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ACTUAL PROBLEMS OF ADMINISTRATIVE LAW OF RUSSIA AT THE PRESENT TIME

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ABSTRACT

This research deals with the status of the science of administrative law in modern conditions which is connected with the cardinal renewal of the administrative law that currently takes place, primarily with the constitutional consolidation of the separation of powers, rethinking and reforming of its traditional institutions, and also raising questions about the need for new legal institutions. In this connection, a number of topical theoretical problems arise in the science of administrative law, from the correct analysis of the future of this branch of law depends. While writing the article, the generally accepted methods of studying the problem were used and certain conclusions were drawn that could be introduced into the practice of Russian administrative law.

Keywords: *Administrative Law, Law Reform in Russia, Russia*

INTRODUCTION

One of the key problems in the science of administrative law is the problem of analyzing the essence of public administration and its correlation with the category of executive power, which is enshrined in the Constitution of the Russian Federation. In a study, Satushieva, et al., (2018) examined the specifics of the legal policy in the sphere of national and religious relations during the period of domination of the Russian Empire in Caucasus, and the results of their study showed that, they were regulated by Russian secular law. Also, Satushieva, et al., (2018) studied legal basis of the christian issue of Russian policy in cacasus in the secnd half of 21st and early 20th centuries. Power is an extremely complex and multifaceted phenomenon. Modern philosophy, political science and sociology examine power as a general sociological category, while singling out the substantive foundations of power relations and their essential features, expressed in any type, form or form of power and giving it an objectively logical character. However, the subject of executive power has not been explored enough. There is no integral view of this category and no specific features of this branch of power. The category of "unified system of executive power," which is referred to Part 2 of

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Art. 77 of the Constitution of the Russian Federation deserved the attention of academic administrators. This system is formed by federal executive bodies and executive authorities of the subjects of the Federation, as well as executive bodies of local self-government. To understand the correlation between the categories of "public administration" and "executive power", it is very important to further study the executive power, its importance and basic features.

The question of the subject of administrative and legal regulation is also needed, taking into account the inclusion of social relations arising in the sphere of application of administrative regulations, administrative coercion and in particular, measures of administrative responsibility for administrative offenses committed, administrative justice.

METHODOLOGY

In this research, the o- binary methods as analyses, syntheses , historicism and the system method were used.

Main part

The country is carrying out administrative reform related to the reorganization of state administration and, first of all, the executive power of both the federal and constituent entities of the Russian Federation. The goal of this reform is achieving the simplicity and efficiency of the work of state bodies; improvement of relations between federal executive bodies and executive authorities of the subjects of the Russian Federation, executive bodies of local self-government between state bodies and economic entities; democratization of governance, and also its openness and accessibility for citizens (Popov LL, Migachev YI, Tikhomirov SV, 2018). Achieving the goals requires new relationships between centralization and decentralization, on the one hand, and relationships between the forms and methods of legal regulation of various spheres of public life, on the other.

A lot of work has been done to analyze, evaluate and streamline the functions of federal executive bodies. A new system of federal executive bodies has been formed, which includes ministries that develop state policy in the relevant sphere and exercise regulatory and legal regulation, federal agencies for the provision of public services, federal services, and provisions have been adopted. The legislation determines the state administration at the level of the subjects of the Russian Federation, as well as the changes of administrative relations between the federal center and the regions.

At present time, a scientific analysis of the results is required, as well as a scientific study of further directions for reforming public administration in the Russian Federation.

The reform of the civil service is continuing in the Russian Federation. The role of the public service in the country is very great. The development of ideas about the system of executive bodies, the increase in the effectiveness of their activities, the optimization of competence and administrative and legal status as a whole are impossible without the parallel improvement of legislation on public service and, first of all, without clear legislative consolidation of this concept. (Popov LL, Migachev YI, Tikhomirov SV, 2018). The issue of civil service as "military service" and "law enforcement service" and their peculiarities requires additional scientific study.

The problem of administrative and legal regulation in the economic sphere is an actual and difficult administrative law for science.

