**DOI** 10.24147/2542-1514.2020.4(3).123-138



# ADMINISTRATIVE OFFENCES LAW (CONSTITUTIONAL PROSPECTS OF CODIFICATION)

**Sergey D. Knyazev[1,2], Konstantin V. Aranovskiy[1,2], Yuri M. Danilov[2]**

[1] *Far Eastern Federal University, Vladivostok, Russia*

[2] *Constitutional Court of the Russian Federation, St. Petersburg, Russia*

***Article info***

Received –
2020 July 2
Accepted –
2020 August 20
Available online –
2020 October 01

***Keywords***

Administrative offences law, legislation on administrative offences, Code of administrative offences, constitutional case-law of administrative torts, codification in administrative offences law, administrative law adjudication, competitive procedure, administrative liability

The subject of the research is the problems of constitutional law enforcement of administrative offences legislation, taking into account the prospects for its new codification.

The purpose of the article is confirmation or confutation of the hypothesis that the effectiveness of the new Code of administrative offences depends on whether the legal positions of the Constitutional Court of the Russian Federation on the principles of administrative responsibility will be taken into account when drafting it.

The authors use methods of complex analysis, synthesis, as well as formal-legal method of interpretation of Constitution, legislation on administrative offences and judicial decisions of Russian Constitutional Court.

The main results and scope of their application. The administrative torts law in Russia is expected to pass through the total review up to the grounds of its codification in close future. The article presents initial positions of that changes within basic frames produced by Russian Constitutional Court. Its case-law has already invaded into many spheres and details in respective sphere of legal rules and also prescribed a lot for their future. This case-law yet is necessarily made within its inherent range for it is ever constrained procedurally by content of actions and cases to be settled. However Russian administrative torts law is destined for reformation in new code-making in view of constitutional case-law and in order to do better with neighbor spheres of legal responsibility. Disputable matters of administrative liability, the company's responsibility with psychical fiction on its fault (corporative thinking, wishing, desire, diligence), substantial and procedural equity etc. are described and discussed in the article as to the administrative law of torts on in its constitutional dimension.

Conclusions. The Code of administrative offences of the Russian Federation does not fully meet the legal needs of society. Work on real improvement of this code will continue, therefore, legal science should be more strongly and persistently to implement in legislative practice constitutional ideas about improvement of codification and ensuring unity of legal space of the country. In particular, it is necessary to settle the debatable aspects of tort liability, the guilt of legal entities when it is addressed by fiction to the phenomena of the psyche (thinking, goals, will, caution), the constitutional and legal foundations of justice in the field of administrative penalties, procedural enforcement of rights and freedoms, etc.

ISSN 2542-1514 (Print)

**1. Introductory remarks.**

The constitutional title of the rule of law binds Russia to the rule of law and the duty to recognize, respect and protect the rights and freedoms of man and citizen (Articles 1, 2, 18 of the Constitution of the Russian Federation). It requires, among other things, to provide and maintain an acceptable quality of the legislation on administrative responsibility [1], referring to its integral position in the national legal system, which is due to interindustry its value in the Russian law and is the responsibility of the physical persons and legal that its use must put significant jurisdictional authority, in addition to the courts, many of the subjects of the Executive authority, which establish it at the Federal and regional levels of legislation [2]. Meanwhile, almost twenty years have passed since the adoption of the current Code of administrative offences of the Russian Federation, and the legislation on administrative responsibility is not entirely convincing, not only in its legal technique and sanity, but also in how it relates to constitutional provisions. The content of appeals to the constitutional Court of Russia from a large number of applicants who amicably challenge almost everything in administrative and tort law allows us to judge this.

**2. Constitutional justice on administrative responsibility.**

Acts of constitutional justice that took place on such appeals suggest that defects in the law on administrative responsibility are mostly caused by ambiguities and disagreements about the very nature and its decisive features, especially in relation to criminal liability. By allowing appeals in which applicants question the constitutionality of various provisions of legislation on administrative offences, the constitutional Court of Russia invariably directs the legislative power to the General principles of public law responsibility, indicating the limits of its discretion in regulating administrative responsibility.

