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COURT PROCEEDINGS FOR IMPOSITION OF ADMINISTRATIVE SANCTIONS

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The subject. The paper deals with the procedural issues of imposition of administrative sanctions by the courts.

The purpose of the paper is to identify how the form of proceedings impacts on the rights and obligations of administrative trial participants.

Methodology. The author uses the methods of analysis and synthesis, as well as dialectic approach. The formal-legal interpretation of the Code of Administrative Offences, the Code of Administrative Proceedings, the Commercial Procedure Code of the Russian Federation and is also used.

The main results and scope of their application. The rules of the Code of Administrative Offences of the Russian Federation are "average" according to their nature, they are de-signed for application by a lot of authorities competent to impose administrative sanctions.

The focus of the rules of the Code of Administrative Offences of the Russian Federation is to regulate the procedure for imposition of administrative sanctions and to define the punishment for an administrative offense. Therefore, the civil procedural form is not applicable here and the rules of the Civil Procedure Code and Code of Administrative Proceedings of the Russian Federation shouldn't be used.

"Procedural form" in cases of administrative offenses considered by arbitration courts is mainly represented by the rules of the Code of Administrative Offences of the Russian Federation. The accused person can receive a little from actually judicial (civil) procedural form.

The serious contradictions of the Code of Administrative Offences with the rules of the Commercial Procedure Code of the Russian Federation couldn't be seen, on the one hand, but, on the other hand, the provisions of the Code of Administrative Offences of the Russian Federation have a different focus. The results of research may be used as the basis of correction of Code of Administrative Offences, the Commercial Procedure Code of the Russian Federation and may also inspire new researches concerning procedural issues of imposition of administrative sanctions by the courts.

Conclusions. Participants in simplified administrative proceedings fall into a double trap: they are initially deprived of guarantees of procedural form due to the predominance of the rules of the Code of Administrative Offences of the Russian Federation and are again deprived of the "remains" of procedural form because of using the simplified proceedings. Empowering the courts with the authority of administrative jurisdiction does not correspond to the current trends in the development of legislation.

1. Introduction.

The consideration of cases arising from administrative (public) legal relations is not subject to a single order. There is no single body responsible for all administrative matters. The procedural rules governing the procedure for handling administrative cases are contained in various codes. Currently, it is the Arbitration Procedure Code (hereinafter - the APC), the Code of Administrative Procedure (hereinafter - the Administrative Code) and the Code of Administrative Offenses (hereinafter - the CAS). The Civil Procedure Code (hereinafter - the Code of Civil Procedure), in connection with the adoption of the Code of Administrative Procedure, no longer regulates the procedure for the consideration of cases arising from public relations. At the same time, the UAN

concentrated the norms on judicial control over the legality and validity of the exercise by public authorities and persons of their powers; CAO - rules on administrative offenses and the procedure for bringing to justice for their commission; APC - connects both directions.

Cases related to the protection of violated or disputed rights, freedoms, legitimate interests of citizens, organizations and other administrative cases related to the exercise of judicial control over the legality and validity of state or other public powers (Art. 17 CAS), are instituted by filing an administrative claim and are intended for the citizen ("weak" side) to enter into a dispute with the state in the person of its bodies or officials. This is the function of justice.

The procedure for bringing to responsibility for an administrative offense is intended to use the law enforcement function, to prevent and to prevent administrative offenses. The foundation of the consideration of cases of administrative offenses is the norms ensuring the maintenance of law and order, while the courts resolve disputes on the basis of the principles of legality, fairness and competition **[1, p . 136].**

2. The role of the Code on Administrative Offenses of the Russian Federation in adjudicating administrative proceedings

The list of cases under the jurisdiction of the arbitral tribunal determines ene in the Administrative Code. AT The APC has a special chapter 25 "Consideration of cases on administrative offenses" , which provides for two categories of cases: consideration of cases on bringing to administrative responsibility (Articles 202-206) and challenging decisions of administrative bodies on bringing to administrative responsibility (Art.207-211). In Thoraya of said cat Egorov - common with those treated general courts by rules CAS (chapter 22). Such cases are closer to the judicial nature of the judiciary, while bringing to administrative responsibility (assigned to arbitration courts) is out of the general trend of the control functions of the judiciary .

The rules of the Code on Administrative Offenses regulate in detail the procedure for the consideration of cases of administrative offenses (section Iv) This section actually follows the structure of any procedural code: there are general provisions denoting, inter alia, the principles of proceedings on administrative offenses (open review, language of proceedings); regulation of the participants in the proceedings (chapter 25); order of proof (chap. 26); initiation and consideration of the case (chapters 28-29); interim measures (chapter 27). The Administrative Code also contains provisions on the revision of adopted acts, on their implementation.

However, despite the external similarity of the specified section of the Administrative Code with other procedural codes, the focus of the norms of the Administrative Code is still different. In the CAO, the rules are "averaged" in nature, they are designed to be applied by *any bodies* that have the competence to bring to administrative responsibility, and the court is only one of these bodies. It should be noted that the court is the only one that is not related to the number of *law enforcement agencies*, and this "averaging" of procedural norms aligns the judicial activities with the activities of non-judicial bodies, leveling it .

