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**DELICTUAL EXERCISING OF DISCRETIONARY POWERS OF A JUSTICE  
OF PEACE IN CONSIDERATION OF A CASE ON ADMINISTRATIVE  
OFFENCE**

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The importance of the content of a protocol on administrative offence in part of description of tort committed by an offender and correspondence of this description to the composition of an administrative offense contained in the norms of administrative-tort legislation are noted in the article.

Authors focus their attention on the imperative nature of norms of the Code on Administrative Offences of the Russian Federation concerning the powers of a judge hearing a case of administrative offense, and on inadmissibility of discretionary interpretation by judges of the circumstances of an administrative offence that has been recorded in a protocol on administrative offence by the body of administrative jurisdiction or its official. A case of delictual exercising of discretionary judge powers in considering a case concerning administrative offense is analyzed in the article.

**Keywords:** administrative offence, consideration of case, the powers of a justice of peace, protocol on administrative offence, composition of administrative offence.

Despite the fact that the main stage of proceedings of an administrative offence is consideration of the case on the administrative offence (here is imposed an official act of bringing to administrative responsibility of the offender), as we see it, the procedural actions of an administrative jurisdiction body (or official), which implements the proceedings on the case, at this stage are largely dependent on the results (outcomes) of the previous stages of the proceedings on the case of the administrative offence. Correspondence of the description of an administrative offence in protocol to the composition of an administrative offence for which provide for administrative responsibility, determines whether the offender will be brought to responsibility or not. The conclusion about the presence or absence of the composition of an administrative offence is made exactly on the basis of the written description in the protocol of the incriminated administrative offence.

There are other errors of administrative jurisdiction body in the drawing up a protocol on administrative offence. For example, the absence in a protocol of a law norm, for the violation of which the guilty person has been brought to administrative responsibility [7].

In accordance with paragraph 1 of article 1.6 of the Code on Administrative Offences of the RF (hereinafter CAO RF) [1], a person brought to administrative responsibility may not be subjected to an administrative penalty and to measures for ensuring proceedings in respect of a case concerning an administrative offence otherwise than for the reasons and in the procedure established by law. By the mentioned norm, in our opinion, the legislator limits the discretion of court in part of proceedings on cases of administrative offences and does not allow the court to go outside the provisions of chapter 29 CAO RF, including part 1 of article 29.4 CAO RF. However, in practice there are cases when the court following the words of a movie character that a thief should be in prison, goes beyond what is permitted in order to ensure the punishment of administrative and legal delinquent. Example of such judicial discretion is a case on administrative offence in respect of LLC "Signal-Nedvizhimost".

According to the protocol on administrative offence, LLC "Signal-Nedvizhimost" was imputed the failure to submit an electronic copy of the declaration provided for by sub-paragraph 3 paragraph 4 article 14 of the Federal Law No. 171-FL from 22.11.1995 "On State Regulation of Production and Turnover of Ethyl Alcohol and Alcohol-containing Products and on Restriction of Consumption (Drinking) Alcohol Products" [2], paragraph 18 and 19 of the rules for submitting declarations about the volume of production, turnover and (or) use of ethyl alcohol and alcohol-containing products, about the use of production capacity

(approved by the Decree of the Government of the Russian Federation No. 815 from August 09, 2012 [4]), at that, bringing to administrative responsibility was carried out under article 19.7 CAO RF, and not under a special norm of article 14.19 CAO RF. The Court did not pay much attention to this circumstance, although if there are special norms governing certain legal relations, exactly special norms should be applied.

At the hearing the court at its discretion set another composition of the administrative offense (other objective aspect), which has not been imputed to LLC "Signal-Nedvizhimost'" by the person who has prepared the protocol on the administrative offense – untimely submission of declaration. The Court, as we believe, wrongly and unlawfully equated in the case two different deeds – failure to submit electronic copy of declaration and untimely submission of declaration, as well as failure to submit declaration and failure to submit information (the distinctive features of the deeds see in table 1 and table 2).

Table 1

<b>CAO RF</b>	
Article 14.19. Violating the Established Procedure for Registration of Ethyl Alcohol, Alcohol Products and Alcohol-Containing Products	Article 19.7. Failure to Submit Data (Information)
Violating the established procedure for registration of ethyl alcohol, alcohol products and alcohol-containing products during their production and trade – shall entail the imposition of an administrative fine on officials in the amount of from three thousand to four thousand rubles, and on legal entities in the amount of from seventy thousand to eighty thousand rubles.	Failure to submit or untimely submission of data (information) to a state body (an official), the submission of which is provided for by law and is necessary for the exercise by this body (official) of its lawful activities, as well as submission to a state body (official) of such data (information) in an incomplete or distorted form, except cases provided in article 6.16, part 4 article 14.28, articles 19.7.1, 19.7.2, 19.7.3, 19.7.4, 19.7.5, 19.7.5-1, 19.7.5-2, 19.7.7 and 19.8 of this Code – shall entail warning or imposition of an administrative fine on citizens in the amount of from one hundred to three hundred rubles, on officials in the amount of from three hundred to five hundred rubles, and on legal entities in the amount of from three thousand to five thousand rubles.