A number of final decisions (resolutions No. 11-P of July 15, 1999, No. 3-P of March 19, 2003, No. 15-P of July 13, 2010, No. 1-P of January 17, 2013, No. 4-P of February 14, 2013, No. 2-P of February 10, 2017, No. 25-P of April 14, 2020, etc.) allow summing up his judgments in line with these principles in an impressive and compact, if not exhaustive, set of legal positions.:

legal liability may occur only for acts that are offences recognized by the law, acting under the Commission; the application of this responsibility in its various types must comply with the principles of the democratic legal state, including justice, in his relations with the constituent entities of responsibility; accountability is only possible if found guilty – proven or presumed, but certainly refutable, and any exception to this General principle should be clearly expressed in the law, that is explicitly provided for;

defining the concept of guilt (guilt) for different subjects and types of legal responsibility, in particular administrative, as an integral feature of the composition of the offense, the legislature, within the framework of the principles of equality, justice and proportionality, has considerable discretion in how to differentiate responsibility for certain illegal acts according to the characteristics of guilt (qualitative and quantitative);

defining, modifying the composition of offences and administrative sanctions, the law should follow the criteria of necessity, proportionality and the proportionality of limitations on rights and freedoms of citizens with constitutionally significant goals, as it follows from the third part of Article 55 of the

Constitution of the Russian Federation, to ensure the equality of all before the law, guaranteed in Article 19 (part 1) of the Constitution of the Russian Federation to the offense, and the penalties for its Commission was recorded in the law, and that in their legislative exposition of the text itself, including by its judicial interpretation – if necessary, allowed everyone to anticipate the legal consequences of their actions (inaction);

justice and humanism determine in law the differentiation of responsibility in accordance with the essential circumstances that determine the choice of an appropriate measure of state coercion. Therefore, imputing the perpetrators of the offense, the specific type of legal responsibility, the state must correlate it with the nature of the offense, danger to the legally protected values, personality and degree of guilt of the offender, ensuring the adequacy of the consequences of liability to the harm caused by the offense, thereby eliminating the excessive coercion in the balance of interests and rights charged subject of public interest protection of personality, society and state from illegal encroachments;

in legal liability, in the application of punishments, there must be a deterrent potential that can reasonably be considered sufficient to comply with the relevant prohibitions (restrictions); beyond these the use of coercion by the state deviates from its purpose, which, under Articles 1 (a part 1), 2, 17 (a part 3), 18 and 55 (the part 3) of the Constitution of the Russian Federation, is mainly for preventive use appropriate means to protect the rights and freedoms of man and citizen, constitutional values of civil society and legal state;

when and if the measures of public liability provided for by law do not correspond to reality, which weakens the protection of constitutionally significant values or, on the contrary, entails excessive coercion, then this forms the basis and reason for the legislative power to use its powers to bring the rules on liability in line with real circumstances, while respecting constitutional principles.

Following these principles and the positions set up on them, it is only possible to maintain the constitutionality of legislation on administrative responsibility. This is clear because deviations from them form the main basis for constitutional disqualification of provisions of administrative and tort legislation.

Interventions, especially conceptual ones, in this legislation should be subject to the constitutional standards of legal responsibility, as follows, first of all, from the legal positions of the constitutional Court, which directly or indirectly fix, including in the constitutional and legal interpretation of the law [3], constitutional and legal errors of legislative decisions in the field of administrative responsibility. Other use of the administrative-punitive coercion disperse with Articles 15 (a part 2) and 125 (part 6) of the Constitution of the Russian Federation and Article 79 of the Federal constitutional law "On the constitutional Court of the Russian Federation" from which follows the obligation of the constitutional provisions in how they interpret the constitutional Court secured an insurmountable legal force of acts of constitutional justice to all the subjects without exception, beginning with the legislative, Executive and judiciary.

At the same time, in a large legislative case, it is important to keep in mind that constitutional justice operates within the limits of dispositivity and cannot conduct a check of administrative and tort regulation, determining the subject from itself. It is related to the subject of incoming complaints and requests [4], which may complicate the understanding of the positions of the constitutional Court in how to follow them in legislative works, when the Court expresses these positions not on the entire area

ISSN 2542-1514 (Print)

of administrative responsibility, but on individual subjects of individual appeals. Therefore, it is not enough to direct legislative discretion to the implementation of only one of the constitutional and legal positions, especially if it is accompanied by other related positions, not to mention the fact that the Constitution of the Russian Federation, as it follows from the first part of its Article 15, has direct effect. This obliges to conduct legislative activities in the field of administrative responsibility more carefully and thoroughly than just in compliance with a separate constitutional and legal position[5].