Courts of general jurisdiction (district courts, military courts, as well as justice of the peace) use the Administrative Code in administrative cases. There is no need to involve the norms of other procedural codes. This also applies to the procedure of evidentiary activity in cases of administrative offenses. In accordance with Article 266 of the Administrative Code on an administrative offense case, the following are subject to clarification:

1) the presence of an administrative offense event;

2) a person who has committed unlawful acts (inaction), for which administrative responsibility is provided;

3) the guilt of a person in committing an administrative offense;

4) miitigating circumstances and circumstances which aggravate administrative responsibility;

5) the nature and extent of damage caused by an administrative offense;

6) circumstances precluding the proceedings of an administrative offense;

7) other circumstances that are important for the proper resolution of the case, as well as the causes and conditions for committing an administrative offense.

In these provisions, the focus of the Code on Administrative Offenses is particularly prominent - to regulate the procedure for bringing to administrative responsibility and to determine the sanction for an administrative offense. Therefore, the civil procedural form here is not applicable and the norms of the PC GC and the CAS "separated" from it cannot be used.

3. The role of the APC in the consideration of cases involving to administrative responsibility

In this regard, the question arises about the special role and special position of the agro-industrial complex. At one time, the rules on the consideration of cases of economic entities were also separated from the "mother" Code of Civil Procedure; they are also considered as rules of *civil* procedural form, since, in accordance with Art.118 and 126 of the Constitution of the Russian Federation, there is a single *civil procedure*, but represented by two branches of judicial power : courts of general jurisdiction and arbitration courts. However, in the AIC, in contrast to the CCP and CAS, chapter 25, devoted to the consideration of cases on administrative offenses, is retained.

Previously, after the adoption in 2002 of the current agribusiness, such duality was seen as a temporary phenomenon, required to disseminate to the cases of administrative violations of judicial procedures, with its guarantees of procedural form **[2, p. 42-46]**. However, in the belt situation it is clearly tightened and now in the trend - a study on the need for a special Code, which would combine the rules on bringing to administrative responsibility , about the presence of scientific, organizational and political prerequisites for the general codification of procedural rules on bringing to administrative responsibility and creating an independent administrative procedural code, since the essence of bringing to administrative responsibility as an independent type of procedural activity is obvious **[3; 4].** It is fairly noted that cases of administrative offenses considered by arbitration courts can only formally be attributed to arbitration proceedings, and in fact they contradict the civil nature of this proceedings **[5, p. 28-34]**, alien to the nature of the arbitral tribunal **[6, p. 235; 7; 8 ,** p **. 55].** The literature also outlines the idea of creating specialized courts for the consideration of cases on bringing to administrative responsibility **[9; 10,** p**. 42].**

If, as noted above, cases of administrative responsibility were referred to the jurisdiction of arbitration courts in 2002 for the sake of the possibilities and guarantees that the civil procedural form gives , then, obviously, it is now necessary to analyze whether these guarantees and to what extent they act.

In accordance with the hours 1 of Article 202 of the APC case on bringing to administrative responsibility of legal entities and individual entrepreneurs in connection with their entrepreneurial and other economic activities related to the jurisdiction of arbitration courts are considered according to general rules of action proceedings, with the features established in Chapter 25 of the APC and the federal law on administrative offenses (meaning the Administrative Code) [11; 12]. Features are established to supplement the rules of action proceedings, or to exclude some of them, this is exactly division of civil proceedings into types for better protection of the rights and interests of its participants. Moreover, for administrative cases, the peculiarities of consideration should take into account two objectives:

1) quick recovery of rights of the subject violated in the administrative legal relationship (therefore, reduced terms of consideration are established) ;

2) protection of the "weak" side in administrative legal relations, for which the evidentiary activity is restructured to the need for the court to assist the "weak " side in the judicial process.

In the current APC, the term for review of cases is 2 months (Part 1 of Article 205) and it can hardly be called short. In addition, it is allowed to extend it for another 1 month (Part 2 of Article 205).

In a relationship evidentiary activity we note two important factors. First, even the number of norms in § 1 Ch. 25 APC (5 articles) is not enough to provide a special regulatory procedure. Consequently, if we proceed from the provisions of Part 1 of Article 202 of the APC, it is these 5 articles and determine the features of this category of cases, and in all other cases should use the general rules of action proceedings.

In accordance with Part 6, Article 205 of the APC, in the consideration of a case, the arbitration officer shall establish:

1) the event of an administrative offense and whether there was a fact of its commission by a person in respect of whom a protocol on an administrative offense was drawn up,

2) whether there were grounds for drawing up a protocol on an administrative offense and the powers of the administrative body that prepared the protocol,

3) whether the law provides for administrative responsibility for the commission of this offense and whether there are grounds for bringing to administrative responsibility the person in respect of whom the protocol was drawn up.

The distribution of responsibilities for proving suggests that the basis for drawing up a protocol on an administrative offense is proved by the one who wrote the protocol (part 5 of Article 205 of the APC). The arbitral tribunal may collect evidence on its own initiative, recognize the attendance of persons as mandatory and impose fines for failure to appear (Part 5 and 6 of Article 205 of the APC).