In modern conditions, when moving to a new economic system, the concept of public administration, based on a single production and economic complex, is obsolete and must be radically revised. The development of a market economy requires a creation of an appropriate legal framework. It should be noted that modern state management of the economy is manifested not in the form of direct command influence, but in other forms, which include, the particular regulation of the activities of economic entities, standardization of products, works, services, implementation of control and supervisory functions. These forms can be attributed to the form of state administration - state regulation. At the same time, there are some branches of the economy in the Russian Federation that the functions of state bodies for managing economic entities (state corporations), nuclear power, production of military products, aircraft and shipbuilding, and a number of others remain.

Actually, the problem of public order in administrative law remains, requiring the deeper understanding of functioning of all forms of ownership.

This order does not arise spontaneously, due to the fact of the existence of market relations, but is established with active and reasonable state activity, support of the relevant bodies. Entrepreneurship, the development of all forms of ownership are possibly provided the state order, personal and property security public safety and also protected the business from corruption, racketeering, raiding, unfair competition, provide, etc. (LL Popov, YI Migachev., Tikhomirov S.V., 2018).

At the same time, economic order presupposes clear legal rules for enterprises and associations of all forms of ownership, within which they are obliged to act. These rules should exclude the actions of economic entities aimed at harming the interests of consumers and the state, and provide for the commission of such actions legal liability.

At present, the problem of administrative and legal regulation of migration processes is urgent. This problem requires scientific comprehension. However, there are very few special works on this subject. Meanwhile, there are a lot of questions in this area related to a more precise definition of such concepts as "refugee", "forced migrant", with control over migration processes, competence of the Ministry of Internal Affairs of Russia and other state bodies in this sphere. (Sevryugin, 2016) Theoretical questions about the relationship of migration processes with the rights of citizens, in particular, with their right of movement and choice of residence freedom and a number of others remains unsolved, yet.

The scientific problem associated with the administrative process, its understanding, correlation with administrative justice and administrative legal proceedings, as well as the problem of administrative delictology, caused by the huge scale of administrative violations, became acute. The drafts of the relevant legislative prepared by representatives of science and practice which remain without motion for the time being.

DISCUSSIONS

During the last two years, by the efforts of academic lawyers and deputies - members of the Committee on Constitutional Legislation and State Building from the fractions of "United Russia" and "Fair Russia", three different draft federal laws have been submitted to the State Duma of the Federal Assembly of the Russian Federation: No. 630089-6 "Administrative Code of the Russian Federation (General part) ", No. 703192-6" Code of the Russian Federation on

Administrative Offenses (General Part) "and No. 957581-6" Code of the Russian Federation on Administrative Offenses . Full text. " I want to pay special attention to the last bill.

It should be noted that procedural issues of administrative responsibility require independent codification and a separate Administrative Procedure Code of the Russian Federation. This separate codification of substantive and procedural rules on administrative responsibility has long been corresponded to the logic of modern evolutionary development of domestic legislation on administrative responsibility.

As a result of the work, the following conceptual flaws, errors and shortcomings of the draft law, which are in the field of expertise, are revealed. (Sevryugin, 2016) Regarding the first and main part of the bill - "On the fulfillment of the main task of the bill" (that is, ensuring the unity, consistency and consistency of the complex of public relations that make up the institution of administrative responsibility), we must state that neither in general, nor in one of the declared positions, the bill, all its presumed novelty and positivity, is not able to achieve its main goal and to ensure the unity of purpose, consistency and internal consistency of the legal regulation of the whole complex of social relations that make up the institution of administrative responsibility.

First, with regard to the title of the bill: the developers rightly state that the main goal and main task of the bill is the legal regulation of administrative responsibility. But then its name should also be brought to a logical conclusion, calling the bill "the Code of Administrative Responsibility of the Russian Federation ", which will eliminate the contradiction already contained in the title with the content of the administrative and legal norms of administrative liability institutes fixed in it. This title of the bill fully reflects the specifics of public relations, regulated by the norms of the institution of administrative responsibility, providing the protective functions of the administrative law branch as a whole.