In this case, it is important to focus not only on the decisions with the final disqualification of the law, but also on those decisions of the constitutional Court where administrative and tort norms conditionally passed the test of constitutionality. When the constitutional Court does not find any signs of unconstitutionality in the norm, it does not mean that the constitutional justice fully approves it and leaves it in operation as the faultless and only possible legal provision, and that other legislative decisions on the subject are impossible and unnecessary. Sometimes it directly draws the attention of the Federal Assembly to the preferred alternatives in this legislation (rulings of the constitutional Court of the Russian Federation No. 486-O of April 4, 2013, No. 213-O of February 9, 2016, etc.).

**3. Constitutional and legal guidelines in administrative and tort legislation.**

This should be kept in mind when discussing priorities and directions in legislative initiatives in the field of administrative responsibility. They will definitely have significant consequences for the Russian legal order, and they will need to take into account the legal positions of the constitutional Court of the Russian Federation, as set out in its decisions and definitions [6]. At the same time, some of the solutions that seem to have the most resonance in this area are of crucial importance.

The "solid" (total) codification of legislation on administrative responsibility, which is now being anticipated and discussed, looks impressive and promises a lot. According to Article 1.1 (part 1) of the administrative Code of the Russian Federation, legislation on administrative offences consists of the said Code and the laws of the subjects of the Russian Federation adopted in accordance with it. This implies a codified unity, at least for Federal administrative tort law. But keep in mind that by the time this Code came into force, other Federal laws, such as the Tax code, provided for quasi-administrative liability outside of it. And so far, despite the unity of Federal legislation on administrative responsibility, such liability still has a normative "registration" outside the administrative Code of the Russian Federation, which is represented in a number of Federal laws (on banking, on mandatory pension insurance, etc.). This affects the status of the profile Code and the jurisdictional practice. It is not in vain that scientists still strongly suggest that all Federal law on administrative responsibility should be compiled into a General code and that the quasi-administrative responsibility should not be left outside of it, no matter what it concerns [7].

The Russian Constitution does not prescribe a comprehensive Federal codification in this area, but still obliges to observe constitutional principles in the grounds and conditions of administrative responsibility. In this sense, it is doubtful to separate the rules on administrative responsibility under different laws, not only in terms of the quality of the law, but also in terms of the fact that outside of codification it is easy to distract from the General legislative principles and imperceptibly

ISSN 2658-4050 (Online)

go into a constitutional offense – to deviate from the principles of equality, culpable liability, to allow double responsibility for one act, etc.

Thus, in the Resolution of the constitutional Court of the Russian Federation No. 8-P of February 4, 2019, the constitutional assessment was given to the rules that allow an individual entrepreneur to be brought to administrative responsibility as an official under Article 15.33 of the administrative Code of the Russian Federation for failure to submit to the Pension Fund of Russia the information (documents) necessary for maintaining individual (personalized) accounting in the mandatory pension insurance system, in the situation of, when he was already held liable for this inaction as an insured under the rules of Federal law No. 27-FZ of April 1, 1996 "on individual (personalized) accounting in the mandatory pension insurance system".

The constitutional Court concluded that, in violation of the principle of non bis in idem (Article 50, part 1 of the Constitution of the Russian Federation), the Russian administrative Code and the above-mentioned Federal law allow the entrepreneur to be repeatedly held liable for the same type (procedure) for a single offense. As a result, it ordered to amend the legislation on administrative liability for violation of the procedure and deadlines for submitting information to the Pension Fund authorities on personalized accounting in the pension insurance system, and separately obliged to eliminate uncertainty about how the liability measures provided for, on the one hand, part 3 of Article 17 of the Federal law "on individual (personalized) accounting in the mandatory pension insurance system", and, on the other, Article 15.332 of the administrative Code of the Russian Federation relate to each other.

This act of constitutional justice deals with a particular case and does not impose decisions on the Parliament on the organization of legislation on administrative responsibility, but still the position expressed in it can hardly be ignored when homogeneous responsibility is presented in a divided legislation.

The distribution of legislative powers in the field of administrative responsibility between the Russian Federation and its constituent entities, which follows from Articles 1 (part 1), 5, 11 (part 3), 72 (part 1, paragraph "K") and 76 (part 2) of the Constitution of the Russian Federation, requires no less detailed consideration. Problems in this area, it would seem, was the principal decision in its decision of 1 October 1998 № 145-Oh, where the constitutional Court, dealing with the former Cao of the RSFSR, was recognized for the subjects of the Federation the right to take administrative law has its own laws unless they contradict Federal laws governing the same legal relations, and determined along the way that the establishment of regional administrative responsibility can not interfere in subjects of conducting the Russian Federation and even in the matters of joint competence, if the relevant issue is already Federal law, and that the subjects of the Federation must comply with the General requirements regarding the establishment of administrative responsibility and proceedings in cases of administrative offenses.