In the second, direct references to the general rules of action proceedings in § 1 Ch. 25 of the APC is a bit of a concern for the procedure for making decisions and appealing them (part 1 and 4.1 of Article 206 of the APC). With regard to all other “general” rules of the claim proceedings, it should be concluded that they cannot be applied . It is necessary to give preference to the norms of the Administrative Code.

Preference to norms of the Administrative Code give and to the highest judicial bodies. The guidelines for arbitration cases on administrative offenses are based on the need for special attention to the administrative offense protocol; focuses on the collection of evidence in the case of bringing to administrative responsibility according to the rules of Chapter 26 of the Administrative Code; on the assessment of evidence according to the rules of Article 26.11 of the Administrative Code **.**

Thus, the “form” in cases of administrative offenses considered by arbitration courts is mainly represented by the norms of the Administrative Code. From the actual judicial (civil) procedural form, persons brought to administrative responsibility receive little.

On the one hand, contrary to the rules of the Code of Administrative Offenses these regulations does not appear in APC, but on the other hand, the provisions of the Administrative Code, despite their external "process", the presence of articles and sections that are similar in the names APC articles have yet another direction.

4. The use of the simplified procedure for consideration of cases on administrative responsibility.

In relation to arbitration courts, one more important detail should be noted. This is the trend on the development of a variety of simplified procedures, among which the priority is given to the expansion of the categories of cases transferred to the simplified procedure, as well as the refusal to draw up a reasoned decision on an increasing number of acts. But after all, the cases of administrative violations fall into the number of cases considered in the order of simplified production (paragraph 3, part 1, Article 227 of the APC). Therefore, the facts about bringing to administrative responsibility, considered by the courts, are largely deprived of the same procedural form, under whose protection they were allegedly transferred.

In accordance with points 3 and 4 parts of 1 Art. 227 of the APC in the order of simplified production can be considered the following categories of cases:

- on bringing to administrative responsibility, if an administrative penalty is imposed for administrative offense only in the form of an administrative fine, the maximum amount of which does not exceed one hundred thousand rubles;

- about challenging the decisions of administrative bodies on bringing to administrative responsibility, if an administrative penalty was imposed for administrative offense only in the form of an administrative fine, the amount of which does not exceed one hundred thousand rubles.

Simplified production is written, electronic procedure under which the consideration of the case takes place without the participation of the parties to the imposition of non-motivated decision

(Article 206 APC claim 37 Resolution of the Plenum of the Supreme Court of the Russian Federation of 18.04.2017)**.** The head of the agro-industrial complex on simplified production contains only 4 articles and the regulation of the consideration of cases in simplified production is supplemented by the Resolution of the Plenum of the Supreme Court of April 18, 2017 , in which 57 items. The adoption of the Plenum Resolution, which is also so voluminous and meaningful, means, on the one hand, the special attention of the Supreme Court to simplified production and its importance as a procedure for handling cases, and on the other hand, reveals the weakness of the regulatory framework, which requires clarification and additions from the Supreme Of the court .

Is it possible to hope that simplified production (by its characteristics) is able to provide guarantees provided by the civil procedural form? In the literature, the following are distinguished as signs of simplified production:

1) the written (electronic) nature of the case;

2) the correspondence procedure for consideration;

3) the shortened nature of all procedures - from the time of consideration in the court of first instance to the peculiarities of execution and appeal **[13, p . 23-24].**

It is unlikely that the presence of such symptoms typical of trial in absentia only on materials provided by the parts, and actually bring together summary trial cases with the procedure for the issuance of a court order, it can be considered a "guarantor" of the procedural form. Z.A. Papulova has her own view on the situation: she proposes to single out the *variability of the procedural form* as its new property, which was not previously distinguished in science. The variability of the civil procedural form is the ability to acquire new features and properties under the influence of the complication of civil legal relations, changes in the procedural law, as well as the specialization of legal proceedings **[13, p. 8]**.

This conclusion is hardly applicable to simplified proceedings (they do not apply to the situation of "complication" of civil law relations). The very absence of legal proceedings involving the interlocutors and the restrictions accompanying appeals against decisions on simplified proceedings are the essential characteristics of the simplified proceedings established by law, and not the "variability" of the procedural form. In a simplified production excludes some important features s procedural form.

5. Conclusions.

With regard to the cases s about bringing to administrative responsibility, which for administrative offenses imposed administrative penalties only in the form of an administrative fine, the maximum size does not exceed one hundred thousand, we can say, they fall into a double trap: they initially denied the guarantees of procedural forms in connection with the prevalence of the rules of the Administrative Code and are again deprived of the "remnants" of the procedural form due to entering the list of cases of simplified production . Such a situation only adds doubt about the legality of attribution cases of bringing to administrative responsibility to the number of cases subordinate to arbitration courts. It can be stated that the time frame provided by the Minister s about bringing to administrative responsibility in 2002, was completed, and giving the courts authority powers, brought to administrative responsibility, does not meet modern trends of development of legislation.

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