on the reality or imaginary nature of threat, which has served as the ground for decision on

imposition of administrative punishment in the form of administrative suspension of activities, on the basis of other equally subjective judgment can be made a decision to terminate the execution of this administrative punishment? It is just a feast of judicial and administrative discretion!

I cannot help but focus my attention on the following circumstance. Review of the legislation and judicial practice of the Supreme Court of the Russian Federation for the fourth quarter of 2008 approved by the Decision of the Presidium of the Supreme Court of the Russian Federation from March 04, 2009 and from March 25, 2009 contains a very curious explanation regarding the practice of imposing an administrative punishment in the form of administrative suspension of activity [8]. Here is an extract from the document: "Question 8: If the sanction of the article provides for the possibility of imposing an administrative suspension of activity, but a protocol on administrative offence does not indicate which of cases listed in part 1 article 3.12 CAO RF pose a threat of harm to protected public legal relations, does the judge have the right to return the protocol on administrative offence? Answer: ... If the protocol on administrative offence does not indicate which of cases listed in part 1 article 3.12 CAO RF pose a threat of harm to protected public legal relations and does not show how is that proved, the judge *shall have the right* (*but not obliged* – V. D.) to make a ruling about the return of the protocol on administrative offence and other case materials to the body or official, who has drawn up the protocol, on the grounds provided in paragraph 4 part 1 article 29.4 CAO RF. From this it follows that the judge at its discretion have the right to return a poorly drawn up protocol on administrative offence, but may also make a decision on imposing administrative punishment in the form of administrative suspension of activity under the protocol on administrative offence that does not contain information about which of cases listed in part 1 article 3.12 CAO RF pose a threat of harm to protected public legal relations and does not indicate how is that confirmed. Is not it an example of legislatively not denied, and maybe even worse, encouraged lawlessness?

Proceeding from a deep inner conviction I'm not inclined to recognize the availability, as well as the emergence in CAO RF of such considered by me legal novelties, explicitly falling out from the architecture of its basic structures, as a result of objective inevitability caused by the desire of the legislator to respond quickly to changes in the content of the dynamically developing relations in the field of public administration, which naturally require administrative-legal protection through making appropriate adjustments in the administrative-tort legislation. "Dropping out constructions" that exist today in CAO RF are rather consequence of flaws in legislative thought and legislative technique.

"Dropping out constructions" of CAO RF – scientifically unfounded or insufficiently substantiated provisions of the Code, which are internally inconsistent with the traditional generally accepted fundamental norms of the Russian administrative-tort legislation, and in some cases, are directly contrary to them.

The appearance in CAO RF of "dropping out constructions" is due to the desire and attempts of lawmakers as soon as possible, but, unfortunately, often without adequate elaboration to address the issues of legal protection of existing and dynamically developed or newly emerging legal relations, which require the implementation of control and oversight activity of public authorities, or legal relations, development and orientation of which causes irritation of representatives of state power, and not so much dictated by the objectives of a constitutional state, but rather by imperatively understood expediency of ensuring interest of, above all, the state, or rather the ruling elite, and only then the interests of society and citizens.

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Gustova L. V.

USE OF POLYGRAPH AT ENTERING TO THE POLICE SERVICE

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The author considers the organizationally-technical and legal problems of the use of polygraph in psychophysiological testing of candidates to the service in internal affairs bodies, including in comparison with foreign experience through the example of the United States.

Keywords: police service, polygraph test (lie detector), psycho-physiological testing of candidates for service in the police, normative regulation of the polygraph use.

One of the peculiarities of enlistment to the police is a mandatory passage of special psycho-physiological research (surveys) and testing. Such research (surveys) and testing are aimed at revealing candidate's consumption of narcotic drugs or psychotropic substances without a doctor's prescription and abuse of alcohol or toxic substances (part 6 article 17 of the Federal Law "On Service in Internal Affairs Bodies and Amendments to Certain Legislative Acts of the Russian Federation").

The emergence in the draft law On Service in Internal Affairs Bodies and Amendments to Certain Legislative Acts of the Russian Federation" of this norm has been accompanied by many comments in the media about the introducing for recruitment to the police of verification procedures on a polygraph (lie detector) [4].

The emergence in the draft law On Service in Internal Affairs Bodies and Amendments to Certain Legislative Acts of the Russian Federation" of this norm has been accompanied by many comments in the media about the introducing of a verification procedure on a polygraph (lie detector) at entering to the police service [4]. This is not entirely true: part 6 article 17 of the Federal Law "On Service in Internal Affairs Bodies" does not provide for the obligation of conducting lie detector research. Although it also refers to the psycho-physiological research, there are

also other kinds of research. Today the check of future police officers by polygraph examination is performed selectively [1].

Meanwhile, in many foreign countries, including, in the United Kingdom and the United States, conducting of a special psychophysiological test of the candidates for the police service through polygraph is a common procedure. Refusal to pass polygraph test results in an unambiguous denial of employment [3].

Selective use of polygraph in the Russian Federation is due to organizational reasons: lack both the equipment and specialists able to work on it. As a result, in some cases, even referred to a polygraph examination candidates (including current or revesting police officers) have to wait for their turn weeks and months.

It must be said that the Interior Ministry is planning to address this issue. To do this there is being conducted a bulk purchase of polygraphs and training (retraining) of specialists. This assumes that each candidate for the police service will be subjected to polygraph test [2].

With all the positive assessment of this move, it seems to us that legislative justification for the use of polygraphic research needs a certain improvement. As has been noted above, both the current legislation on the service in the interior bodies and subordinate acts in this area do not provide for obligatoriness of conducting surveys exactly through a polygraph. As a result, even with the necessary technical base we cannot exclude the situation where officials responsible for complying with the procedures of recruitment to the police service on the base of any personal interests (for example, to ensure the recruitment of a relative) will not carry out such a survey.

In addition, we find not quite true the very wording of part 5 article 17 and part 4 article 19 of the Federal Law "On Service in Internal Affairs Bodies and Amendments to Certain Legislative Acts of the Russian Federation", according to which psycho-physiological research (survey) is conducted solely for the purpose of revealing the consumption of narcotic drugs or psychotropic substances without a doctor's prescription and abuse of alcohol or toxic substances. It is quite obvious that the polygraph test can be used to reveal other facts that make entering of a person to the police service unwanted (or impossible). In fact, in practice when polygraph is used the questions aimed at their clarification are usually asked (such as about existence of criminal past, sources of income, grounds for entering to the police service, etc.).

However, since the current domestic legislation provides for the use of polygraphs only to identify consumption of narcotic drugs or psychotropic substances without a doctor's prescription and abuse of alcohol or toxic substances, a candidate

can theoretically refuse to answer questions not related to the establishment of these circumstances. Of course, in this case, in practice, it likely will not be hired to the police, but it will be able to appeal against the refusal in the court.

In addition, lack of proper regulation of polygraph application procedures when admission to the police profession may also lead to the violation of the rights of examined persons. The experts carrying out this type of check argue that the rights of examined persons are not violated because:

1) the need for testing at recruitment to the service is established by law;
2) all examined persons sign a written consent to verification;
3) when testing the questions regarding ethnicity, religious beliefs, sexual life, etc. are not asked [1].

All this, of course, is true. However, it should be understood that consent to a polygraph test at the entry to the police service is not entirely voluntary and, even, of quasi-mandatory nature, because a candidate understands that rejection of test deprives it of any possibility of employment. At that, no one can guarantee that, in the absence of a normative document regulating the procedure of verification, a checked person will not be asked questions about its personal life, which are not related to future service, and it will be forced to either answer them, or, in fact, abandon admission to the police.

All this requires, in our view, the development and adoption of a normative act regulating the grounds and procedures for polygraph tests at entering to the police service; the rights and obligations of a checked person; demands to the person conducting test; an indicative list of questions to be clarified during verification; an indicative list of those themes that are forbidden to ask, etc.

If we turn to foreign experience, the United States can serve as an example, in which there is a comprehensive legislation concerning the use of polygraphs. There, in 1988, came into force "The Employee Polygraph Protection Act" - EPPA, which established the main directions of application of this method and introduced restrictions on its use in the field of private entrepreneurship, in hiring in state institutions, as well as in respect of working personnel. However, the Act does not apply to:

- members of the Federal Government, administration of the States and local self-government bodies or any of their units;
- permanent or contract staff, experts and consultants of the Ministries of Defense and Nuclear Energy;
- all persons working at the NSA, FBI, and CIA or gain access to their classified information.

In this connection, in order to establish unified nationwide demands in this area in 1991 the U.S.A. State Department approved departmental instructions: "The policy regarding polygraph tests", which stated that "testing is regulated by the Constitution and the United States Code, legislative act about service in the State Department" and the law on protection of employees from polygraph. The instructions also established that "in accordance with the adopted in the State Department policy of conducting polygraph tests, any candidate for the job in this department under certain circumstances may be offered to pass this verification on a voluntary basis, and due to the sanction of authorized officers" [5].

United States legislation also establishes that in conducting a polygraph examination the following topics should not be touched upon:

- religious beliefs, affiliation to religious organizations;
- beliefs and views on public issues;
- information about the views and practices in sexual sphere.

It appears that this experience can be used in the Russian Federation.

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ADMINISTRATIVE OFFENCES COMMITTED UNDER EMERGENCY CONDITIONS[1]

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Here are considered the conditions of an emergency situation in the context of circumstances that strengthen and mitigate responsibility for an administrative offense. The author proves that the conditions of an emergency situation can be a source of extreme necessity. The article proposes the author's classification of administrative offenses regarding compositions of administrative offenses that "generate" an emergency situation and "are generated" by an emergency situation.

Keywords: administrative offences, emergency situation, state of emergency, administrative responsibility, mitigating and aggravating circumstances.

Under paragraph 1 article 1 of the Federal Law No. 68 -FL from 21.12.1994 "On Protection of Population and Territories from Emergency Situations of Natural and Man-made Nature" [1] , the legislator considers emergency situation as a situation in a particular territory that has developed as a result of an accident, natural hazard , disaster, natural or other disasters that may cause or have caused human losses, damage to human health or the environment, significant financial loss and breach of conditions of people life.

[1]Published on materials of VII All-Russian scientific-practical conference with international participation «Theory and practice of administrative law and process» (Rostov-on-Don — Krasnodar — Nebug — 2012)

This definition allows us to represent state of emergency as an objectively existing phenomenon, a state of affairs, which can serve as a basis for the introduction of a special order of legal regulation. At that, it should be noted that neither in the Federal Law No. 68-FL nor in the Constitution of the Russian Federation the legislator uses the term "emergency mode", and therefore the question of the legitimacy and feasibility of this concept use in administrative-legal science is debatable. So, D. N. Bakhrakh mentions emergency mode among examples of legal regimes [4, 479]. The opposite position is that when making a state body decision to establish the fact of existence of an emergency situation and taking measures to ensure the safety of the population (e.g. evacuation) more correct wording is not "introduction of emergency mode", but "establishing the fact of the existence of an emergency situation" of this or that type and adoption in this connection of the relevant measures to save lives and property [5].

The objections, on which is based the second position, are more terminological than reflecting the crux of the matter. Because emergency mode in the theory and practice of law enforcement is understood as just such a legal situation where the authorities of an appropriate level on the basis of fixed objective evidence of emergency situation of a certain scale adopt non-normative legal acts that change the nature of action of some legislative norms, what cannot help but influence on the volume rights and responsibilities, as well as the limits of responsibility of the subjects of law. This is evidenced by the existing judicial practice on challenging such non-normative legal acts under the procedure of article 197 of the Arbitration Procedural Code of the Russian Federation [3].

In contrast to emergency mode, which is introduced only by a decree of the RF President and allows specific restrictions on rights and freedoms of citizens, in an emergency situation such restrictions are not introduced. However, there is a range of specific duties of citizens and organizations in the field of regulation of issues related to the prevention of emergency situations and liquidation of its consequences. The range of these duties is defined in article 19 of the Federal Law No. 68-FL.

Thus, an emergency situation is not only a particular actual state of affairs that is just stated by a non-normative legal act of a state body, but also a particular legal situation. This particular legal situation affects, including the conditions for occurrence of administrative responsibility, the limits of this responsibility and the measure of imposed administrative punishment – both towards of tightening and in towards of mitigating.

One of the general rules of imposition administrative punishment is the requirement of accounting, including, both circumstances mitigating administrative

responsibility and circumstances aggravating administrative responsibility, and this rule applies to both physical and legal persons (part 2, 3 article 4.1 of the Code on Administrative offences of the RF, hereinafter CAO RF).

At that committing of an administrative offense in conditions of a natural disaster or other emergency circumstances is expressly stated by the legislator in paragraph 5 part article 4.3 CAO RF as a circumstance aggravating administrative responsibility. This norm, by virtue of part 2 article 4.3 CAO RF, does not apply only to the offense under part 2 article 20.6 CAO RF (failure to take measures in order to ensure the readiness of the forces and means intended for liquidation of emergency situations, as well as untimely sending to the area, where there is an emergency situation, of the forces and means stipulated by a plan of liquidating emergency situations, endorsed in the established procedure) because it is the only norm of CAO RF, which expressly provides for the commission of these punishable actions (inaction) in an emergency situation as a qualifying attribute of an administrative offense.

As for circumstances mitigating administrative responsibility for the administrative offense, their list contained in part 1 article 4.2 CAO RF does not contain such circumstance as commission of an offense in the context of an an emergency situation. In accordance with paragraph 3 part 1 article 4.2 CAO RF legislator refers to commission of an administrative offense in the state of intense emotional excitement (temporary insanity) or at the concatenation of difficult personal or family circumstances. Logically, these circumstances can be caused by an emergency situation, but they are possible only for a physical person.