This is also the case in the current administrative and tort legislation: according to Articles 1 (part 1), 1.3 and 1.31 of the administrative Code of the Russian Federation, subjects of the Russian Federation have the right to their own rulemaking on administrative responsibility; it is no accident that the relevant laws have become a familiar part of the regional legal landscape.

At the same time, this legislation and the very competence of the subjects of the Russian Federation initially raised objections,

ISSN 2542-1514 (Print)

and not only in the academic environment, on the grounds of their constitutional insolvency. Opponents of the transfer of relevant powers to the subjects of the Russian Federation condemn regional legislation mainly in the fact that administrative responsibility as a form of state coercion involves restrictions on constitutional rights and freedoms, and therefore it can only be established by Federal law, as follows from part three 3 of Article 55 of the Constitution of the Russian Federation [8-11].

Such judgments are not without grounds, which partly follows from the decisions of the constitutional Court of the Russian Federation (resolutions No. 4-P of February 14, 2013, and No. 13 of April 22, 2014-P, etc.), where he linked administrative responsibility (for violating the order of public events, traffic rules, etc.) with the restriction of human and civil rights and freedoms, which by virtue of Articles 55 (part 3) and 71 (paragraph "b") of the Constitution of the Russian Federation is possible only in accordance with Federal law. It is not excluded that the constitutional order of anything will correct the distribution of legislative powers regarding liability for administrative offences, for example by reference to the Federal management within the framework of administrative penalties for certain offences to the regions did not establish, but merely clarify their application at the place of action.

And it should be taken into account, following the position of the constitutional Court of the Russian Federation, set out in Resolution No. 27-P of July 2, 2018, that the adoption of laws on liability for administrative offenses does not belong to the duties of the subjects of the Russian Federation. It is not necessary to use these legislative opportunities, bearing in mind, by the way, that the unwarranted adoption of such regional rules is fraught with unnecessary costs in their application when the subject of the Federation lacks organizational, human, material and other resources. Thus, in the field of public order and public security, the implementation of administrative responsibility of "regional production" may become impossible, as follows from the request of the Legislative Assembly of the Rostov region to verify the constitutionality of the second paragraph of part 6 of Article 28.3 of the administrative Code of the Russian Federation, which became the reason for the issuance of the said Resolution [12].

In General, the distribution, and the implementation of legal rights in relation to administrative responsibility are subject to the constitutional imperatives of the rule of law, federalism and equality with the advantage of the rights and freedoms of man and citizen before other values and that their restriction is permitted only in accordance with the Federal law and only to the extent of threats to the protected objects contained in the closed constitutional list that pravoohranitelnye suitable as a means of protecting them and, moreover, proportionate to the objectives and the real possibilities of this protection to provide.

**4. Starting administrative-tort concepts in ambiguities and prospects.**

The codification concept of an administrative offense still needs to be clarified [13], taking into account a number of decisions in which the constitutional Court of the Russian Federation insists that it is necessary to distinguish between an administrative offense and a crime with certainty, despite the fact that the principles, objectives and goals of the two types of responsibility are comparable. It comes in particular from the fact that administrative offences of public noted the danger to the extent that probation is higher in crime, and that in determination of their compositions cannot be attributed to him criminal acts in

which the public danger prove the prevalence and growth dynamics, the importance of the protected values, on which these acts are infringing, and materiality of the harm caused by them, as the inability to resist them without the use of criminal repression; the repeated administrative offense by itself cannot be the basis of his "retraining" in a crime, as repeated act to become criminal, must involve, as a General rule, the infliction of harm to health of citizens, property of other persons, the environment and other protected constitutional values or actual threat thereof, of what should be a purely criminal social danger (resolution dated 27 June 2005, No. 7-P, dated July 14, 2015 No. 20-P, from February 10, 2017 No. 2-P, etc.).