Second, the content of the draft law does not correspond to modern advanced achievements of the administrative and legal science and new constitutional and legal realities. It does not eliminate the obvious conceptual errors, flaws and shortcomings of the current version of the Code of Administrative Offenses (COAP RF), but only exacerbates them or retouches some of them and generates many new ones. This concerns the defects of a fundamental nature (primarily the conceptual categorical apparatus) offered by the science of administrative and administrative procedural law, and once again ignored by the drafters of the bill, which in fact destroy the integrity of the institution of administrative responsibility. Such fundamental administrative and legal categories include: the institution of administrative responsibility, its concept, features, grounds; institute of administrative violation: concept, legal features, composition and types; the institution of administrative punishment: the concept, essence, goals, types, legal nature of administrative sanctions; category of guilt, its concept, types and forms; fault of the legal entity as a subject of administrative responsibility and its signs; concept, signs and administrative-legal characteristics of an official as a subject of administrative responsibility and a number of others (Sevryugin, 2016).

The bill still lacks a classic definition of the concept of guilt and, accordingly, its signs. While the principles of fault (Art. 2.2) and its form (v. 3.13) are included or are implicit in most of the rules common part code and transported its especial part. It is known that wine is one of the most important signs of an administrative offense. The definition of guilt through its forms directly in the codified federal administrative law refers to the serious achievements of

administrative and legal science. Only the guilty - intentional or reckless - violation by the subject of administrative responsibility of the established rules entails administrative responsibility. Ignoring this fundamental provision of legal science, a scope for objective imputation becomes possible. Refusal of legal definition of guilt and its forms directly in the Code of Administrative Offenses allows to bring the administrative responsibility of physical and legal person in the absence of guilt. But such a situation, even if it is recognized as legitimate, nevertheless, cannot exclude the guilt sign stipulated in the sanctions of most articles of the special part of the code by itself.

The authors of the bill again do not take into account the fact (it is already a bad tradition) that a "legal entity" is a category of civil law. A legal entity is created, operated and terminated in accordance with the norms of civil law. Therefore, in accordance with Ch. 4 of the Civil Code of the Russian Federation "any public education becomes a participant in administrative, tax, labor and other relations only in so far as it is recognized as a subject of civil law by a legal entity" (State Duma of the Russian Federation, 1994). Atemova et al., (2018) stated that the most important role of education at the present stage is the transformation of process of future specialists training into the most significant sphere of human activities. The administrative-legal concept of a legal entity is absent in jurisprudence. Administrative and legal science, such a concept is also not developed. Clumsy attempts by developers of the bill and some scientists to put private law into the institution of public administrative law and consider such entities as subjects of administrative responsibility (Article 3.8) are pseudo-scientific, opportunistic and have no scientific perspective.

Third, in the terms of the volume of legal regulation, the General and Special parts of the draft law have been more than doubled in comparison with the current Code of Administrative Offenses of the Russian Federation. The general part contains 6 chapters and 83 articles, Special - 32 chapters. In the current Administrative Code of the Russian Federation, material norms are combined into 17 chapters. The increase and expansion of the volume of the General and Special parts of the draft law are removed, as the most important concepts which can be recognized as positive facts that provided the previous shortcomings of a substantive, conceptual and editorial nature revealed in the course of almost fifteen years of enforcement. As is known, during this period, more than three thousand amendments and additions to the text distorted its purpose were made into its text. At the same time, as demonstrated by the dynamics of legislative initiatives, their recklessness and haste create favorable conditions for the abuse and corruption. Unfortunately, the new version of the draft law and a number of proposed short stories in a significant part of their conceptual provisions, clarity and transparency of formulations which were far from new, complete and not flawless in terms of modern understanding, interpretation of the norms of the most important administrative and legal institution, and also the institution of administrative responsibility.