Frankly, part 2 article 4.2 CAO RF authorizes law enforcement officials considering a case concerning an administrative offence to deem mitigating some circumstances that are not indicated in this Code or in the laws on administrative offences of the subjects of the Russian Federation. Together with the requirement of parts 2, 3 article 4.1 and paragraph 4 article 26.1, according to which in the case of an administrative offense the circumstances mitigating administrative responsibility and circumstance aggravating administrative responsibility are subject to clarification, this norm means that a law enforcer at the moment of imposition of an administrative penalty not only can, but must consider as mitigating circumstances any circumstances, including those arising out of the special conditions of an emergency situation, which make lawful activity of an individual or organization difficult or objectively impossible.

In addition, in administrative law of Russia exists institute of extreme necessity. Article 2.7 CAO RF determines extreme necessity as such conditions, under

which a person inflict harm to legally protected interests for the prevention of a direct danger to a person, or to the rights of the given person, or of other persons, as well as to the protected by the law interests of the state or society, if this danger could not be prevented by other means and if the inflicted harm is less than the one that has been prevented. Such actions (inactions) do not constitute an administrative offense, under paragraph 1 article 24.5 CAO RF in the presence of such circumstances as the actions of a person in a state of extreme necessity, case proceedings concerning an administrative offense cannot be initiated, and initiated proceedings shall be terminated. And, again, following the logic of common sense, it cannot be denied that conditions of emergency situation may be a source of extreme necessity.

If extreme necessity exempts a person from responsibility for forced infliction of damage during fulfillment of actions aimed at the prevention of infliction of worse harm or elimination of a threat, then force majeure exempting the person from responsibility for inaction, at the same time obliges it to commit certain alternative actions. This concept is expressed in article 16.6. CAO RF that enshrines carrier's responsibility for failure to preserve goods and (or) vehicles (part 1 article 16.6 CAO RF) and failure to report to the nearest customs office about the accident or force majeure, or the occurrence of other circumstances preventing delivery of goods and (or) means of transport to the place of arrival, stopping of sea (river) vessel or planting aircraft in specified locations or transportation of goods in accordance with the internal customs transit or international customs transit, about the location of goods and (or) means of transport or failure to transport goods and (or) means of transport to the nearest customs office or to another location specified by the customs body. At that, part 1 of this article provides for an exception in case of perishing or loss of goods and (or) means of transport due to circumstances, which the carrier could not avoid and the elimination of which did not depend on it.

It seems that the provisions of this article deserve generalization, since the circumstances of force majeure can occur not only in the activities of a carrier, but also in any other activity.

This general overview gives us reasons to review compositions of administrative offenses at a particular angle of view, paying most attention to the fact of how conditions of emergency situation may affect the imputation in the commission of the actions or inaction. Consideration the connection of a specific composition of an administrative offense with an emergency situation can be beneficial for better ensuring of legality in bringing a natural or legal person to administrative responsibility, as well as for delimitation of administrative offenses, on the one hand, from

crime, on the other hand, from disciplinary misconducts, in case of similarity in the content of committed actions or inaction.

First of all, we can emphasize the specific administrative offences directly related to emergency situations. These, on the one hand, are such actions or omissions that result in increased risk of emergency situations of natural or man-made nature (relatively speaking, actions "generating" emergency situations), on the other hand, these are actions or omissions, the public harm of which occurs only in an emergency situation, that are expressed in making obstruction to organized activities on liquidation of consequences of an emergency (compositions "arising" from emergency situations).

This group of administrative offences, in turn, consists of three sub-groups. Detaching of the first of these three sub-groups is related to the codification of substantive and procedural norms that establish responsibility for administrative offenses: as is well known, since the 1st of July 2002 at the federal level, the main source of those norms in federal legislation is CAO RF [4, 540]. In turn, the delimitation of the second and third subgroups is due to the absence in the current legislation of formal criteria for applying the concept of "threat of an emergency situation", which, in contrast to the concept of emergency situation, has a fuzzy sense.

The first of the three subgroups include deeds, administrative responsibility for the commission of which is provided for by the norms of CAO RF that contain a direct indication of material relationship of an appropriate deed with an emergency situation. An example of such an administrative offense is failure to comply with rules and regulations on the prevention and elimination of emergency situations (article 20.6 CAO RF). As you can see, this norm combines in one offence actions and inaction both "generating" an emergency situation (part 1 article 20.6 CAO RF) and "generated by" an emergency situation (part 2 article 20.6 CAO RF).

In the second subgroup is expedient to combine the compositions of administrative offenses, which are punishable under norms of CAO RF that do not contain in the norm itself direct indication of the substantive relationship of an appropriate deed with an emergency situation, but directing to a law that contains such direct indication. An example of such a composition is a denial to provide information (article 5.39 CAO RF), which the legislator defines as a wrongful refusal to provide citizen and (or) organization information, the provision of which is provided for by federal laws, its late providing or providing of knowingly false information. This norm refers to part 4 article 6 of the Federal Law No. 68-FL from 21.12.1994 (as amended on 01.04.2012) "On Protection of Population and Territories from Emergency Situations of Natural and Man-made Nature" [1], according to which the

cover-up, late submission of information or submission by officials of knowingly false information in the field of protection of the population and territories from emergency situations shall entail responsibility in accordance with the legislation of the Russian Federation. Another example is article 6.3. CAO RF (Violation of the Legislation in the Area of Securing the Sanitary-and Epidemiological Well-Being of the Population and the Legislation on Technical Regulation).

The third subgroup is supposed to include compositions of administrative offenses "generating" and "generated by" an emergency situation, which are punishable under norms of CAO RF that do not contain in the norm itself direct indication of the relationship of an appropriate deed with an emergency situation and do not refer to a law that contains such a direct indication. The relationship between an appropriate action or omission is detected through the analysis of the objective aspect of administrative offences of this group.

As an example of composition of an administrative offense of this group can be given a failure to provide information on the acts of unlawful interference in the facilities of transport infrastructure and on vehicles. Article 19.7.5 CAO RF, which establishes administrative responsibility for failure to submit or late submission by a subject of transport infrastructure or carrier of information about threats of commission or about commission of acts of unlawful interference in the facilities of transport infrastructure and on vehicles to the competent authorities in the field of ensuring transport security, corresponds to paragraph 1 part 2 and part 3 article 12 of the Federal Law No. 16-FL from 09.02.2007 "On Transport Safety" [2]. Part 2 article 12 of the Law establishes the obligation of the subjects of transport infrastructure and carriers to immediately inform about the threats and commission of the acts of unlawful interference in the facilities of transport infrastructure and on vehicles in the procedure established by the federal executive body responsible for elaboration of public policy and normative legal regulation in the sphere of transport. According to part 3 article 12 of the Federal Law No. 16-FL from 09.02.2007, subjects of transport infrastructure and the carriers are responsible for the failure to perform the requirements on ensuring transport safety in accordance with the legislation of the Russian Federation. Analysis of the composition of administrative offense provided for by article 19.7.5 CAO RF indicates that a social harm emerging as a result of it may consist, inter alia, in the occurrence of the threat of emergency situation.

The same group includes compositions of offences described in article 9.1 CAO RF (Failure to Meet the Requirements Concerning Industrial Safety, or the Terms and Conditions of a License for Operating in the Area of Industrial Safety of

Dangerous Production Objects) and 9.2 CAO RF (Violating the Safety Norms and Rules Concerning Hydraulic Engineering Structures).

Common to all these types of administrative offences is that their relationship with emergency situations is detected through the analysis of the objective aspect of deed: there is a causal link between a committed action (inaction) and occurrence of a threat of an emergency situation or obstruction to organized activities on liquidation of emergency situation consequences.

In addition, the analysis of a specific composition of administrative offense in the context of an emergency situation can detect the influence of the conditions of the emergency situation on the determination of the subjective aspect of deed, and, respectively, its qualification as an administrative offense. According to part 1 article 2.1 CAO RF, administrative offense is a wrongful, guilty action (inaction) of a natural person or legal entity, which is administratively punishable under this Code or the laws on administrative offences of the subjects of the Russian Federation. At that, according to part 2 article 2.1 CAO RF, a legal entity shall be found guilty of an administrative offence, if it is established that it had an opportunity to observe rules and norms whose violation is administratively punishable under this Code or under the laws of a subject of the Russian Federation, but it did not take all the measures that were in its power in order to comply with them.

All compositions of administrative offenses for which CAO RF provides for responsibility can be divided into two groups. These are, on the one hand, the compositions, the subjective aspect of which may depend on the presence or absence of an emergency situation, on the other hand, actions and inactions, the guiltiness of which does not depend on the conditions of emergency situation.

Compositions, the subjective aspect of which does not depend on the conditions of emergency situation, include such compositions as, for example, failure to follow in due time a lawful direction (order, citation, decision) of a body (official) exercising state supervision (control) (article 19.5 CAO RF), failure to submit information to the federal executive body in the field of financial markets (article 19.7.3 CAO RF), failure to submit information or failure to submit information in due time about conclusion a contract or its change, execution or termination to the federal executive body of the Russian Federation, local self-government body authorized to run registers of contracts concluded after the placement of orders in accordance with the legislation of the Russian Federation on placing orders for delivery of goods, execution of works and rendering services for state and municipal needs (article 19.7.4 CAO RF) and etc. In an emergency, there may be no objective opportunity to commit actions required by law, this eliminates the guiltiness of an

appropriate inaction, and, hence, the presence of a composition of administrative offense.

Compositions, the subjective aspect of which does not depend on the conditions of emergency situation, include, in particular, failure to follow a rightful order of a policeman, military serviceman, officer to monitor traffic in narcotic drugs and psychotropic substances, employee of the Federal Security Service, employee of a body authorized to exercise the functions of control and supervision in the field of migration, or an employee of body or institution of the correctional system (article 19.3 CAO RF); failure to follow a lawful order of an official of a body exercising state supervision (control) (article 19.4 CAO RF); unlawful denial of access of a tax authority official to inspect territories and premises of a taxpayer, in respect of which tax audit is being conducted (article 19.7.6 CAO RF) and etc. According to the content of these actions, conditions of an emergency situation cannot make them involuntary, therefore, emergency situation cannot exclude their guilt nature.

A detailed analysis of compositions of administrative offences in terms of their possible commission in conditions of emergency situation is intended to promote the rule of law in bringing a natural or legal person to administrative responsibility, including, will help to avoid formal application of paragraph 5 part 1 article 4.3 CAO RF in isolation from the requirements of part 2 article 4.2 CAO RF, Part 2, part2, 3 article 4.1 and paragraph 4 article 26.1, during determining the degree of guilt and imposing of punishment for an administrative offence.

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PECULIARITIES OF TAX LEGAL RELATIONS AS AN INDEPENDENT KIND OF PUBLIC LEGAL RELATIONS[1]

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Based on the enumeration of the features of tax legal relations the author supports the point of view that tax legal relations constitute a separate kind of public legal relations, rather than a subkind of financial legal relations. The author especially emphasizes the stable and lasting nature of tax legal relations.

Keywords: tax legal relations, public legal relations, peculiarities of tax legal relations, taxation.

Currently, in most states with market economy the main kind of state revenue is taxes and fees collected in the budgets of all levels in the process of tax legal relations. Russian legislation contains a specific reference to the targeted purpose of taxes – provision of activity of the state and local self-government bodies: in accordance with part 1 article 8 of the Tax Code of the Russian Federation [2] (hereinafter – TC RF), tax is understood as a compulsory and individually non-refundable payment which is collected from organizations and physical persons by means of the alienation of monetary resources which belong to them on the basis of the right of ownership, economic jurisdiction or operational management for the purpose of financing the activities of the state and (or) municipalities. The mentioned duality of the wording (and/or) disposition of article 8 TC RF is associated with a three-tier system of taxation in the Russian Federation: structuring of taxes into federal, regional and local.

[1]Published on materials of VII All-Russian scientific-practical conference with international participation «Theory and practice of administrative law and process» (Rostov-on-Don — Krasnodar — Nebug — 2012)

This definition allows us to formulate the first feature of tax legal relations as an independent type of public relations: they represent the public interest of the state. It is well known that taxation is one of the most important functions of the state, a prerequisite of its sovereignty. At that, in the current conditions in the process of tax legal relations accumulates about 90% of the funds serving as financial support of the state's functioning; other – non-tax sources of forming public (state and municipal) finance are minor. Existence of a state without tax system, without fixed mechanism of "deductions" to the state budget, is impossible – that is why the theoretical relevance of the issues related to the study of features of tax legal relations is supported by its practical significance.

Second, expressing the public interests of the state, tax relations are formed and developed in the field of tax activities of the state. Exactly these features of tax legal relations, in our opinion, allow us to characterize them as public-law relations with all the features inherent to public ones. Exactly tax legal relations are structural for the public sector, because exactly taxes are a major source of forming the state central fund of monetary funds; they are associated with banking relations (banks as participants in the tax legal relations may serve as taxpayers, tax agents, tax collectors, tax administrators).