The importance of precise criteria for identifying administrative offences will increase all the more if a criminal offence appears in the national legal system. It will become, along with an administrative offense and a crime, a separate basis for legal liability[14-16], which, according to the plan of its supporters, will occur for criminal acts that objectively do not require the classic criminal repression associated with deprivation of liberty and a criminal record. On December 20, 2018, the Supreme Court of the Russian Federation submitted to the State Duma a bill on the introduction of criminal misdemeanor in criminal and criminal procedure legislation, with the view that its isolation from the number of crimes will soften the criminal policy. The implementation of this idea should be provided with a thorough clarification of how criminal misdemeanor and administrative offense are related, in order to determine how possible it is in the legislation to "translate" into the number of criminal offenses not only crimes, but also administrative offenses that tend to them on the basis of public danger. In this systemic solution, we will have to re-decide the fate of "crimes with administrative sanctions", taking into account, among other things, their constitutional and legal criticism [17].

The "void" created by the absence of a full-fledged institution of complicity in the current administrative Code of the Russian Federation remains under criticism. Its absence frankly yawns and does not convince at all that administrative torts are committed only alone, as well as that complicity forms a "negligible" value in them, which is not worth contacting. The code, however, takes into account co-execution (joint Commission by two or more persons), but only as an aggravating circumstance (part 1, paragraph 4 of Article 4.3), which strangely does not concern either the qualification of the act or the composition of participants in the case of an administrative offense.

In this light, in particular, it becomes a clear problem of irresponsibility of persons involved in the offense, who create conditions for committing administrative offenses, but do not violate administrative and legal prohibitions themselves. While remaining outside the limits of administrative responsibility, they are usually spared from applying the confiscation provided for in Article 3.7 of the administrative Code of the Russian Federation in respect of machines, mechanisms and other items (objects) belonging to them on the right of ownership, which are used by the perpetrator of an administrative offense.

In the Resolution of April 25, 2011 No. 6-P, adopted after checking part 1 of Article 3.7 and part 2 of Article 8.28 of the administrative Code of the Russian Federation in connection with the complaint of Stroykomplekt LLC, the constitutional Court of the Russian Federation declared unconstitutional the confiscation of an administrative offense tool (logging equipment) precisely because the owner was not brought to justice in due process and was found guilty of illegal logging personally. The Court allowed the

ISSN 2542-1514 (Print)

possibility of administrative confiscation of equipment that the owner handed over to another person who performed illegal logging, assuming that it would be qualified as complicity, for example, as aiding and abetting. This, however, is not possible in practice as long as the administrative-tort law does not know complicity.

It would be useful for the Federal Assembly to decide something about this, if not for the sake of justice and in defense of constitutional rights and freedoms, then at least with the mood that increasing responsibility will not hurt. In this mood, it should seem disturbing that the violation of the law "by someone else's hands" will remain without confiscation of the object of the offense.

**5. Guilt and responsibility of legal entities and authorities.**

For years, administrative responsibility of legal entities has remained in the zone of high interest, primarily in the nuances of determining their guilt, as well as in extending administrative tort to all subjects of this kind up to public authorities – state or municipal [18].

On the guilt of legal persons in the Commission of administrative offences of the Russian constitutional Court, remaining loyal possible the provisions of the administrative code of the Russian Federation, has long supported the position that their guilt though, and represents a consequence of the guilt of its officials (employees), but the involvement to administrative or criminal responsibility does not exempt the legal entity itself from that responsibility, however, does not mean that it is identical to the wine fault of these individuals (order of 27 April 2001 n 7-P, dated 26 November 2012 No. 18-P, dated January 17, 2013, No. 1-P, etc.). This allowed us to think that the establishment of the guilt of a legal entity is not conditioned on the establishment of the guilt of an individual in an act imputed to a legal entity. On the other hand, as a legal person under part 2 of Article 2.1 of the administrative offences code of the Russian Federation, is found guilty, if he had the ability to comply with rules and regulations, violation of which entails administrative liability, as it has not adopted all best efforts to comply with them, that is enough to attract legal entities to the responsibility it is for their own fault. This fault can be expressed in ignoring the requirements of legislation, in evading the execution of certain regulations, in not using all available means to comply with the rules, and in other similar actions (inaction), despite the fact that all this does not have a constituent significance in the definition and qualification of an administrative offense committed by a legal entity (constitutional Court Decision No. 4-P of February 25, 2014).

From these legal positions, it would seem clear that the legal regulation allows administrative liability of a legal entity only in the presence of its own fault, which must be established regardless of what is established in terms of the fault of its employees (officials), and therefore carelessness or intent in its fault cannot be differentiated.