Comments by lawyers [8]	
Article 14.19 CAO RF	Article 19.7 CAO RF
<p>Objective aspect of the analyzed offense is that a perpetrator violates the established procedure for accounting of alcohol products and ethyl alcohol in their manufacture or turnover (i.e., delivery, retail, storage, etc.). Thus, in particular, are violated:</p> <p>1) rules of article 14 of the Law on alcoholic products about that organizations engaged in the production, procurement and supply of ethyl alcohol, alcohol products and alcohol-containing products are required to submit declarations on the volume of production and turnover;</p> <p>2) norms of the Provision on submission declaration on the volume of production, turnover and use of ethyl alcohol, alcohol products and alcohol-containing products (approved by the decree of the Government of the Russian Federation No. 858 from 31.12.05), the Provision on the accounting of production and turnover (except for retail sale) of ethyl alcohol, alcohol products and alcohol-containing products (approved by the decree of the Government of the Russian Federation No. 380 from 19.06.06, as amended 08.01.09);</p> <p>3) norms of the legal acts adopted by the Ministry of Finance of the RF, Ministry of Taxation (FTS) of the RF on the issue of declaration of production and turnover of these products.</p> <p>A deed is considered consummated since the commission. It occurs both in the form of action and inaction (for example, when there is no any accounting)</p>	<p>Objective aspect of the analyzed offence is that a perpetrator:</p> <p>1) does not submit at all (i.e. completely ignores the performance of its duties) or out of time submit to the state body (official) relevant information (such as number of employees, staff reduction, the types of offences committed in the locality). It should be borne in mind that this is about information:</p> <p>a) range (list) of which is defined by law;</p> <p>b) needed for the state body (official) to implement functions assigned to it by law (in the exercise of its activities). If the information is beyond of the specified range, the failure to submit them does not form composition of this offence;</p> <p>2) submits to state body (official) the above information:</p> <p>a) not in full volume (for example, only part of the information required);</p> <p>b) in distorted form (that is, in essence, about the presentation of false information). We should not confuse the objective aspect of this administrative offence with the objective aspect of:</p> <p>- administrative offense provided for in article 19.7.1 (about violation of the order of submission information to the body authorized in the field of regulation of state tariffs, see the comments to it);</p> <p>- administrative offense provided for in article 19.7.2 (about non-submission of information to the state agency responsible for supervising over the placement of orders for the supply of goods (works, services) for public or municipal needs, see the comments to it);</p>

Article 14.19 CAO RF	Article 19.7 CAO RF
	<ul style="list-style-type: none"> <li>- administrative offenses provided for in article 19.7.3 and 19.7.4 (about failure to provide information to the Federal Commission for Securities Market and about the conclusion of a state contract, see the comments to it);</li> <li>- administrative offense provided for in article 19.8 (it establishes responsibility for failure to provide information to the anti-monopoly body, the body regulating natural monopolies, see comments to article 19.8);</li> <li>- administrative offense provided for in article 19.19 (it establishes responsibility for submission of false information on the results of certification tests, etc., see comments to article 19.19);</li> <li>- crime provided for in article 327 of the Criminal Code (it establishes criminal responsibility, inter alia, for the manufacture, forgery and use of an identity card, another official document).</li> </ul> <p>This deed is considered consummated since the commission. It is committed both in the form of action (for example, submission of incomplete information) and inaction (for example, failure to submit any information)</p>

The mere existence of illegal deeds of a subject (as the objective aspect of an administrative offense under article 19.7 CAO RF) does not mean the permissibility of bringing to administrative responsibility under an article of the CAO RF, regardless of the actually committed offense determined (recorded) by the protocol on administrative responsibility. Otherwise, it would be enough in the protocol to indicate the law norm, under which the subject is being brought to responsibility, and on the base of discretionary powers the court itself would substantiate (determine) all the elements of an administrative offense.

According to article 29.1 CAO RF, a judge, body or official in preparation to consider a case on an administrative offence ascertain whether correct have been drawn up the protocol on the administrative offence and other protocols provided

for by the Code, as well as whether correct have been drawn up other materials of the case.

In accordance with article 29.4 CAO RF, in preparation for consideration of a case on administrative offence, there is provided for an opportunity to make a ruling about the return of the protocol on administrative offence and other case materials to the body, official who has drawn up the protocol, if it is established that:

- the protocol and other materials of the case have been drawn up by unauthorized persons,
- the protocol and other materials of the case have been drawn up wrong,
- there is incompleteness of submitted materials, which cannot be compensated during proceedings.