Being regulated in detail in the legislation of the Russian Federation, the issue about the features of tax legal relations as an independent type of public relations in the scientific literature remains controversial – in part because there is no consensus about the concept of tax legal relation. It should be noted that there was no close attention on the issue of tax legal relations in the pre-revolutionary legal literature in the field of finance and financial law. It would be unfair to say that the problem of tax legal relations was completely deprived of attention in the Soviet financial and legal science – often the topic under consideration was being developed simultaneously with the study of common problems of financial relations, but detailed special studies of public relations emerging in the field of taxation, even as a sub-type of financial legal relation, were not carried out. At the modern stage of the development of science, a contribution to the development of the issues of financial and legal regulation of tax legal relations has been introduced in the writings of A. V. Bryzgalin [9], S. G. Pepelyaev [13], M. I. Piskotin, E. A. Rovinskii, N. I. Himicheva [16], M. V. Karaseva [11; 12].

These characteristics allow us to call the third feature of tax legal relations as an independent type of public legal relations – the state is their mandatory participant: independently – as the "author" of tax policy or through authorized bodies. Because of that tax legal relations are based on the authoritative subordination of

one party to the other. The tax authorities, acting on behalf of the state, have powers of authority that are based on the law. Taxpayer is required to comply with the requirements of the legislation on taxes and fees, and tax authorities control exercising of this responsibility. Taxpayers are required to comply with the demands of the tax authorities, which are based on the law. In accordance with article 21 TC RF, taxpayers have a right not to comply with unlawful acts and requirements of tax authorities and their officials, which are at variance with TC RF or other federal laws. Therefore, the essence of interrelations between the participants of tax relations is not subordination of the taxpayers to the tax authorities, but subordination of both parties to the law. Tax authorities shall monitor the implementation of tax legislation requirements by the taxpayers and have the right to act in authoritatively-binding way. Taxpayers have the right to challenge the legality of actions of the tax authority in judicial or administrative procedure. At that, it should be borne in mind that the powers of the tax authorities at the same time include their duties, because often it is about legal duties as a special feature of the powers of executive authorities and subjects of public legal relations. This combination of rights and duties once again underlines the authoritative, public nature of these relations and peculiarities of the content of tax legal relations.

The above-mentioned characteristics allow us to call the following peculiarity of tax legal relations as an independent type of public legal relations – availability of force of state coercion (fourthly). Taking into account the definition of legal relation in general, we cannot say that the availability of force of state coercion is a feature of only tax legal relations. This is a common characteristic feature of all public relations regulated by the norms of law, and so much the more by the norms of administrative law. However, "ignoring" of this feature within the study of the designated issue would be methodologically wrong.

Fifth, tax legal relations constitute a separate type of public legal relations, rather than a sub-type of financial legal relations. This statement has been formulated by us not only on the basis of the author's own scientific discretion, but also taking into account the views of scientists dealing with the issues of tax law. However, there is no convergence of views on the issue in science. So, M. V. Karaseva uses the term of "tax obligation" as a separate type of financial and legal relations [12, 76]. The author does not offer definition of the concept of "tax obligation" and outlines only individual characteristics of such obligation (property nature, certainty of the parties of obligation, purposiveness, and availability of sanctions for violations). She localizes tax obligation as a "new financial and legal category that serves as a kind of binding relation". Widespread opinion is expressed by N. I. Himicheva,

who characterizes tax legal relations as regulated by tax law norms public financial relations arising in respect of establishment and collection of taxes from organizations and physical persons [16, 111]. O. V. Staroverova adheres to similar positions, according to whom the presence of such specific elements as subjects and objects differs tax relations from financial and administrative ones [15]. A. V. Bryzgalin connects the essence of tax legal relation with the introduction, establishment and collection of taxes and fees, pointing out that "tax legal relations can be determined as public relations regulated by the norms of the tax law and arising in connection with the establishment, introducing and collection of taxes and fees" [9 , 336]. This is also confirmed by S. G. Pepelyaev, who emphasizes relations to levy taxes as the core of tax legal relations [13, 223]. Broader approach is suggested by G. V. Petrova, according to who tax legal relations are of complex nature and derived from financial, constitutional, property, administrative, managerial, arbitration procedural, administrative procedural, information and civil procedural relations [14, 14].

Sixth, by their legal nature, essence and value tax legal relations are socially meaningful public relations of compound nature. In the scientific literature except the term of "compound ones" to tax legal relations apply the definition "complex ones", this, in our view, also accurately reflects their essence. Social significance of tax legal relations as an independent type of public legal relations is manifested in the mechanism of tax allocation for socially important needs – for example, the allocation of incoming payments in the RF Pension Fund or a fund of obligatory medical insurance. Furthermore, in our opinion, the social essence of tax legal relations is also manifested in the legally enshrined mechanism of benefits for taxpayers. In accordance with part 1 article 56 TC RF, tax and fee exemptions shall be understood as privileges over other taxpayers and payers of fees, which are provided for by tax and fee legislation and are granted to particular categories of taxpayers and payers of fees, including the right not to pay a tax or fee or to pay a lesser amount thereof. Analysis of the TC RF allows us to call the following types of tax benefits: firstly, deferral or instalment plan for the payment of tax, which shall represent an alteration of the time limit for the payment of tax, subject to the existence of the grounds which are envisaged by this article, for a period not exceeding one year, with the amount of the indebtedness to be paid as a lump sum or by phased payments respectively (part 1 article 64 TC RF). The social nature of such benefits is manifested, in particular, in the grounds of provision of deferment or payment by installments – under paragraph 4 part 2 article 64 TC RF – if the financial position of a physical person makes it impossible to pay tax in a lump sum. Secondly, investment tax credit – an alteration of the time limit for the payment

of tax whereby, subject to the existence of the grounds envisaged in TC RF, an organization is granted the possibility of reducing its tax payments over a specified period and within specified limits and subsequent paying the amount of credit and interest charges on an instalment basis (part 1 article 66 TC RF). Thirdly, benefits regarding specific taxes: VAT (value added tax) – the list of grounds on which the release from taxpayer obligations is possible (article 145 TC RF); enshrining of the list of operations that are not subject to taxation (tax exempt) (article 149 TC RF) and goods, the importation of which into the territory of the Russian Federation is not subject to taxation (article 150 TC RF); establishment of tax deductions (article 171 TC RF). With regard to excise taxes –establishment of the list of transactions that are not subject to taxation (tax-exempt) (article 183 TC RF) and tax deductions (article 200 TC RF). With regard to PIT (individual income tax) has been established the most extensive, according to the author, range of tax benefits, and namely socially significant tax benefits. They include: establishment of the list of non-taxable (tax-exempt) income (article 217 TC RF); establishment of the list of tax deductions: standard ones – with, in our view, bright social orientation (article 218 TC RF), social ones (article 219 TC RF), property ones (article 220 TC RF) and professional ones (article 221 TC RF). TC RF also establishes benefits on profit tax of organizations in the form of a list of incomes not taken into account in determining tax base (article 251 TC RF), benefits on fees for the use of wildlife objects and for the use of aquatic biological resources in the form of establishing the rate of 0 rubles in cases provided by law.

The following types of "socially significant" incomes of individuals are not subject to taxation (tax-exempt): public relief, except for benefit for temporary incapacity for work (including benefits for caring for a sick child), as well as other payments and compensations. In this case, benefits, which are not subject to taxation, include unemployment benefits, maternity benefits, state-provided pensions and occupational pensions, and all kinds of compensations (within the limits set in accordance with the legislation of the Russian Federation) and about 70 types of payments. A wide range of benefit recipients is established in TC RF in the event of legal relations on payment state duty: for certain categories of physical persons and organizations (article 333.35 TC RF); in case of recourse to courts of general jurisdiction, as well as justices of peace (article 333.36 TC RF); in case of recourse to arbitration courts (article 333.37 TC RF); in case of application for the performance of notarial acts (article 333.38 TC RF); when state registration of acts of civil status (article 333.39 TC RF). Also have been established benefits for tax on the assets of organizations (article 381 TC RF) and land tax (article 395 TC RF).

Seventh, tax legal relations as an independent type of public relations are characterized by stable, lasting nature. Indeed, it is difficult to find in the legal field of the RF such long public relationships. Comparing tax legal relations with constitutional and legal relations, we can conclude that the relations connected with the mechanism of formation of state and local self-government bodies occur, in accordance with the norms of the Federal Law No. 51-FL from May 18, 2005 "On Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation" [8], Federal Law No. 19-FL from January 10, 2003 "On the Election of the President of the Russian Federation" [6] , Federal Law No. 138-FL from November 26, 1996 "On Ensuring the Constitutional Rights of Citizens of the Russian Federation to Elect and be Elected to Bodies of Local Self-government" [5], Federal Law No. 131-FL from October 06, 2003 "On the General Principles of Organization of Local Self-government in the Russian Federation" [7], once in four or six years. Whereas payment of tax is possible monthly – for example, on transactions dealing with excisable goods (article 192 TC RF), for gambling business (article 368 TC RF).

Eighth, tax relations as an independent type of public relations arise on the basis of the norm of tax law, but, at that, they have common economic basis with civil legal relations (for the most part – with private-law ones) that is associated with their property, monetary nature and distribution of benefits; while the grounds of emergence of tax obligation are associated with the result of evaluation of taxpayer's activity from the point of view of civil law [11, 28].

Tax legal relations arise, change and stop only on the basis of the norms of legislation on taxes and fees, exist only in legal form, only on the basis of the legislation norms. The sources of regulation of tax legal relations in the totality are as follows: the Constitution of the Russian Federation; norms of international treaties of the Russian Federation; subordinate normative legal acts of bodies of general and special competence; special tax legislation consisting of federal and regional legislation on taxes and fees, as well as normative legal acts on taxes and fees adopted by representative bodies of local self-government; general tax legislation; decisions of the Constitutional Court of the Russian Federation. This is one of the essential differences of tax relations from private-law ones: for example, civil law relations can easily occur if there are reasons not directly provided by the civil legislation, but which do not contradict it. In addition, historically, civil legal relations formed by fact and only then were recognized by the state. In this regard, in the special literature were developed two approaches to the study of the concept and determination of the interrelation of tax legal relation with the other: the first one distinguishes tax legal relations from related legal relations: budgetary, administrative, customs, etc.,

and on the base of the provisions of article 2 TC RF, is of descriptive nature. The second approach is based on "contrast method of research": tax legal relations are compared to and distinguished from constitutional-legal (including election ones) and municipal-legal relations.

Ninth, tax legal relations as an independent type of public legal relations are of authoritative nature. This quality is manifested not only in compulsory execution of authoritative orders in the form of the provided for by article 57 of the Constitution of the Russian Federation obligation to pay legally established taxes and fees [1]. In addition, it is the state determines what public relations of public-law nature fall within the scope of regulation of tax policy: article 2 TC RF provides for the following groups of tax legal relations: 1) relations with respect to the establishment, introduction and collection of taxes and fees in the Russian Federation; 2) relations which arise in the process of exercising tax control; 3) relations which arise in the process of appealing against acts of tax authorities and the actions (inaction) of their officials; 4) relations which arise in the process of bringing to responsibility for the commission of a tax offence. TC RF establishes a special indication that tax legal relations do not include relations associated with the establishment, introduction and collection of customs payments, relations which arise in the process of exercising control over the payment of customs payments, appealing against the acts of customs authorities and the actions (inaction) of their officials and bringing guilty persons to responsibility – regulation of these legal relations is carried out by the norms of the Customs Code of the Russian Federation from April 25, 2003 [3], which operates in part that does not contradict to the provisions of the Customs Code of the Customs Union annexed to the Treaty adopted by the Decision of Interstate council EurAsEC at the level of the Heads of States No. 17 from November 27, 2009 [4].

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INTERNATIONAL ADMINISTRATIVE LAW AND ITS PLACE IN THE SYSTEM OF RUSSIAN LAW[1]

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Here is noted an insufficiency in the study of the institutes of investments, innovations, concession agreements, although they have been developed in the scientific works of leading states and are widely used in their practical activities. The author substantiates the issue of establishment in Russia of the system of public administration legal regulation, which will allow comprehensive analyzing of administrative-legal relations and the content of modern administrative law on the basis of experiences and perspectives for development of administrative law in other states.

Highlights the impact of the evolution of the modern nation State, which is functioning in the conditions of globalization, on the evolution of law. The tasks that are required to be resolved by the scientists of administrative law are listed in the article.

Keywords: administrative law, the system of Russian law, international law, international administrative law, public administration.

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In substantiating the concept of administrative law and the prospects for its future development the development of its new administrative-legal aspect and substantiation of new sub-branch of administrative law – international administrative law seems to be relevant and modern.

Ongoing reforms in Russia, including administrative reform, raised the issue of the reform of administrative law.

At present, it is about the creating a new world of administrative law, which is based on modern ideas, doctrines, concepts, new vision of administrative law, on the international legal space.

Under conditions of globalization the term of "international administrative law" refers to the processes of interaction of states in respect of various legal matters such as management and its efficiency, the global crisis, active development of market relations, innovation processes, protection of human rights when appear violations encroaching upon the rights of citizens, their health (illegal trafficking in narcotic drugs, psychotropic substances and their analogs; failure to meet environmental and sanitary requirements in dealing with waste of production and consumption or other hazardous substances; violation of fire safety rules and regulations of protection aquatic biological resources; unfair competition; abuse of dominant position on the commodity market; failure to perform duties and requirements in the implementation of foreign trade of barter transactions; market manipulation; violation of customs regulations; violations encroaching on the institutes of state power; offenses in the field of protection of state border; offenses against management order; offenses encroaching upon public order and public safety, including violation of the legal regime of a counter-terrorism operation, corruption, etc.). Most of these issues has grown out of the national (domestic) level, and the norms that regulate them obtained cross-border interstate nature.