However, in Resolution No. 17-P of April 14, 2020, the constitutional Court of the Russian Federation expressed a different opinion, assessing the constitutionality of part 3 of Article 11.15 of the administrative Code of the Russian Federation, which establishes administrative liability of legal entities for deliberate failure to comply with transport security requirements. He considered that an administrative offense committed by a legal entity can be qualified as intentional if the intentional nature of actions (inaction) of officials (employees) responsible for the implementation of the rules and regulations violated by the legal entity is established, and if this is properly motivated in the decision on the

case. If intentional actions (inaction) of responsible officials (employees) of the legal entity of the circumstances of the case should not, as a legal entity had the opportunity to comply with the violated rules and norms, but did not take this all dependent measures, its administrative responsibility for an offence by negligence.

Leaving in the end the nuances careless or willful fault of legal entities within the legislative discretion, the constitutional Court did not, however, the rejection of their differences in law, if separate compositions of administrative offences can be described by other criteria, providing certainty and fairness responsibility, and if it differentiated to ensure proportionality in enforcement allow the scope of sanctions provided for the basic administrative offense. This can be understood to a certain extent as a sign of the ambivalent position of the constitutional justice regarding the guilt of legal entities in the Commission of administrative offenses, in this regard, it is important to immediately bring full clarity in the legislation and restore the links between the General and Special parts of the administrative Code of the Russian Federation, violated in the way they determine the guilt of legal entities.

As for administrative liability of public authorities, the constitutional Court of Russia in its decision of 24 September 2013 № 1397-O came from the fact that the authorities, in particular, local governments have legal personality and full participate in public relations and the administrative code of the Russian Federation does not exclude them from under administrative responsibility, and, therefore, the administrative punishment is no violation of the Russian Constitution, which stipulates equality before the law and court (Article 19 part 1). This, however, does not deprive of reason, and does not preclude opposing a legislative decision and not for nothing in that Definition says that the administrative liability of public authorities should not from the Constitution of the Russian Federation and KoAP of the Russian Federation, which does not provide for their administrative and tort immunity.

Public authorities do receive the rights of a legal entity under the law, but this puts them into civil circulation together with non-profit or commercial organizations (Article 50 of the Civil code of the Russian Federation), but does not prejudge the identity of their status in other legal relations. Not everyone will agree with the administrative responsibility of these entities on the sole basis that they participate in civil traffic, and not everyone will find this logic convincing. It is much more significant that state and municipal bodies pay administrative fines to budgets and spend money from budgets that receive them, including from inter-budget transfers. This casts doubt on the economic and social meaning of such punishments, and allows us to suspect that they are more of a sham than just retribution with a preventive effect. It is not by chance that the literature suggests completely abandoning the administrative responsibility of public authorities in favor of real responsibility of officials, while allowing more rigor and taking into account foreign experience [19-22].

With regard to the administrative responsibility of legal entities, the legal position of the constitutional Court of the Russian Federation, as set out in Resolution No. 4-P of 25 February 2014, requires special mention. It follows that the reference in part 1 of Article 1.4 of the administrative Code of the Russian Federation to the responsibility of legal entities, regardless of location, organizational and legal forms, subordination and other circumstances, unifies it, including for small businesses and non-profit organizations (medical, cultural, educational, etc.), state and municipal institutions. This has a bad effect on the

ISSN 2542-1514 (Print)

individualization of the applied sanctions and therefore requires respect for the relevant circumstances in determining the size of the fine for different categories (types) of legal entities.

This legal position is partially implemented in the addition of the Code by Article 4.1 (Federal law No. 316-FZ of July 3, 2016). Now, under certain conditions, a warning can be applied to small and medium-sized businesses and their employees for the first time committed an administrative offense instead of an administrative fine, even if it is not provided for in the corresponding Article of the Special part. But this novel is not enough, despite the fact that a lot of resources that allow us to fairly differentiate the administrative responsibility of legal entities remain idle. The content of appeals that continue to come to the constitutional Court in the issue of administrative tort and the right to fair mitigation of liability for persons left without mention in Article 4.1 of the administrative Code of the Russian Federation (Rulings of the constitutional Court of the Russian Federation No. 1790-O of September 21, 2017 and No. 2255-O of October 10, 2017) allows us to judge.