Fourth, the developers, as before, with the insistence insensible to common sense and ignoring the proposals of scientists and the legal community, are following the erroneous, unproductive way of combining the two groups of diverse norms of substantive administrative law and administrative procedural norms in one federal law and still do not distinguish them at the federal level into two separate codes: the Code of the Russian Federation on Administrative Liability and the Administrative Procedural Code of the Russian Federation. Once again, they lose the opportunity to cite the fragmented, imperfect and extremely contradictory

administrative legislation of Russia in full compliance with the requirement of clause "C" of Part 1 of Art. 72 of the Constitution of the Russian Federation and the logic of the progressive legislation development of the Russian Federation on administrative liability (Sevryugin, 2016). The idea of complete codification of federal legislation on administrative responsibility, including the codification of legislation on administrative violations of the subjects of the Russian Federation, proposed by the drafters of the bill, is a positive and long-awaited phenomenon aimed at eliminating one of the oldest and most serious legislative defects of the current Code of Administrative Offenses. But such codification of administrative legislation in the subjects of the Russian Federation is only possible on a single federal regulatory framework. It seems that such a single federal model law should be "Fundamentals of the RF legislation on administrative liability," the development and adoption of which can be carried out in parallel with the finalization of the bill. The drafters ignored the fact that, the RF Code of Administrative Responsibility is part of a special group of fundamental RF laws affecting the vital everyday interests of tens of millions of citizens and various legal entities and regulates at the federal level the most significant broad areas of public life. Hence, the specific feature and purpose of administrative responsibility, which gives it a universal intersectoral character, is not only the protection of administrative and legal norms, but also the prosecution of violations of the requirements of legal norms of other branches of administrative constitutional law, tax law, customs law, budgetary law, banking law, financial law, currency law, land and environmental law, etc. Therefore, the chapters mentioned in the draft law. 1 "Legislation on Administrative Offenses" (instead of "administrative responsibility"), art. 1.1 "System of legislation on administrative violations" and art. 1.2 "Tasks of the legislation on administrative violations" (instead of "administrative responsibility") do not reflect specificity of public relations, regulated by the norms of the institution of administrative responsibility (Government of the Russian Federation, 2001). Their names need to be changed, and the content should be brought into line with the main task of the bill.

Evaluating the draft law from the standpoint of "the adequacy of studying the issues of jurisdiction over cases of administrative violations, as well as the rules for their consideration and complaints against decisions on administrative offenses," it should be noted that the effectiveness of law enforcement practices is not monitored by state authorities. Instead, only the number of initiated cases of administrative violations and those brought to administrative responsibility is recorded for reporting and statistics in the bodies of the federal executive and executive authorities of the subjects of the Russian Federation.

As the analysis of normative legal acts in this sphere of legal relations and official conclusions of officials (human rights commissioners in the RF VP Lukin and E. M. Panfilova, chairman of the Investigation Committee of the Russian Federation A. Bastrykin , Minister of Justice of the Russian Federation A. V Konovalov), the All-Russian Center for the Study of Public Opinion Foundation, statistical information on the road safety portal, the information monitoring and analysis system, the independent report of the All-Russian Anti-Corruption Public Reception "Clean hands "" Russia: Corruption in the Courts " (All-Russian Anti-Corruption Public Reception" Clean Hands ", 2014) , Center for Anti-corruption Research and Initiatives" Transparency International-R "materials electrotransport.ru site, car owners Federation Commission on combating unlawful collusion of the State Second inspections and by security road traffic and ships, in Russia in recent years,

extremely negative enforcement has emerged . Currently, law enforcement in Russia is in a systemic crisis. The law enforcement practice of the Code of Administrative Offenses of the Russian Federation testifies that any, even insignificant increase in the amount of administrative fines, the emergence of new security measures leads only to a multiple increase in bribes. For example, the emergence of the Administrative Code of the Russian Federation of such new measures to ensure the production of administrative offenses, such as the detention of vehicles, registration of license plates, the seizure of goods and things involving an administrative fine, instantly increased the bribes in various constituent entities of the Russian Federation by 5-10 times in comparison with the size of the administrative fine (Government of the Russian Federation, 2001).

In some cases, the inclusion in a number of federal laws of unprocessed and questionable amendments and changes has led only to another round of abuse and corruption. Thus, in the legal position of the Constitutional Court of the Russian Federation, set forth in the ruling No. 346-0-0 of May 29, 2007, it is established that an official who drafted a protocol on an administrative offense may be questioned as a witness (Constitutional Court of the Russian Federation, 2007). As a result, the official acquired at once two powers - a witness-prosecutor and an administrative persecutor.