Administrative law of Russia, having come from the depths of the science on cameralistics and police law, today with its theoretical developments and experience of practical regulation the system of management of internal state affairs serves as a source and a generator of management and formation of not only the Russian legal system, but also in the establishment and regulation of interstate relations.

Administrative law is a leading basic branch of law and differs from other branches by more extensive range of diverse relations regulated by it, emerging and developing in the field of public administration. It should be emphasized that the functions of public administration are constantly evolving and transforming under the influence of various political, economic and social factors occurring

both in Russia and abroad. One can note an increase in tasks facing public administration and change of their magnitude both in our country and in other countries.

The doctrine of the development of modern administrative law is understood as a set of scientific ideas and views on the goals, objectives, principles, components and the main directions of development of administrative law, substantive and procedural law, managerial and contracted law, as well as international administrative law.

At the same time, in the modern science of administrative law an understanding of the legal nature of international administrative law and its place in the legal system of Russia has not yet been developed.

One cannot but agree with the opinion of the pleiad of legal scholars from Moscow State Law Academy that "public, including management, relations have changed, and consequently, the essence, purpose and the very content of administrative law have done the same" [2, 15]. The proposed by us classification and content of administrative law, consisting of four separate parts, are not indisputable; they include:

- essence and basic institutes of administrative law;
- organization of public administration (previously in many textbooks on administrative law that section was called the special part of administrative law, and currently there is an ongoing debate about the need for its study within the framework of administrative law);
- administrative procedural law;
- administrative law of the foreign states.

In the legal literature have been indicated different approaches to administrative procedural law, which consist in both a broad approach to the definition of administrative process [12] and in its narrow understanding (N. G. Salishcheva, M. I. Maslennikov, etc.). Administrative procedural law is proposed to consider as a separate branch of law – procedural law, as well as criminal and civil procedural law (and not just as parts of administrative law), with its own subject of regulation. This concept today seems more preferable, in the development of which the issue of establishment administrative courts, which will carry out judicial control over public administration and provide legal protection of public rights and freedoms of man and citizen and access to justice, is lawfully and objectively justified [13, 16 -17].

In considering the problems of administrative law should be noted a certain place in legal system, which is occupied by the administrative law of foreign

countries, which is an independent branch of law, has its object of study that is conditioned by the peculiarities of the legal systems of foreign states [1; 3; 5; 10].

It seems erroneous to represent administrative law of foreign countries as international administrative law.

At present, in Russia there are already works in the form of textbooks and study guides on international criminal law [7, 8], where ICL (International Criminal Law) is perceived differently both as a branch of international law and as an independent branch of law.

Of great interest is a study guide on international economic law [9], which deals with the concept of a New International Economic Order (NIEO) and the Charter of Economic Rights and Duties of States. This paper points out that in most western international law courses NIEO is considered as a concept, but not a part of the current international law, which involves updating the principles of international economic co-operation. However, as noticed by representatives of economic science, these updated principles are not classified in any single international legal instrument that would denote their legally binding nature, and referring to the opinion of many countries put the question of the need to improve the legal foundations of the world economy [9, 32-34].

Among the works of the representatives of the Russian science of international law we cannot fail to note the textbook O. I. Tiunova "International Humanitarian Law" [14] devoted mainly to the international legal regulation of the rights and freedoms of a man, peculiarities of ensuring the assumed by the state obligations in the field of human rights, including, peculiarities of domestic measures to implement these commitments in the Russian Federation. Authors of all textbooks on administrative law, published in the XXI century, pay great attention to the legal regulation of the rights and freedoms of man and citizen, and as the main subjects of administrative law allocate citizens, their rights, duties, guarantees of the rights and freedoms in exercising of executive authority activities [2; 6; 11].

To study the issue in the discussed version about the new branch of law –international administrative law, one should pay attention to the work "European Law", which was written by a large group of international lawyers [4]. In this work, along with a description of the content, nature and features of European law, describes the institutional structure of the European Union. For example, in chapter 12 of the above textbook Professor L. M. Entin in sufficient detail conducts a study of the legal status of the European Commission (EC), its mission, procedure of formation, composition, structure, organization of work and powers. As the author notes, the European Commission is designed to play a crucial

role in the management, having its own regulatory authority, and to pursue goals and objectives of European integration. The European Commission is regarded as the leading institute of the European Union.

The task of the EC is to ensure and protect the common interests of the Union, protect the interests of European integration from any encroachments on the jurisdiction and powers of the Union.

Coordinating, executive and managerial functions prevail among the functions of the EC. By the general rule its posts are occupied by the former heads of national governments, former ministers who have considerable experience of political leadership and administrative management.

In its work the European Commission relies on administrative staff numbering about 40 thousand people. In the European Union, along with the EC, have been established and operate a number of committees, the status of which has received the name of "comitology". There are three types of these committees: advisory, managerial and regulatory.

On the basis of the Treaty on European Union the Commission shall supervise the observance of constituent agreements and acts that are taken by the institutes of the European Union, for their execution, as well as supervise (under the supervision of the judiciary) the application of the Union right, upholding its common interests. The European Commission run the budget, and is a credit manager on the budget of the European Union, manages the implementation of programs.

According to the Reform Treaty (RT) in 2007, it is the European Commission becomes the bearer of executive authority, the executive and administrative body of the EU, and regulations or decisions it takes are subordinate acts and have almost the status of managerial decisions.

This, as noted by L. M. Entin, "undoubtedly brings together the European Commission with such institute as government in sovereign states" [4, 164].

Speaking at the regular international economic forum in St. Petersburg, Russian President Vladimir Putin focused attention of all states on the need for effective management.

After analyzing the activities of the European Union and the European Commission of the EU we can say that at this point in the European Union has already been established a system of bodies dealing with the efficiency of public administration and carrying out coordination, performing and managerial functions.

In this regard, as we believe, set the stage for raising the issue of a new independent branch – international administrative law and discussion of its place in the legal system, not only of the Euro-Union, but also on the global scale.

Administrative law itemizes, develops and concretizes many public relations and is implemented through the use of administrative-legal regulation of managerial relations, which are formed in the process of public administration exercising.

In Russia, currently, it comes to reassessment of the role of public administration, which is a multi-faceted and is manifested in normative-legal regulation , coordination, assistance, in establishing further cooperation between public authority and citizens, in establishing interaction of the state with business, in the active development of market relations; have been named and are being implemented, despite the global financial and economic crisis, priority national projects; have been set the task to create in Russia a powerful research and development center. But still remain controversial and poorly studied by Russian science of administrative law such institutes as investment institute, institute of innovations, concession agreements, although they have been developed in the scientific works of leading states and are widely used in their practice. The study of these and many other directions is possible in the conditions of development of international managerial relations in the field of public administration.

Science of administrative law is designed not only to note the changes that have taken place in public administration at this stage of development of the Russian state, but also to take into account those changes that are taking place in the global community. After revision it should determine all fundamental provisions of the further development of the state, the ways and prospects for its development in the context of the global financial and economic crisis. The crisis that has gripped the entire world is not only a financial and economic one, but also a crisis in governance. Russia is not an exception, and its reforms, including administrative reform, and the proposed system and structure of executive authorities are not able yet to solve their tasks.

In this regard, we believe, it is legitimate to put the question of the establishment in Russia the system of legal regulation of public administration, which will let to comprehensively analyze administrative-legal relations and content of modern administrative law after studying and analyzing the experiences and perspectives of development of administrative law in other states.

Administrative law is a complex key branch of law, comprehensive, large and very large (but not all-encompassing) spectrum of managerial relations, the boundaries of which in the context of globalization are not clearly defined. It is about the evolution of the modern national state and law that function in the context of globalization.

Domestic literature notes that the process of globalization, albeit in varying degrees, but affects virtually all of the national states and legal systems. At that, some of them it affects mainly by its economic aspect, others – by socio-political one and most of them – by both economic and socio-political aspects.

In Russia continues the search for an ideal, adequate to the new economic realities and world challenges management system, the system and structure of state power bodies. At the same time, as many representatives of administrative law believe, and the author agrees with their position on this issue, we need to reform not only and not so much the bodies of executive power, but also to reform the very ruling mechanism, to adjust relations developing between the executive branch, its agencies, officials and citizens of Russia, simultaneously with the restructuring of managerial relations at the international legal level.

The issue of the "new world" of administrative law and its new traditions based on the doctrines of a constitutional state have been repeatedly discussed in the legal literature and at numerous international and Russian conferences. We need to rethink the purpose of the modern administrative law and the role, which it has rightly been called on to play in the life of the state, society and citizen, also the administrative science has a task of bringing administrative law in line with international legal standards and terms, with which it cannot but reckon with.

We share the view of Russian legal scholars focusing attention on the need to reform management and administrative law, which under current conditions "must evolve taking into account the requirements of international legal institutes on the basis of the principle of internationalization of the world's legal systems" [11, 17].

The representatives of the science of administrative law (both in Russia and in foreign countries) need to develop:

- concepts and principles of international administrative law (IAL), its sources, types and their general characteristics;
- international administrative-legal relations as a subject of international administrative law, the mechanism of their legal regulation;
- concept of a subject of international administrative law;
- definition of state, its functions and powers as the main subject of the IAL;
- concepts on the immunities of states and their property;
- concept of the new international the integrational law and order;
- concept of integration of states, definition of its scope and limits of this integration, etc.

This is not a complete range of issues to be investigated in the framework of the development of such a new branch, to which we refer international administrative law.

International cooperation is designed to address a number of administrative issues, among which, besides the already mentioned problems of modernization of economy, should be called the issues of counter-terrorism, search for forms of combat against illegal drug trafficking, nature-industrial and social problems (employment of the population, unemployment, conservation and transmission of natural resources to future generations etc.), creation of a customs union, further development of cooperation with the European Union and collaboration within the framework of the SCO. Under the conditions of development of international-legal norms in Russia posed the issue of anti-corruption, which is named as one of the main barriers to the development of every country, and the combating against which in the implementation of public administration must be carried out in all directions around the world.

Analysis and development of the legal forms of international cooperation, their improvement, in our opinion, cannot fail to take into account the processes of globalization, regionalization, global financial and economic crisis, many of which may be the subject of consideration in the study of international administrative law.

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THE PROBLEMS OF DETERMINATION THE COMPETENCE OF THE PERSONS, WHO CARRY OUT ANTI-CORRUPTION EXPERTISE OF NORMATIVE-LEGAL ACTS AND THEIR PROJECTS

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The article analyzes the demands made to experts who carry out an anti-corruption expertise, notes the advantages and drawbacks of the carrying out the expertise by various state bodies, highlights the proposals to toughen the requirements imposed on independent experts. Here is offered a way to increase qualification of both independent experts and public servants, who conduct anti-corruption expertise in the course of their activities.

Keywords: anti-corruption expertise, competence, independent experts, Prosecutor's Office, Ministry of Justice.

Federal Law (FL) "On Anti-corruption Expertise of Normative Legal Acts and Projects of Normative Legal Acts" [3] calls the competency of people who conduct anti-corruption expertise as one of the fundamental principles of the organization of anti-corruption expertise. What exactly it should be the Federal Law does not disclose. It is supposed that requirements for experts must be enshrined in other normative legal acts.

Requirements for employees of procuratorial bodies can be found in the Federal Law "On the Procuracy of the Russian Federation" [1]. Thus, "prosecutors may be citizens of the Russian Federation with higher legal education received in a state-accredited educational institution of higher education and having necessary professional and moral qualities, who capable for health reasons execute imposed

on them duties". These and other laws also set a number of restrictions and prohibitions. It is necessary to note the presence of the current system of continuous education and training of prosecutors, which is not a right, but an official duty of prosecutors. Certification to determine compliance of an employee with a prosecutor's position is carried out systematically.

Public servants – members of the Ministry of Justice of the RF and various departments are subject to the requirements of the Federal Law "On Public Civil Service of the Russian Federation" [2] and the RF Presidential Decree "On the qualification requirements for the length of public civil service (public service of other types) or employment experience in the same occupation for federal public civil servants" [4]. Of course, to the posts of employees, who are responsible for conducting anti-corruption expertise, must be assigned the requirement of a higher vocational education. As for length of service, regarding of the middle group of posts, which, including, conducts the expertise, the requirements for length of service are absent.

The presence of experience in itself does not indicate the ability of an expert to perform a qualitative expertise. Here is needed a theoretical and practical training for conducting anti-corruption expertise. And after all, all the training of civil servants of the Office of the Ministry of Justice to just introduced methodology of conducting anti-corruption expertise has been limited to familiarizing of staff with the RF Government Decrees No. 195, 196 from 05.03.2009, defining the rules and procedure of conducting the examination [5; 6]. It should be noted that such training is conducted annually, only this time in accordance with the Decision of the Government of the Russian Federation No. 96 from 26.02.2010 "On anti-corruption expertise of normative legal acts and projects of normative legal acts" [7] (hereinafter Government Decision No. 96). And it is the Ministry of Justice and its territorial bodies bear a significant layer of normative legal acts and their projects that are subject to examination.

Due to the lack of highly skilled professionals in a number of regions provided an opportunity to attract experts to conduct anti-corruption expertise of legal acts and their projects on a contractual basis. In this order, for example, Anti-Corruption Department under the Government of the Saratov region to conduct an anti-corruption expertise of draft normative legal acts invites the Chamber of Commerce of the Saratov region.

The main advantage of anti-corruption expertise conducted by the Prosecutor's Office and the Ministry of Justice is its independence and objectivity of the conclusions. After all, it is hardly possible to exclude a subjective approach and

personal interest during the examination by federal authorities of their own normative legal acts.