**6. Punishments: constitutional integrity against bitterness and disorder.**

Administrative punishments together with the rules of their imposition are far from well-being in administrative and tort law. The legal state may not use them as a means against the dignity of the individual or disproportionately restrict the rights and freedoms of citizens in punitive practice, regardless of the purposes constitutionally recognized as grounds for legal restriction, as follows from Articles 1 (part 1), 2, 15 (part 2), 18, 19 (parts 1 and 2), 21 (part 1) and 55 (part 3) of the Constitution of the Russian Federation.

Changes and additions to the administrative offences code of the Russian Federation spoken the propensity to repression in determining administrative sanctions, primarily to increase administrative fines, often uncontested and absolutely certain (fixed), the introduction of frightening punishments, such as suspension of activities, compulsory work, administrative ban to visit places of sports competitions in days of their carrying out [23, 24].

This legislative attraction, if not bitterness, threatens to cross the constitutional boundaries, when it will no longer be possible to ensure the proportionality of sanctions and fair individualization of administrative responsibility. However, subjects of administrative jurisdiction are now allowed to impose fines below the minimum limit provided for by law, after the law has fulfilled the instructions of the constitutional Court set out in resolutions No. 1-P of 17 January 2013, No. 4-P of 14 February 2013 and No. 10-P of 8 April 2014. But not to say that today these irregularities are resolutely corrected [25]. After all, in those decisions, the constitutional Court of the Russian Federation generally suggested following the principle of reasonable individualization of administrative responsibility in the legislation regarding the imposition of penalties, and not just allowing different instances to reduce fines "below the lowest limit". He proposed to evaluate the possibility of reducing the minimum amount of administrative fines in the law itself, an alternative to them in more lenient sanctions, in the application of the institution of exemption from administrative responsibility (punishment) due to active remorse. Intervention in the system of administrative penalties, especially in the rules for their imposition, requires a lot of thoughtful legislative efforts. They are hardly as effective as increasing fines and expanding the list of punishable acts, but in the constitutional dimension, a balanced, fair and stable system of

ISSN 2658-4050 (Online)

punishments is appropriate, rather than responding to the fleeting moods that lead legislation to a spontaneous increase in repressive intimidation.

In the application of administrative penalties invariably important remains appropriate fixing of terms and order of calculation of limitation for bringing to administrative responsibility (Article 4.5 of the administrative offences code of the Russian Federation) and administrative nakatannoy (Article 4.6 Cao of the Russian Federation). Here it is necessary, in particular, to re-evaluate the General two-month limitation period for administrative liability (three months in a case considered by a judge) and special terms in their annual calculation (one, two, three and six years), in order to correlate them with each other and with the limitation periods for criminal liability, which, according to part 1 of Article 78 of the criminal code of the Russian Federation, are two years for crimes of minor gravity (item "a"), six years for medium gravity of the crime (item "b"). Even if the criminal law allows the suspension of these terms, which allows you to increase the Statute of limitations, and the administrative Code of the Russian Federation does not allow this, except in cases of satisfaction of the request for consideration of the case at the place of residence of the violator, but the coincidence of the Statute of limitations for both types of liability looks controversial. The correctness of the position that the criminal law and the rules of administrative responsibility are not equal to each other is tested when both types of repression have a comparable duration. This is a reason to strengthen the suspicion that an administrative tort is only a convenient way to increase criminal repression and simplify it under the guise of administrative responsibility.

Article 4.5 of the administrative Code of the Russian Federation links certain types of violations of Russian legislation and customs legislation of the EAEU, certain types of offenses, and administrative penalties in the form of disqualification with special Statute of limitations. Such differences in timing and criteria, in the opinion of the constitutional Court of the Russian Federation, contained in Resolution from 15 January 2019 No. 3-P, not out of constitutional bounds of legislative discretion, but rather in the legal technique to correlate them with specific compositions of offences or sanctions that it does not leave room for arbitrary interpretations with the risk of prosecution beyond the promised ago. It would also be useful to try these special terms in their connection with the maximum amount of the sanction provided for an administrative offense, so that the analogy of the rules of limitation of administrative responsibility with the criminal law in this part would be appropriate.

According to Article 4.6 of the administrative code of the Russian Federation the person who has assigned administrative punishment for committing an administrative offence is subject to punishment from the date of entry into force of the decision about appointment of administrative punishment to the expiration of one year from the date of completion of the execution of this decree. In this statement, it would seem that there is no room for ambiguity in the calculation of the term of administrative punishment. Meanwhile, when a person voluntarily pays an administrative fine in the amount of half of the assigned amount in accordance with part 1 of Article 32.2 of the administrative Code of the Russian Federation, and before the entry into force of the decree on its imposition, in practice this allows for differences in how to count the time of administrative punishment. In some cases, the final point of this period is recognized as the expiration of a year from the date of the end of the execution of the assigned

ISSN 2542-1514 (Print)

administrative penalty-in the literal sense of the law, and in others – also the expiration of a year, but from the date of entry into force of the decision on its appointment.