Observing this norm of the CAO RF, the court, having ascertained that the protocol on the administrative offence of LLC "Signal-Nedvizhimost'" was incorrectly compiled, would had to make a ruling about the return the protocol on administrative offence to the official. However, the judge went beyond its powers in the present case, and in violation of the CAO RF brought LLC "Signal-Nedvizhimost'" to administrative responsibility for an administrative offense, the composition of which was not described in the protocol, in addition made a counting error in calculating the timing of execution of obligation by the subject of administrative responsibility.

In the motivation part of the judgment the court pointed to the violation of the deadline for submission declaration specified in paragraph 15 of the rules of submission declarations (approved by the decision of the Government of the Russian Federation No. 815 from August 09, 2012) – deadline for submission of declaration for the 4th quarter not later than the 20<sup>th</sup> day of the month following the reporting period. According to the list of enclosures of the Russian Post, which was represented among case materials by LLC "Signal-Nedvizhimost'", the declaration and the floppy disk with the electronic file were sent 21.01.2013 to the address of the Interregional Territorial Administration of the Federal Service for Alcohol Market Regulation in the Volga district, what, in the opinion of the court, constituted violation of the terms of submission the declaration. However, the very administrative jurisdiction body did not consider that the term had been violated, so in the protocol on the administrative offence the violation of paragraph 15 of the rules of submission declarations (approved by the decision of the Government of the Russian Federation No. 815 from August 09, 2012) was not noted. Moreover, in the notice on the need to appear for drawing up the protocol on the administrative violation from February 20, 2013, as the reason of initiation of administrative proceedings

was specified failure to provide an electronic copy of the declaration for the 4th quarter of 2012 to the Federal Service for Alcohol Market Regulation.

Thus, considering the case on administrative offence, the court found that LLC "Signal-Nedvizhimost'" had filed a declaration with the delay for one day, that is, instead of the due date not later than the 20th day of the month following the reporting period, the obligation had been performed by the 21 day of the month, what, in opinion of the justice of peace, did not correspond to paragraph 6 article. 6.1 of the Tax Code of the RF and constituted an administrative offense of LLC "Signal-Nedvizhimost'" under article 19.7 CAO RF in part of late submission of information to supervisory authority. However, the twentieth day of the reporting month was a day off – Sunday, January 20, 2013.

In calculating the deadline for submission declaration to supervisory authority, in accordance with paragraph 15 of the rules of submission declarations (approved by the decision of the Government of the Russian Federation No. 815 from August 09, 2012), the legislator established the term, defined by the calendar day that has an ordinal number in a calendar month.

In accordance with the federal tax calendar for 2013, deadline for submission declaration to supervisory authority was deferred, in accordance with article 6.1 of the Tax Code of the RF, article 4 of the Federal Law No. 212-FL from July 24, 2009 [3], paragraph 88 of the provision on maintenance of accounting records and accounting reporting in the Russian Federation (approved by the order of the Ministry of Finance of the Russian Federation No. 34n from July 29, 1998 [5]), the letter of the Federal Service for Alcohol Market Regulation No. 02-02-17/237-VD from May 26, 2010 [6], to the next working day if the last day of the reporting period fell on a day-off.

By virtue of paragraph 88 of the provision on maintenance of accounting records and accounting reporting in the Russian Federation (approved by the order of the Ministry of Finance of the Russian Federation No. 34n from July 29, 1998) the day of submission of accounting reporting is determined by the date of mail item or the date of the actual transfer by belonging.

Thus, in connection with the moving of the reporting date from January 20, 2013 to January 21, 2013, declarations for the 4th quarter 2012 must be submitted no later than January 21, 2013, therefore, LLC "Signal-Nedvizhimost'" did not violate the due date for submitting declarations to supervisory authority (just therefore administrative jurisdiction body did not imputed this kind of offense). The court, we believe, applying discretionary powers determined the composition of the administrative offence in its sole discretion where it was not.

In addition we would like to mention that the essence of the very dispute between the administrative jurisdiction body and the controlled subject of public law was what should be considered an electronic form of declaration on the volume of retail sales of beer and beer drinks. LLC "Signal-Nedvizhimost" (has on the balance sheet a hotel complex, which has a license for the retail sale of beer) sent to the supervisory authority the declaration on a magnetic media, but the administrative jurisdiction body requested electronic version of the declaration through telecommunication channels with enhanced qualified electronic signature (despite the fact that the turnover of alcohol products carried out by LLC "Signal-Nedvizhimost", requires submission of declaration only in paper form).

We believe that the justice of peace examining the case on the administrative offence under protocol drawn up by the Interregional Territorial Administration of the Federal Service for Alcohol Market Regulation in the Volga district, deviated from (if you take into account the re-qualification by the judge of the composition of the administrative offense, otherwise, in the absence of administrative-legal tort, bringing to administrative responsibility should had been denied) the essence of the imputed administrative offence and also went beyond the limits of authority defined by part 1 article 29.4 CAO RF in preparation for consideration of the case.

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