On the other hand, exactly departmental experts possess a narrow specialization, which helps them easily understand the specific activities of their agency and a large number of acts of legal regulation in a particular branch. These skills are needed especially in the evaluation of specific provisions of an examined act in totality with other normative legal acts. Because in ignorance of the whole layer of normative legal acts from an expert may escape such corruption factors as the presence of duplicating powers, uncertainty of the conditions for taking decision, existence of excessive requirements specified in various legal acts, and others.

Special attention should be paid to the institute of independent expertise. Its undeniable advantage is that the experts choose the sphere of legal relations, which lies in the area of their interests and the most studied by them. The Decree of the Government of the Russian Federation No. 96 provides that independent experts can be legal and natural persons that are accredited by the RF Ministry of Justice. Provision of the Ministry of Justice on accreditation [8] in establishing the requirements for persons wishing to obtain the status of an independent experts refers to the approved by the Decision of the RF Government No. 195 from March 05, 2009 Rules of the examination of draft normative legal acts and other documents to identify in them provisions facilitating the creation of conditions for corruption. The problem is that these rules were functioning less a year. The above rule required the following for individuals: availability of higher vocational education and professional experience of at least five years. The accreditation procedure continued up to the middle of 2012, even though there were no actually legislatively enshrined grounds. July 27, 2012 at last was issued an order [9], which approved the same requirements for applicants. Today, there are 1.5 thousand of accredited physical persons.

Many scientists note incompetence of independent experts and understated requirements that are applied to them. When reading the literature on this theme we constantly see recommendations to tighten requirements for persons applying for accreditation. So, for example, T. Ya. Habrieva believes that qualification requirements must be scientific or practical specialization on the problems of the economic analysis of legislation, shadow economy, corruption and combating it (presence of the assigned academic degrees, titles; experience in analysis of normative legal acts; passage of a special test in selection with an analysis of legal acts for corruption, etc.) [13, 13]. V. V. Astanin, in turn, offer to burden potential applicants for the rank of expert with additional specific criteria, for example, such

as availability of the certificate of an associate professor or professor in the legal profession, as well as the presence of at least five scientific papers in the relevant sphere of regulation of a studied draft of a normative legal document [10, 10]. O. G. Dyakonova proposes to develop certain criteria, including among other issues also moral qualities of a person applying for the certificate [11, 49].

Yet the legislator is not in a hurry to implement in practice similar suggestions, since at the presentation of such stringent requirements the number of independent experts will decrease significantly. And the current level of professionalism of the experts is sufficiently compensated by the fact that their conclusions are only of advisory nature.

It seems obvious that, even with no experience of examination of legal acts, a Doctor of law familiarized with the procedure of examination will be able to perform it at a decent level. But do not forget that an expert not having scientific achievements sometimes can see a corruption factor that other professionals simply miss. In this case, quantitative indicator plays an important role. It is also worth noting that with a considerable reduction in the number of experts separate legal acts at all will not be subject to independent examination in view of the possible lack of interests in a particular branch among the remaining experts.

There are also really highly qualified specialists with academic degrees and titles, years of practical experience and research activities in the relevant area of jurisprudence. They should be involved to state bodies as experts on a contractual basis. But this should not be a general requirement, since an expert might not have an academic degree, but be a first-class specialist in its field.

In this regard, we believe sufficient the requirements placed at this time to persons seeking accreditation. But there is a need for raising the level of experts' education. For example, the accreditation procedure might be preceded by special education of persons and obtaining an appropriate certificate. Of course, this must be done by higher education institutions that implement professional development programs. Appropriate training programs and scientifically-practical study guides have already been developed.

Implementation in practice is made difficult by organizational issues, in particular, who will fund the training of independent experts? It seems reasonable, if the obligation is assumed by the State. If an independent expert who carries out its activities on gratuitous basis will additionally be paying for education, the interest in this activity will almost come to naught [12].

As an alternative to certified training can be arranged training seminars that are mandatory for visiting by experts.

In state structures similar training will not be excessive (since staff is changing). I consider useful that experienced experts would be obliged to attend this course, because over time their antenna gets dulled, they getting used to search out formulaic corruption factors and do not notice dynamically developing legislation and corruption schemes. Also appear new scientific developments in the field. Awareness of the practice of other experts also will not be excessive. And if specialists do not need additional training because of their professionalism, knowledge and experience in this field, then exactly these experts should be involved in the teaching of courses and seminars, and share their experience.

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ADMINISTRATIVE COURT PROCEDURE AS A WAY TO IMPROVE THE QUALITY OF THE RUSSIAN STATE[1]

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The author analyzes the arguments in the legal literature and scientific discussions in favor of the need for creation of specialized administrative courts in the context of protection of citizens against negative performance results of executive bodies of state power, administrative errors.

Blending of absolutely different institutes: administrative justice and pre-trial settlement of administrative disputes, as well as ignoring the features of administrative proceedings, is noted in the article.

Here is argued that the administrative court procedure will add new qualitative nuances to the model of the Russian state, the system of state power.

Keywords: administrative court procedure, administrative administration of justice, judicial power, administrative justice.

[1]Published on materials of VII All-Russian scientific-practical conference with international participation «Theory and practice of administrative law and process» (Rostov-on-Don — Krasnodar — Nebug — 2012)

The title of this article obliges the author to show the process of the emergence of a new stage in the discussion about administrative court procedure and the need for comprehensive implementation of the norm of the Constitution of the Russian Federation on *administrative administration of justice* as a special form of the exercise of judicial power in the country. By itself the existence in the text of the Constitution of the term of "administrative court procedure" determines not only the need for an appropriate interpretation of this norm, but, first of all, makes political elite, top officials, public authorities form in practice a "suitable" institute designed to monitor the activities of administrative agencies and to ensure the legality of their performance of state functions.

In 2012, in the practice of consideration fundamental matters and, at the same time, modern problems of state-legal construction by the country's top officials and prominent political figures, a new theme was revealed – *quality of the state*, which ensures the democratic development of the country and the regime of legality of functioning of state power institutes.

Quality of the state is associated with many democratic institutes, procedures, regimes and methods, and with democracy as a whole. Quality of the state is directly dependent on the degree of implementation of all constitutional-legal norms. This is all the more important when it comes to techniques and processes to protect the rights and freedoms of citizens, to the guarantees of implementation of the powers of authority by state bodies without violations and without negative consequences for the society, citizens and the very State.

Quality of the modern Russian state is directly connected with the judiciary, with all its attributes, appropriate organizational and functional signs, institutes, substantive and procedural legislation. Change (improve!) the quality of the state – means to raise the activity of state bodies and officials to the next level, which would allow instantly (or "within a reasonable time") spot the difference between the old order of public administration and the newly created one. And do not just see the difference in the practical activity of the state and its bodies, but, most importantly, that the society could see that the administrative life of the state apparatus has become more democratic, more understandable, and more open, that tools of monitoring over the activities of officials really work.

Improving of the quality of the state is improving of organizational and functional indicators and characteristics of the bodies in all branches of state power. Increasing the quality of the organization and functioning of the *judiciary*, of course, should be connected with the need to strengthen the external state (judicial) control over executive power, elimination from administrative practice of

arbitrariness, illegal actions (inaction), administrative errors, prevention of abuses in the exercise of public functions and the provision of public services.

If you recall the purpose of all branches of public administration, it is easy to make sure that *legislative power* (even if to reason quite superficially) in the course of its activity creates a legal ways to ensure the rights, freedoms of citizens and legitimate interests of all the subjects of law. *The judiciary* also serves for protection of law, establishes the legitimacy of practical activities, resolves arising disputes, recognizes the activities of public authorities legal or illegal (and, therefore, recognizes the legal acts of public authorities legal or inactive). In other words, here should be noted that legislative and judicial power always work in favor of rights and freedoms of man and citizen, "good" methods in the system of public administration and *proper* public administration. And only executive power (as soon if it has been planned initially), taking into account its purpose and authoritative potential, in any way sets obstacles for citizens and legal persons, introduces into practice excessive controlling mechanisms; executive power is initially "established" "against" citizens; it suspects them in wrongful conduct. Executive power rarely itself initiate procedures for revealing appropriate arguments that are needed for proving citizens' rightfulness. Executive power, even in conditions of today's state of law, in the presence of a colossal amount of normative legal acts that establish "legal framework" and numerous restrictions on representatives of executive branch, is trying to include a citizen (or other legal entity) in the list of "long wait" in the exercise of public functions or the provision of public services.

Exactly executive power is increasingly requires the improvement of its *quality*, *organization* and *functioning*. In practice, this does not mean at all that we need legislative novelties that can fully eliminate the arbitrariness of the executive branch and establish democratic order in it. They have already been normatively enshrined in a large number. The main thing here is a judicial control that is able to determine violations of executive power, point to them and prohibit them. And this requires new organizational changes in the structure of the judiciary itself, the development of modern procedural rules for resolving administrative-legal disputes and eliminating administrative errors.

Thus, we come to the conclusion that the quality of the Russian state will certainly be increased if, in practice, implemented constitutional and legal norm on administrative court procedure. It is sometimes said that this norm has already been implemented; this position is based on the fact that procedural norms of the Civil Procedure Code and the Arbitration Procedure Code of the RF contain norms on administrative court procedure. In our view, such a position is a misconception:

first, about the theory and practice of separation of powers; secondly, about the structure of judiciary in the modern political and legal conditions; thirdly, about the legal nature of disputes, which are considered in courts. Then, fourthly, to name civil (or arbitration) procedural legislation administrative one – it means actually disparage the theory of public and private law, their separation, private and public interests; and finally, fifthly, developing administrative legislation and administrative law today cannot be imagined without administrative process (administrative court procedure), as the very development of administrative law, its new institutes, administrative procedures and administrative bodies require a corresponding development of the judiciary for a comprehensive and adequate control by the judiciary.

As is known, legitimate activities of executive power bodies, prevention of commission and overcome the consequences of administrative errors, formation of new conditions, procedures and ways of effective public administration, building a system of effective control over the activities of administrative bodies and their officials – all these tasks are real for solution only in conditions of functioning of formed democratic standards and principles of modern constitutional state.

Federal laws and other normative legal acts in the field of formation the system and structure of the executive bodies of state power, public service, procedure for the development and functioning of normative legal acts of the executive authorities, which have been adopted in Russia over the past 15 years, are aimed at ensuring the legality and transparency of public administration, at protection the rights, freedoms and legitimate interests of citizens, legal persons and organizations when they interact with administrative bodies and their officials.

Start (and simultaneously resumption) of the debate on the need to develop the system of administrative court procedure was defined by the opinion of Vladimir Putin, which had been expressed in the article "Democracy and Quality of the State". In the section of this article "On the development of the judicial system" Putin wrote: "We will make justice accessible to citizens. Including, we will introduce the practice of administrative court procedure, not only for business, but also for special consideration of disputes of citizens with officials. The spirit and meaning of administrative court procedure is based on the fact that a citizen is more vulnerable in comparison to an official, with which it argues. That the burden of proof should lie upon administrative body, rather than on a man. And that is why the practice of administrative court procedure is initially focused on the protection of the rights of citizens" [22]. The focus of this statement is, in my view, the desire to *introduce the practice* of administrative court procedure. When people say

so, it means that they stress that up to this point this institute did not exist or it was truncated. On the other hand, in principle, for specialists there have not been represented any new findings on the role of administrative court procedure. But the main thing is the very actualization of the issue of administrative administration of justice; refers to the role of administrative administration of justice in the protection of the rights and freedoms of citizens. And that is why it is possible to hope that the institute of administrative court procedure expects an attractive future, in which it will be carried out by specialized courts under specifically designed administrative and procedural rules. It is from these political and legal positions the opinion expressed by Vladimir Putin represents particular interest. However, one cannot fail to notice how focused on "*spreading the practice of administrative court procedure*" "*for special consideration of disputes of citizens with officials*". If top government officials say that we are just going to enter "the practice of administrative court procedure", it follows that at least there is some doubt in the fact that normative legal acts operating in this field of relations do not correspond to the new quality of the judiciary and the state itself. This, from my point of view, is the main essence of the analyzed words of Vladimir Putin. Thus, opponents of the institution in the country of administrative courts, who state that in Russia has long been established and is effectively functioning the system of administrative court procedure, can argue with the President of the Russian Federation on the issue… At the same time this idea of Vladimir Putin was supported by the country's well-known public figures. For example, the Russian Prosecutor General Yurii Chaika told reporters: "I support this with both hands, because, of course, there should be special courts to deal with disputes between the state and citizens. This issue is long overdue" [35].

Decree of the President of the Russian Federation No. 601 from May 07, 2012 "On the Main Directions of Improving the System of Public Administration" [1] required "up to the 1st of September 2012 to take measures to increase accessibility to justice for citizens, organizations and associations of citizens in consideration of disputes with public authorities of the Russian Federation, through introducing into the legislation of the Russian Federation changes providing for the improvement of administrative court procedure". Thus, administrative court procedure already before September 01, 2012 must somehow be changed and improved with in order to ensure both *accessibility* to justice and its *effectiveness*. It turns out that this order of the President of the country has not been met.