Thus, according to the current legislation of the Russian Federation on administrative responsibility, officials who drafted a protocol on an administrative offense began to act simultaneously in four ways: first, as initiators of the prosecution in the case of an administrative offense; second, as witnesses in the case; third, in case proceedings - by default at the same time the prosecutor of the person brought to administrative responsibility; Fourth, when appealing a court decision - an active participant in the proceedings in the case of an administrative offense, a witness and prosecutor of the person against whom the case was initiated.

It seems that only with the adoption of a full-fledged administrative-procedural code of the Russian Federation with the judicial procedure in detail in the law the cases of administrative and other public legal relations will be resolved, it is possible to ensure legality and competitiveness and equality of parties in the administrative process. This will make it possible to exclude from practicing the accusatory deviation of judges, caused by the absence in the meeting of the representative of the prosecution and the procedural inequality of the parties.

Obviously, insufficient attention was paid by the developers of the project to the modern legislative techniques when constructing administrative and tort norms. As a result, the level of regulatory and legal provisions of the General and Special Parts of the draft law remains extremely low and does not meet the established requirements.

CONCLUSION

So, on the basis of the conducted researches it is necessary to allocate the basic conceptual flaws and defects of the bill:

- unreasonable toughening of administrative responsibility for misdemeanors, which was reflected in the introduction of a number of new, dubious types of administrative punishments and a sharp, multiple increase in the amount of administrative fines for citizens significantly exceed the average wage in the country, which the Constitutional

Court of the Russian Federation already pointed out in its judgment of 14 February 2013 (the Constitutional court of the Russian Federation, 2012) At a time when half of the population of the country lives below the poverty line, it is not just a only cruel, but also immoral;

- an unfounded extension of the scope of administrative arrest. For the period of 2002 to 2016, the sanctions of articles providing for administrative arrest increased almost 35 times (from 4 to 135 compositions). (Sevryugin, 2016) As a result, the deprivation of the freedom of the person in the administrative order lost the sign of exclusivity and turned into ordinary, ordinary administrative punishment;
- the explicit commercialization of legislation on administrative liability, which has lost its preventive role and is aimed primarily at ensuring a purely fiscal function of the state;
- the outdated, which has lost its actuality, the mixed codification of material and procedural norms on administrative responsibility in the Code of Administrative Offenses of the Russian Federation, which significantly inhibits further progressive development of the administrative legislation of the Russian Federation and its subjects;
- the absence of any internal consistency of the rules on administrative and criminal liability and their correlation, still not taking into account the existence of the same type of institution of administrative and criminal legislation, as well as the presence of a large number of related administrative offenses, the dynamics of criminalization and decriminalization;
- the clearly low level of normality of most of the legal provisions included in the bill, as a result of which many norms of both the General and Special Parts of the Code are far from the current level of legislative technology.

Summary

The need for a profound radical reform of Russia's archaic, highly imperfect Russian legislation on administrative responsibility has long been recognized by lawmakers, law enforcers, the scientific community, and representatives of human rights organizations.

The need for reforming all administrative legislation is not only due to the imperfection of its norms, which require an urgent fundamental, conceptual rethinking and ordering, but also primarily because the democratic principles of the modern rule of law, enshrined in Art. 1 of the Constitution of the Russian Federation (popular vote of the Russian Federation, 1993) , do not operate in the system of administrative and legal relations, and the prevailing negative law enforcement practice is not capable of providing reliable protection of the rights and legitimate interests of citizens and legal entities.

As the retrospective analyses of the administrative legal theory and the established law enforcement practice showed, the current legislation on administrative responsibility does not correspond to the scale or standards of the rule of law, prevention of the development of civil society institutions, and the outdated doctrine of administrative law ceased to correspond to the purpose and objectives of public administration.

Against this background, the activity of the leading scientists- administrators, deputies, profile committees of the State Duma of the Russian Federation, aimed at reforming the domestic administrative legislation, and deserves all approval, and also all-round support.

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