"Concept of the federal targeted program "Development of the Judicial System of Russia for 2013-2020" [2], which was approved by the decree of the Government of the RF No. 1735-r from September 20, 2012 , notes the need to address

(albeit largely already known) problems of the Russian state and society. Among them, the main are: conducting of a *judicial reform* that ensures the efficiency and fairness of decisions taken by court; fight against corruption; significant improvement in access to information about the activities of public authorities. Unfortunately this Concept does not contain specific plans for improving administrative court procedure within the framework of the planned changes under the targeted program "Development of the Judicial System of Russia for 2013-2020". It states that "at the present stage the judicial system operates in an environment of implementation in the state of intensive socio-economic processes and reforms, which poses new tasks and defines the need to move courts to a qualitatively new level of performance. This necessitates serious state support and application of program-oriented approach to attract additional resources in order to enhance the effectiveness of courts". But, unfortunately, there is no space left for the development of administrative court procedure within this program-oriented approach. This document in relation to the research topic has so-called "negative potential" because it does not introduce into the system of reforming judiciary the development of capacity of the institute of administrative court procedure and the formation of special administrative-procedural legislation. However, this concept is also important in the analysis of current trends and building up the vectors of development of new approaches to the reform of the judiciary.

Here, however, it is possible to criticize the authors of the Concept for globalism in the goal setting and for the generality and simplicity of the proposed methods and ways of solving the problems of the judiciary and functioning of courts. Regarding the *globalism* of set goals: the Concept enshrines the idea of necessity for a "qualitative renewal and creation in the Russian Federation the justice system, which is adequate to the requirements of a constitutional state". It is the model of "constitutional state" and legal statehood requires the presence in the judiciary system and structure of a specialized administrative administration of justice, which as an institute corresponds to fundamental principles that form the very judiciary.

The above-mentioned Concept is not planning a *qualitatively new* structuring of justice and creating a new kind of court proceedings. What, then, is the subject of the Concept? Actually, are being planned, for example: the *amount of financing* of this federal targeted program "Development of the Judicial System of Russia for 2013-2020"; computerization of the judicial system and the introduction of modern information technologies in the activity of judicial system; construction, renovation and acquisition of courthouses; technical equipment of courthouses by technical means and security systems; provision of mobile alarm devices to judges

acting outside the court buildings; about providing judges with living quarters. By itself the investment in the judicial system is essential. It is obvious. Therefore, this program will ultimately be beneficial for the development of the judicial system. However, it is more about the technical aspect of the issue, about finances, "constructions", etc. Actually, we need to pay attention to the core issues of the structure of the judiciary in conditions of a constitutional state. The term of "constitutional state" requires state power and governments, at first, to create an adequate system and structure of the judiciary, and only then ensure technical and production conditions of implementation by judges of their powers.

Fall 2012 was full of scientific forums devoted to the themes of "administration justice" and "administrative court procedure". For example, October 21, 2012 the State Duma Committee on Legislation and State Building organized and conducted a "round table" on the development of administrative justice in Russia. At the meeting of "round table" expressed confidence that a draft law on the establishment of administrative courts in the country developed by the Supreme Court of the Russian Federation (after refinement) will be accepted. There were noted already known stages of the draft law, since 2000. Despite many arguments in favor of the establishment of administrative courts, were also made some skeptical judgments on this issue. For example, S. Pashin "doubted that administrative courts, which would be established within the framework of the courts of general jurisdiction, would not perceive the traditional flaws of system – controllability, advertency to the instructions and wishes of government authority" [36]. Chairman of the Higher Arbitration Court of A. Ivanov proposed dividing administrative jurisdiction between arbitration courts and courts of general jurisdiction. In detail, this view is as follows: "cases, which belongs to the sphere of general administrative law, should be retained for the courts of general jurisdiction; and economic aspects should be attributed to the jurisdiction of arbitration courts" [36]. As was stated at the "round table", representatives of the judicial community would be able to more fully discuss the issue of administrative court procedure at the All-Russian Congress of Judges to be held in December 2012 [36].

Why do we need to slow down the development of special administrative-procedural norms, on the basis of which consider administrative-legal disputes? Who benefits from this? Every modern country is proud that it has an effective judicial control over the activities of administrative bodies and officials. At that, demonstrates an appropriate special administrative-procedural form of exercising such control. Opponents of the formation in the country of administrative courts say that, of course, over time, some bodies will be established to deal with disputes

between the power and citizen, at that, for some reason they call a Chamber to consider such disputes, which should be located somewhere within the judicial system. It is thought that when we talk about the judiciary, it is always necessary to speak about courts and judges, and not about chambers!

October 31, 2012 Committee of the Council of Federation on Constitutional Legislation, Judicial and Legal Affairs and Civil Society Development held a "round table" on the topic "Administrative Justice in Russia: Problems of Theory and Practice" [34]. First Deputy Chairman of the Supreme Court of the Russian Federation, Doctor of Law, P. P. Serkov in his speech very fully and convincingly proved the necessity of a new stage in the development of the Russian model of administrative justice, administrative court procedure and forming in the country of specialized administrative administration of justice. Deputy Chairman of the Higher Arbitration Court of the Russian Federation, Candidate of legal sciences, T. K. Andreeva considered the topical issues of administrative court procedure exercised by the judges of arbitration courts of the Russian Federation. Advisor to the President of the Russian Federation, Doctor of Law, Professor V. F. Yakovlev in the analysis of issues of improvement administrative court procedure in Russia drew attention of the "round table" participants to the need of development of pre-trial resolution of disputes and legal cases arising in the field of public law. The author of this article devoted his speech to the analysis of modern theoretical and applied problems of practical implementation of constitutional-legal norm on the specialized administrative court procedure, pointing out that the establishment of administrative courts in the Russian Federation corresponded to the strategy of *innovative development of the country* [10, 104-107, 18 , 48-57] and the state-legal construction.

Many countries demonstrate attention to the problem of formation and development of administrative justice. For example, the German Society for International Cooperation (Deutsche Gesellschaft für Internationale Zusammenarbeit – GIZ) organized the III-rd International scientific-practical conference on administrative law, as well as Regional Seminar within the framework of "Rule of Law Initiative for Central Asia" of the European Union on the topic "Issues of theory and practice of application administrative justice in the European countries and the countries of Central Asia" (2-3 November 2012, Astana, Republic of Kazakhstan). The main issues discussed by the participants at the scientific-practical conference were: platform, principles and standards of the rule of law; formation of an effective state and assistance in conducting of a judicial reform; search for an optimal model of administrative justice in the legal doctrine of the countries of Central Asia; problem of formation of administrative justice in the countries of Central Asia;

"administrative and economic administration of justice"; regulations of administrative-procedural activities; European model of the Code of Administrative Procedure and the national administrative-procedural legislation; value of administrative justice in a democratic state and the place of administrative justice in the structure of the judiciary; independence and effectiveness of administrative justice; compliance with judicial decisions by administrative authorities. Deputy Minister of Justice of the Republic of Kazakhstan Z. Kh. Baymoldina considered in her speech the current state and prospects for the reform of administrative justice in the Republic of Kazakhstan. An opinion was expressed on the feasibility of developing science-based, practically verified recommendations for further improving of the legislation of Kazakhstan and other countries. Professor of Caspian Public University, Doctor of Law, R. A. Podoprigora pointed out the lack of useful practical actions to improve the norms of the Code of Civil Procedure, which now covers issues of administrative justice. R. A. Podoprigora considered the problems of preparation and issuing of administrative legal acts, as well as the complexities of the judicial procedure of consideration administrative-legal disputes. Associate Professor of Tashkent State Institute of Law, PhD of legal sciences, L. B. Hwan noting that until recently approaches to implementing the norms of administrative legislation were based largely on the models of Western European experience, stressed the importance of taking into account the experience of development of legal systems in such Asian countries as Hong Kong, Thailand, India, Singapore, Japan, Korea, China. In many of these countries, according to L. B. of Hwan, was successfully implemented the concept of a judicial contesting the acts and actions of public authorities. The result of the scientific-practical conference became the development of recommendations for the introduction in a system of state-legal construction of an effective administrative justice for achieving the following purposes: improvement of activity of administrative bodies to increase the credibility of the state and strengthen public confidence in it; increasing of efficiency and strengthening of compliance with the principle of legality of actions (inaction) of administrative bodies; establishing in law and observance in practice the principle of prohibition of arbitrary actions by administrative bodies; establishing guarantees for the operation of the principle of equality before the law and court; improving the predictability and legal certainty of administrative decisions to ensure investors' confidence in their activities in the country; strengthening of protection of the rights and legitimate interests of citizens and legal persons in their interrelations with administrative bodies in the use of pre-trial procedure of appealing administrative decisions and in judicial process; ensuring the transparency of the adoption procedures of managerial acts and anti-corruption;

implementation of international legal standards into national legal systems in order to develop legal statehood.

The experience of legislative regulation of the organization and implementation of administrative court procedure in post-Soviet countries can be traced by the published Codes of Administrative Procedure of Azerbaijan, Armenia, Georgia, Latvia, Lithuania, Ukraine, the Republic of Estonia, and Bulgaria [24].

The role of administrative justice in the mechanism of protection the rights and freedoms of man and citizen is to be considered at the expert-practical conference in the Republic of Kazakhstan (November 29, 2012, Astana). Thus, the issue of development of administrative justice and, therefore, administrative court procedure has been given enough attention in the last time.

Further noteworthy is the fact that unfortunately the task of forming a new model of administrative administration of justice in Russia is not seen in the decisions taken by the judicial community of Russian. For example, the Decision of the VII All-Russian Congress of Judges from December 04, 2008 "On the State of the Judicial System of the Russian Federation and the Priorities of its Development and Improvement" [38] did not include measures to improve the structure of court procedure, creating a system of specialized courts, development of administrative administration of justice and development of an administrative procedural legislation (such as the Code of Administrative Court Procedure). At this congress of judges the Chairman of the Higher Arbitration Court of the Russian Federation A. A. Ivanov again repeated the idea that "an effective system of consideration administrative disputes may be created in a different way – through the development of pre-trial settlement of disputes. This can be achieved through creating, for example, a federal administrative service, which would be a kind of filter for separation of cases brought before the courts, on the one hand, and for facilitation the consideration of these disputes and reducing the time of their consideration for the parties, on the other" [37]. In this case are mixed absolutely different institutes: *administrative administration of justice* (institution of administrative courts) and *pre-trial settlement of administrative disputes*. One should not replace the other. By the way, development of both institutes is relevant in Russia.

For the last fifteen years by the scientists have been expressed many opinions, arguments and justifications both in support of the establishment of administrative courts in Russia and against this idea [27, 416-428]. If we analyze some of the published during 2012 scientific papers on the issue of administrative justice or administrative process, you will need to note an interesting, from a theoretical point of view, analysis of the mentioned issues, but without a noticeable advance *towards*

a new quality of ongoing discussions. For example, M. Ya. Maslennikov, referring to the already long established approaches to the structure of procedural activity (that is, the existence of three procedural branches: civil procedural law, criminal procedural law, administrative procedural law) determines administrative process in the structure of the subject of administrative law [14, 26-27]. M. Ya. Maslennikov defines administrative process as a branch of the Russian law through "a totality of procedural-legal norms and institutes that regulate the activity of subjects of law enforcement and other participants of administrative-procedural legal relations, in a sphere not related to managerial (service) subordination" [14, 31]. All the previous reasonings of M. Ya. Maslennikov about the content of administrative-procedural activity were limited to indication of: the order of application the "administrative coercion measures in performance of executive authorities (administrative-legal sanctions)"; "administrative-procedural (managerial) activity"; "procedural actions of the participants of administrative process for exercising of substantive administrative norms and procedural-legal norms governing the order of application of the first ones" [14, 27-28]. Thus, by M. Ya. Maslennikov, there is no place at all for *administrative administration of justice* in the structure of the modern administrative-procedural law. In other paper M. Ya. Maslennikov enters into a debate with Professor D. N. Bakhrakh about the content of the project of the *Russian Code of Administrative Procedure*, which he has proposed for discussion [9]. According to M. Ya. Maslennikov, "uncertain "broadness" of administrative process" leads to the need for a "conceptual delimitation of administrative process from administrative procedures, administrative-procedural norms from administrative-technical regulations", "to the confusion in the debates about the usefulness/uselessness of the Executive Code of the RF"[16, 27-28]. From my point of view, the two authors because of the already overdue secondary debate forgot to discuss the main in theme of "Administrative process" issues about administrative court procedure, since D. N. Bakhrakh pointed out that "in the present time administrative-procedural law is just a big group of norms that regulate procedures of authoritative activity and are in the system of administrative law" [6, 5]. D. N. Bakhrakh defines administrative-procedural law "as a large group of procedural norms that are systematized within individual institutes of administrative law. Many of them have their own procedural part" [6, 5]. Moreover, in such statements, in fact, both M. Ya. Maslennikov and D. N. Bakhrakh occupy absolutely the same position. M. Ya. Maslennikov finishes his article with the words: "At different times, codification of administrative-procedural norms has been hampered by a lack of convincing arguments. But time, circumstances, objectives and tasks of socio-political transformations are changing"

[16, 28; 15, 22-40]. Unfortunately, despite these changes there is *no* change in the understanding of administrative process and justification of its new requirements that correspond to modern ideas about the essence of a constitutional state.

In the administrative-legal special literature is once again clearly seen the devotion of legal scholars to the idea of adoption the Code of Administrative Court Procedure of the RF [20, 19]. However, as is well known, the repetition of expressed and long discussed idea does not introduce new arguments to discussion, thus weakening the capacity to implement this idea. N. N. Tsukanov, reasoning about the possible directions of systematization of administrative-procedural legislation, considers it appropriate to develop and adopt the Foundations of the administrative-procedural legislation to establish specific standards for different types of administrative proceedings [30, 103]. However, this proposal is, in essence, a repetition of old idea on the multiplicity of administrative processes in Russia. Some sort of Russian specifics – the multiplicity of administrative processes! In other countries with a developed legal system administrative process is always one. In his article M. V. Solovov considers *administrative procedures* as *part of administrative process*. It is possible understand the author of the article, because he tries to point out the close intertwining of administrative procedures and administrative justice. However, the aims and tasks of the mentioned institutes are different [26, 117]. In addition, M. V. Solovov writes about "possibility to implement an especial administrative-procedural process"; however, he does not explain: what is "*administrative-procedural process*"?!

Administrative-procedural relations are being explored by modern writers also with regard to the issue about the *subject of administrative-legal regulation*. For example, A. I. Stakhov depending on the nature of the relations of participants in the structure of the subject of administrative law distinguishes a group of homogeneous relations, which he calls "relations developing with the participation of judicial bodies" (here the author indicates, including, "relations arising in consideration by the courts of general jurisdiction and arbitration courts of complaints (applications) of individuals and legal entities on actions (inaction) and decisions (normative legal acts) of administrative-public bodies") [28, 13]. Certainly, the structure of the subject of administrative law can be reviewed from different perspectives and different names, but, in fact, from that nothing changes: since in the subject of administrative law from the mid 90-s of the last century have been entering the relations in the sphere of activities of courts for resolving administrative-legal disputes.

Separate authors, speaking about the role of administrative law in ensuring the rights and freedoms of man and citizen, repeat the thesis on the need for

establishing administrative courts in Russia, without adding any new arguments. For example, S. S. Kupreev notes that "to date we are very far from establishing administrative courts. And first of all it is connected with the financial problems, because in the conditions of overcoming the consequences of the global financial crisis, the State does not have the necessary level of financial resources to create them". In practice, quite the contrary; First, even "in the conditions of overcoming the consequences of the financial crisis" huge funds for the development of the judicial system are allocated in Russia. Here you need to once again recall "the Concept of the federal targeted program "Development of the Judicial System of Russia in 2013-2020" and its financial support. And, second, at this time we do not know even the general outlines of the financial support of the process of establishment administrative courts in Russia.

In new administrative-legal studies appear some new shades of research ideas about the need and usefulness of administrative courts for the state and all kinds of state activities. For example, scientists link the formation of administrative courts with the ability to prevent and overcome (remove from administrative practices) *administrative errors* [8, 3-4]. N. A. Bocharnikova, in developing the problem of administrative errors, actualizes the theme of her research by the processes of the undertaken in the country multifaceted modernization of state-legal construction. In the opinion of this author, it is impossible to achieve the planned results of modernization policy and the real practical reformatory state activity without significant reducing of the level of corruption in the country and eradication from practice the cases of erroneous administrative activities. From the point of view of N. A. Bocharnikova "administrative errors of executive authorities, officials and public servants today have turned into a serious political and socio-legal problem. They show legal insecurity of man and citizen, because as a result of administrative errors the rights, freedoms and interests of citizens are violated. Creating an efficient mechanism to detect, prevent and correct administrative errors could be of paramount importance for reforming the system of public administration" [8, 3-4]. The author presents new arguments in favor of the need for specialized administrative courts to protect citizens from the negative performance of executive bodies of state power, from administrative errors. In this regard, substantiates the expediency of adoption a Federal constitutional law "On the Federal Administrative Courts in the Russian Federation", as well as the need to determine the features of administrative court procedure in the draft Code on Administrative Court Procedure of the RF that is being developed. According to N. A. Bocharnikova, "legal mechanism to combat and overcome administrative errors must be based on the idea and practice

of modern administrative court procedure. Consideration of administrative-legal disputes in administrative court procedure shall provide accounting of the peculiarities of administrative activities of executive bodies, officials and public servants, the principal characteristics of both rule-making and administrative enforcement process, the principles of administrative procedures" [8, 14-15].

In the dissertation research have begun to pay more attention to the administrative-procedural terminology, with emphasis on the formation of administrative courts. For example, N. A. Tunina in her master's thesis examined the legal nature and theoretical problems of administrative claim as a means of protecting an infringed public law [29]. N. A. Tunina comes from the fact that article 118 of the RF Constitution obliges to create in the country administrative court procedure, which should be of *claim nature*. At that the author emphasizes *competitiveness*, *equality of the parties* and *the principle of the free exercise of material and procedural rights by the parties to legal proceedings* as the most important principles of action proceedings in cases on public legal relations [29, 8]. A more detailed list of the principles of administrative court procedure is presented in the master's thesis of E. A. Shilova: principle of priority of rights and legal interests of citizens; burden of proof on an entity endowed with powers of authority; active role of the court; completeness of judicial protection; procedural economy; equality of the parties and the principle of the free exercise of material and procedural rights by the parties to legal proceedings; immediacy of trial proceedings; and others [31].

A brief analysis of scientific statements regarding the issue of civil proceedings, in which as a gold thread runs the idea of the so-called its *differentiation*, is very important. Several scientific papers on this subject have been prepared in the recent time [11; 21; 25]. Through such terms as "differentiation", "unification", "simplification", "optimization" [19] of civil and arbitral proceedings, can be explained many of the problems of the current Russian court proceedings, as well as affect on the nature of the discussion on the topic of "administrative court procedure". It is especially difficult to understand the reasonings of authors about the belonging of proceedings on the cases arising from public legal relations to civil process of the cases arising from public relations, who write about the "differentiation of civil process" [12, 150-182]. *Administrative process* inherently should not be included in the structure of *civil* process! Most importantly – because of such terminology details we forget the most important thing – are there peculiarities of administrative court procedure? [12, 159-163]. If not, then in science appears an opportunity to argue for the need to change the RF Constitution, which has established a special kind of court proceedings – administrative court procedure.

At some turn of legal assumptions a desire may appear to change the constitutional-legal provision on the ways of exercising of the judiciary in Russia: "*The judicial power is exercised in the Russian Federation through a unified and differentiated civil proceedings*". Sounds, as one of my senior colleagues says, *wildly*! However, if carefully study the recent works on civil proceedings, and even there we will find a correct view about the need for legislation on administrative court procedure. For example, E. V. Slepchenko concludes, that "there is every reason for the conclusion on the need for unification of the considered procedural rules, removing them from the Arbitration Procedural Code of the Russian Federation and placement in a single Code on Administrative Court Procedure of the Russian Federation" [25, 141]. One of the most important findings in the work of E. V. Slepchenko can be regarded the statement that "separation of the norms of administrative-procedural law between the three codes – Code of Civil Procedure of the Russian Federation, Arbitration Procedural Code of the Russian Federation and Code on Administrative Offences of the Russian Federation – does not provide, in our opinion, the necessary level of protection of the rights of citizens and organizations from the arbitrariness of authorities" [25, 143]. However, despite the positive and correct reasonings of the author on these issues, the final conclusion is very unjustified and, therefore, controversial. E. V. Slepchenko says that neither formalization of administrative court procedure as an independent type of proceedings, nor implementation of the proposal for the adoption of the Code on Administrative Court Procedure "indicates the need for creation of special administrative courts" [25, 145]. The author suggests to leave the problem unresolved; "all cases arising out of administrative and other public legal relations should be dealt with by the courts of general jurisdiction, specialized structures and panels of these courts. Arbitration courts herewith should be combined by the courts of general jurisdiction in a unified judicial system. All of this will eliminate quite an acute problem of determining the jurisdiction of these cases, which are now being considered both by courts of general jurisdiction and arbitration courts" [25, 145].

The reasonings of E. V. Slepchenko about merging arbitration courts with the courts of general jurisdiction in a "unified judicial system" at first seemed highly innovative and assumed for a long term. But as it turned out, it is only at first glance. At the end of October 2012 it was reported about the plans to join (merge) the Supreme Court of the Russian Federation and the Higher Arbitration Court of the Russian Federation [39], and just after it – a new idea of moving the joint court in St. Petersburg [42]. Perhaps it will be so in the future. And only then there will be

just one step to the transfer of the capital of Russia from Moscow to St. Petersburg! As you might expect, in this case "will not stand" part 2 article 70 of the Constitution of the Russian Federation, which says: "The capital of the Russian Federation is the city of Moscow". And hardly at that will be remembered the talking about "not touching" to the text of the Constitution and not offering any amendments to it. By the way, such introducing of novelties to constitutional and legal norms, obviously, does not fit the ideology of the "implementation" of the Constitution of the Russian Federation. While all of this is in the spirit of Peter's time!

As can be seen, despite of all the serious approaches to the understanding of administrative court procedure in Russia and the presence of attention to the issue of establishment of administrative courts, the formation of administrative court procedure is not included in the plan of *innovative development* of the country, administrative courts also do not fit into a big plan of initialization and implementation of *innovative* ideas. It turns out that the planned transfers of the Supreme Court and Higher Arbitration Court of Russia from Moscow to St. Petersburg – these are the main features of the development of the judiciary; it is "truly innovative way" of reforming the judicial system! It may be that way we are going to improve the quality of justice, and, notably, to ensure access to justice by moving the courts into the West corner of Russia; will the quality and accessibility of justice clearly increase due to its greater distance from the population?!

N. A. Gromoshina, speaking about specialized courts, argues that "separation, splitting up of relatively common today civil court procedure will result in more visible negative consequences" [11, 99]. As can be seen from the scientific analysis of the problem under discussion, the author is against specialized courts, since here is put a direct question: "Is it acceptable at the expense of a beggar state to conduct dubious social experiments?" [11, 98]. About the "beggar" Russian State and numerous experiments we can talk meaningfully in other articles. Now just need to emphasize that again and again the idea of forming administrative court procedure and administrative courts is being denied due to lack of finance, "bad roads in Russia" that do not provide access to justice for "ordinary citizens". Here it is important to add, that in scientific works constantly repeat the same arguments "against" the establishment of administrative courts in Russia. For example, V. S. Anokhin agrees with the opinion of scientists, who offer not creating of administrative courts, but improving of procedural legislation regulating administrative court procedure [5, 12]; establishment of administrative courts, in his opinion, would weaken the accessibility to justice, such principles as "adversary character of a judicial process, equality of parties, etc. would be violated" [5, 12]. In short just

have to note here that exactly administrative process manifests different principles, thanks to which specific objectives are achieved and special tasks are resolved in respect of administrative court procedure intended to address administrative-legal disputes.

In the scientific works on the problems of justice in civil cases this type of court proceedings is defined as "activity of a court of general jurisdiction or arbitration court to hear and resolve cases referred to their jurisdiction by civil procedural or arbitration procedural legislation that sets the very order of proceedings" [12, 27]. Thus, firstly, obviously, civil cases automatically include "cases arising out of public legal relations", and, secondly, only civil and arbitration procedural legislation refers these cases to the jurisdiction of the courts of general jurisdiction and arbitration courts. *Here you can put a question: whether such legal provisions correspond to constitutional and legal norm on the forms of exercising judicial power in Russia and about the purpose of the administrative court procedure itself? Whether create or not such normative findings any preconditions for limiting access to justice and to the protection of violated rights and freedoms of citizens, legitimate interests of legal persons?* Where, then, is the location of administrative procedural legislation, administrative law, administrative practices, and administrative-legal disputes? How can you justify affiliation of negative results of administrative law norms action to the competence of the courts of general jurisdiction and arbitration courts? They say that such norms are established by the CPC RF and APC RF. But these Codes appeared in the process of law-making activity in the conditions of the relevant concept and prevailing in those years legal ideology in the formation of procedural legislation. Times are changing; and procedural legislation should also be modified.

The scientists note that "from the letter" and "spirit" of article 46 of the RF Constitution, as well as from the legal positions, which have been expressed repeatedly by the Constitutional Court of the Russian Federation, it follows that it is possible to apply to court for resolving any dispute affecting the rights and interests of a citizen or other subject of Russian law, including disputes arising from public legal relations" [7, 8]. It immediately raises the question: what, in this case, have the Constitutional Court of Russia asserted? That in our country there are no guarantees of judicial review of legal disputes arising, including between citizens and administrative authorities and their officials? The Constitutional Court of the RF will always note the existence of legal options and legal mechanisms for challenging in court the actions (inaction) of the bodies of executive power and their officials. It is impossible to provide answers to these questions in a different way. However, the question remains: does administrative court procedure in

all its features, purpose, principles of implementation match known standards of civil procedural and arbitration procedural justice? It seems very difficult to respond positively to this question, in view of the constitutional-legal meaning of the norm on administrative administration of justice.

FCL from February 07, 2011 "On the Courts of General Jurisdiction in the Russian Federation" in paragraph 2 article 4 establishes that the courts of general jurisdiction consider all civil and *administrative cases* on protection of violated or disputed rights, freedoms and legal interests except cases, which are, in accordance with the legislation of the Russian Federation, addressed by other courts. Thus, in this formulation the term of "administrative cases" gives rise to other interpretations of this institute. First, the Federal Constitutional Law, establishing in the text this term of "administrative cases", gives rise to assumption about its direct and main interaction with the term of "administrative court procedure". Second, "administrative cases" are directly linked to the need *to protect violated* or *disputed rights*, *freedoms* and *legitimate interests*. Thus, *administrative-tort* characteristics of "administrative cases" in this case are not acceptable, it is about judicial protection of the rights, freedoms and legitimate interests of natural or legal persons. That is why a case on administrative offence, theoretically, can be classified as "administrative case". However, in terms of its content from the position of both a subject of administrative-legal dispute, participants of a trial, and the features of the procedural rules of a case on administrative offenses – these are not administrative cases in the sense of the considered article of the FCL "On the Courts of General Jurisdiction in the Russian Federation".

As you know, the legislation on administrative offenses (in its substantive and procedural content) has been developed and have being operated in practice since the Soviet era, that is, long before the adoption in1993 of the Constitution of the Russian Federation, which has enshrined the term of "administrative court procedure". As well as other types of justice in Russia – criminal or civil court procedure had a long history of growing and development. However, in the text of the Constitution of the Russian Federation in 1993 appeared the term of "administrative court procedure"; and by this, of course, legal novelty the legislator stressed the new quality of the judiciary and the need for forming a new quality of the very Russian justice. Consequently, no identification of administrative court procedure with proceedings on cases of administrative offences should be taken.

Here we can provide data on the structuring of content from monthly published Bulletin of the Supreme Court of the Russian Federation. Of course, this example does not include a capacity of deep scientific argumentation. However, it

demonstrates the instability of even experts' representations about the essence and content of administrative court procedure and the term of "administrative cases". For example, in one of the issues of the Bulletin, in section "Overview of the judicial practice of the Supreme Court of the Russian Federation" highlighted sections: in criminal cases; in civil cases; in *administrative cases*. In the latter category of cases the editorial staff of the Bulletin includes, for example: "Practice of declaring normative legal acts *invalid* in whole or in part" [4]. It should be noted that these sections do not deal with *cases on administrative offences*. In other cases, in the section "In civil cases" appears a subsection "Practice of reviewing cases arising out of public legal relations", which also gives examples of judicial activity for the recognition of contested norms (contested act) inactive or relevant to law. Also, here the editorial staff of the bulletin publishes articles under the heading "Issues of application of the Code on Administrative Offences of the Russian Federation" [3].

Reform of the judicial system (judicial reform) and administrative system are designed to ensure the legality of state activity, that is, of the judicial activities and functioning of the executive branch. However, in contrast to the executive power, which indeed (judging by formal indicators of administrative reform) is being meaningfully reformed, that is, a new administrative legislation establishes new administrative procedures, new orders in all areas of public administration, the judiciary has not undergone internal meaningful and functional changes. More apparent become organizational changes and material-technical supply.

On the other hand, even administrative changes can be evaluated in different ways. Why in the latest studies devoted to the institute of civil service, improvement of discipline in service relationships and strengthening the procedures of passing civil service more often note the need for establishment in fact the principle of "*presumption of guilt*" of state and municipal employees? Exactly in such a way can be evaluated newly passed laws by hard itemization of the order of public service passage. In the last five to seven years, the legislation establishes procedures for combating corruption in the public service, provision of income declarations of a public servant, establishing a mechanism for rotation of personnel in the public service, formation at the executive bodies of state power of numerous commissions for the prevention and resolution of conflicts of interest in public service. However, in practice, the changes in public law that have already taken place, aimed at strengthening the responsibilities of public servants, do not lead to a new quality of activity of professional officials. On the contrary, every day from all of the media the society receives the facts of improper conduct of public servants and committing by them various offences. It turns out that the "strict" service legislation does

not constitute a final barrier for commission offences by public servants. And it is hardly needed to bring here the argument that revealing of such public servants is associated with improvement of relevant units of the police, prosecutors' office or the Investigative Committee of the Russian Federation.

Therefore, while appreciating the useful changes in all areas of state activity, we should not to exaggerate the significance of the changes. Many directions and new institutions, which are born by reforms, do not strengthen the State itself, do not make it more democratic or stronger.

A year ago (mid-December 2011) the author asked in writing (in the framework of the event "A conversation with the country) at the site of the Russian Government at that time the Prime Minister of the Russian Federation the issue on the establishment in our country of a *strong Russian state*. Here this question is:

"Dear Vladimir Vladimirovich!

Ten years ago You in your speeches often and with much attention said about the problem of formation in Russia of a ***strong*** *state, that is, You said about the need to build a* ***strong country*** *and a* ***strong government****. Later, the term of "strong state" gradually began to be replaced in your statements by "****effective state****". And in recent years, in fact, you have stopped (as I can see from Your statements, reports and discussions) to talk about this topic. Does this mean that now the priority directions for development of the country, state and society do not include formation of a strong state? After all, for every citizen, who is trying to think about the future of Russia and who wishes to see its country successful and powerful, it is extremely important to know the view of the country's leaders about what state should be created, in which areas it needs to be reformed, what it should be in the future. Every thoughtful and principled man wants its country to be recognized and respected everywhere, all countries to reckon with Russian policy, including the very reason that the country – strong and democratic.* ***The question is****: what is, in your opinion, a "strong state"? How today do you understand the concept of a "strong State"? What, in your opinion, is the main strength of the modern Russian state? What are the features of a strong state: is it a strong power or modern democracy? Is it a proper public administration or administrative powers of authority of state bodies? I would be very grateful to you for a brief analysis of the question and the answer".*

The answer, unfortunately, did not follow. And it is unlikely that we can hope in the face of such magnitude of the event (i.e. an open conversation with the country) on an individual approach to answering all the questions. It is easy to understand. Probably it cannot be otherwise. But it is not the main thing. The most important is that such questions arise, but the looking for answers to them leads researchers to a very large generalizations and practical conclusions.

Discussion on administrative court procedure, from my point of view, easy "fits" into all discussions about *modernization*, *reforming*, *establishing of a constitutional state*, on the most important *projects* in the country, on *legal reform* and *judicial reform*, which are taking place in society, in politics, among various professionals. I believe that all modern public discussions can be joined by the recently topical theme of a "*strong state*" in Russia.

Thoughts on the current state of administrative justice in Russia and the future of administrative court procedure are directly related to the above-mentioned issue of a *strong state*: exactly in a strong state the justice and all its forms, including *administrative one*, are strong and credible. Strong, high-quality, effective state is only then when created and maintained a strong judiciary, accessible and efficient administration of justice. Famous political personalities of the country for several years have been highlighting the problem of modernization of the country as a major. For example, A. Chubais says: "If we seriously put the task of modernization, first of all, this would mean the need to create a completely new quality of the State itself" [23]. Of course, all of the reforms in the country must end with positive results. Therefore, modernization of legal institutions itself should also be aimed at forming of a useful practical activity. Although, as is often the case in Russia, reform's goals are not achieved, and as an outcome – results that are quite opposite to target aspirations of the reform authors. For example, in September 2010 the President of the Russian Federation said, that according to the Ministry of Finance of the Russian Federation "almost 1,500 officials' functions are redundant, more than 260 – duplicated, and 700 need to be clarified" [13]. Thus, the need is "optimization of the number and structure of the state apparatus. This question anyway facing all modern states, and the optimal variant still has not been found simply because officials will anyway find for themself an activity and they will deal with it as long as how many time they have for it" [13]. It turns out that it is not possible to carry out an administrative reform with real, positive result. Why then there was conducted administrative reform in 2003-2008? Because, as is known, about the same issues were being solved in the framework of the administrative reform. Efficient public administration will never appear and form in dismal administrative environment.

Lack of administrative courts in Russia (as, indeed, legislation on administrative procedures), unfortunately, "fits" in the general formula of a very difficult parting with the old ideology and the practice of omnipotence of administrative authority. It is known that the attributes of a *police state* disappear slowly. In the fight against *legal nihilism*, despite some achievements in this sphere, the Russian

Federation is still far from the final overcome and defeat of this phenomenon. We have not come far in the last few years in fight against legal nihilism, and the prevailing administrative ideology "everything is permitted!" (including in public administration). Just one example. Until quite recently, few people paid attention to tinted windows of the official cars of Road Patrol Service -Traffic Police (hereinafter RPS - TP). As a rule, all four windows of these cars were darkened to an extreme. That was not seen what TP officers was doing after inviting drivers into their cars. It is known that traffic police officers have made hundreds of thousands of reports on administrative offenses for driving a vehicle that is equipped with the glass (including coated by transparent color film), light transmission of which does not meet the requirements of technical regulations on safety (i.e., it is due to excessive "toning" of car glass). If today you look closer to traffic police official cars, each can easily make sure that these cars, however, have very perceptible for every man "tinted" glass, though it has remained on the windows of rear doors. Thus, the real "achievement" for the past 5 years has become the removal of "toning" (blackout) only from the windows of the two front doors of RPS cars. But the two windows still have remained "dark"! This is, from my point of view, the triumph of legal nihilism, which allows employees of internal affairs bodies even today to live by the principle "everything is permitted for us". Well, let's wait for a new phase of the spread of democratic regime of *transparency* on the official cars of Traffic Police! Obviously, it is a very slowly undertaken administrative reform; at that, the most basic tasks of reforming are resolved in the country very long, partially and sometimes with a zero result.

Courts and judicial practice can change and improve public administration exactly through administrative court procedure, that is, by its decisions the courts establish a regime of legality in the field of organization and functioning of the executive bodies of state power. However, it is hardly possible that improvement of executive and administrative activity is carried out by civil or arbitration procedural legislation. It is to achieve such a goal create a special system of administrative administration of justice. Such characteristics of the model of administrative justice are most attractive and justified. As is known, Russia is far from establishing a system of "*good*" or "*proper*" public administration. Then, that is why, and it is in these circumstances, a state, which cannot create a well-functioning system of public administration, must direct its efforts to the formation of an effective judicial system and all forms of justice. Administrative court procedure will complement by new qualitative nuances the model of the Russian state, the system of state power; administrative administration of justice also will be changing the legal culture of

society, creating in it the elements that put to the fore in the behavior of people requirements to the authority, a desire to improve the results of its practical activity, to impact in order to improve administrative results; accountability of the authority before the society will be developing in this case.

Here you can go on more qualitative generalizations, namely on the nature of democracy formed in the country. Exactly democratic traditions as an essential corollary lead to the emergence of a judicial branch, which is traditionally called *administrative court procedure*. It is unclearness and underdevelopment of democratic institutes does not allow talking about the need for full implementation of the constitutional-legal norm on administrative administration of justice. Speaking at the second Yaroslavl forum October 14, 2010, Dmitry Medvedev spoke about the 5 standards of democracy; was suggested "to what criteria the state of the XXI century must comply with. In other words, what are the universal *standards of democracy*". In this case, the emphasis was put on the following several directions of democracy development: a) "legal realization of humanistic values and ideals"; b) "state's ability to provide and maintain a high level of technological development; promotion of scientific activity and innovation in the end produces a sufficient number of social benefits"; c) "ability of a democratic state to protect its citizens from encroachments by criminal associations" ("this are terrorism, corruption , drug trafficking and illegal migration"), "democracy must effectively and fully perform a variety of functions, including police function"; d) "high level of culture, education, communication and information exchange", "democracy in general is inseparable from responsibility... Democratic state, which reduces the regulatory and repressive burden on society, conveys to the society itself some of the functions for maintaining order and stability in this society", "democracy – is not only freedom, but also self-restraint"; e) "conviction of citizens in the fact that they live in a democratic state". Summarizing the arguments D. A. Medvedev said: "The question arises: does whether Russia correspond to these standards? I can honestly say that only to a certain extent, not to in full. But I have already said that we are at the beginning of the path" [17]. If top government officials and politicians talk about the lack of prevalence in Russia of general democratic values, then, in this context it can be concluded that the lack of a specialized administrative administration of justice – is a shortcoming of democratic system, of the structure of democracy, the weakness of democratic institutes.

Concerning the issue of establishment of administrative courts in the country, unanimity in the absence of "*political will*" has become observed in this process.

For example, many experts discussing the question of the establishment in the subjects of the Russian Federation of constitutional (charter) courts, also link the lack of politicians' attention to this issue with direct reluctance to form a very important body of the judiciary in the country. As written by A. Tsaliev, "many heads of subjects don't want to establish a body that would monitor the legality of their norm-making activity. As well as they do not want to create at their location the institute of ombudsmen: "Apparently, someone does not want to have such an institute, independent from the regional government and in general not dependent on anyone", – said on this occasion the head of state at the last meeting with the Human Rights Commissioner Vladimir Lukin. Probably we need to encourage subjects to create constitutional (statutory) courts, what is insisted by the majority of scholars and practitioners. According to many, eminent jurists, it is a necessary condition for the existence of a federal constitutional state" [32; 33, 21-22].

Thus, the constitutional norm on administrative court procedure is still on the periphery of legal consciousness, legal policy and legal reforming in the Russian Federation. Almost twenty years scientists spent on argumentation of the need for a specialized administrative administration of justice under special legal procedural rules. New "quality of the state" cannot be achieved without the ensuring of a new quality of all kinds of government activity: legislative, executive and judicial.

The President of the Constitutional Court of the Russian Federation V. D. Zor'kin, speaking in December 2008 at the 7th all-Russian Congress of Judges, said: "the rule of law, human rights and freedoms, justice are inseparable concepts. The Constitution guarantees fair administration of justice. Court is a final instance in resolving disputes about a right – whether it is a dispute between citizens or a dispute between a citizen and the state. For 15 years of life under the new Constitution, our Russia, step by step, overcoming legal nihilism, has been strengthening independent judiciary as an essential element of a constitutional state and fundamentally changing. Our goal is to make these changes irreversible" [37]. These words are extremely relevant today. It is possible, only actualizing their creative potential, to add, that administrative court procedure in Russia requires "increasing" and respectively "advancement" to a new level of legislative regulation, that is, the establishment of all its procedures in the Code of Administrative Court Procedure; and only in this form it can fully ensure the rights and freedoms of man and citizen, guarantee the efficiency of the judicial system itself, as well as the rule of law.

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