The constitutional Court of the Russian Federation declared this provision unconstitutional and ordered changes in the rules of administrative punishment to "remove" uncertainty in its calculation when "early" payment of an administrative fine before the relevant decision comes into force (Resolution No. 28-P of June 23, 2020). In fulfilling this Commission, we cannot lose sight of the administrative penalties, which are subject to enforcement from the time of their imposition (prior to the entry into legal force), and we consider that the Ministry of justice of Russia the project of the Procedural Cao distributes "soft" procedure for voluntary payment of an administrative penalty in all cases of their application.

**7. Constitutional and procedural fairness of administrative responsibility.**

To bring legislation on administrative offences closer to the imperatives of constitutionality is incorrect in the well-known mood, as if the procedural side of administrative responsibility is secondary in comparison with the material administrative-tort law. The tasks of administrative responsibility cannot be properly implemented without adequate procedural support with a fair balance of interests and rights of all participants in the proceedings in cases of administrative offenses [26]

Note that Article 72 (part 1, paragraph "K") of the Constitution of the Russian Federation, distinguishing between administrative and administrative procedure legislation, does not in principle exclude separate systematization of material and procedural rules on administrative responsibility, as is done, for example, in the Republic of Belarus, where the Code of administrative offences is accompanied by the Procedural and Executive code of administrative offences, or in Tajikistan, where the Code of administrative offences and the Procedural Code of administrative offences also apply [27-28]

It is essential to determine which of the types of legal proceedings provided for in part 2 of Article 118 of the Constitution of the Russian Federation (constitutional, civil, arbitration, administrative, criminal) is located within the boundaries of the proceedings on administrative offenses carried out in courts of General jurisdiction [29]. And it should be taken into account that the rules of administrative and tort proceedings do not significantly coincide for citizens and for legal entities (individual entrepreneurs), whose cases are resolved in the arbitration process – basically civil.

Not only the constitutional Court of Russia (rulings No. 20-P of July 20, 2011, No. 27-P of December 6, 2011, No. 25-P of November 17, 2016, etc.), but also the European Court of human rights (rulings of February 10, 2009 in the case "Sergey Zolotukhin V. Russia", December 12, 2013 in the case "Khmel V. Russia", etc.) have repeatedly noted that judicial and legal procedures for the prosecution of crimes and administrative offenses, despite the titular difference between administrative and criminal responsibility, must be subject to General parameters, ensuring that the person, to be held accountable, adversarial with the prosecution, remedies and fair justice in General. This calls into question those procedures that, judging by law enforcement practice, do not provide convincing protection of the rights of persons who are subject to administrative and tort proceedings, as well as victims (ruling of the constitutional Court of the Russian Federation No. 1648-O Of June 28, 2018).

Fair trial in cases of administrative offences is difficult to imagine outside of the

adversarial nature of the parties, including the prosecution, and yet in courts of General jurisdiction, the judge usually remains alone with the person brought to administrative responsibility. However, the constitutional Court of the Russian Federation has so far assumed that the absence of an official in court who drew up a report on an administrative offense or a Prosecutor who supports bringing a person to administrative responsibility does not prejudge the court's accusatory function and does not prevent it from remaining objective, including in cases where the penalties are similar to criminal sanctions in severity and consequences (rulings of June 26, 2014 No. 1312-O, September 25, 2014 No. 2157-O, November 23, 2017 No. 2522-O, etc.). In the literature, however, it is considered necessary to make competition a prerequisite for administrative and tort proceedings [30-31].

In the same spirit, the European Court of human rights outlined the "pilot" ruling of 20 September 2016 in the case of Karelin V. Russia, referring to the absence of the prosecution in trials of administrative offences in violation of the right to a fair trial. In order not to test the impartiality of the courts, this Court suggested that the Russian authorities take legislative or other measures and introduce the Prosecutor's office or other bodies in the process of oral hearings of cases of administrative offenses.

In other words, even the sparing legal positions of the constitutional Court of the Russian Federation do not allow us to consider Russian proceedings in cases of administrative offenses as trouble-free, and in the fundamental part where we are talking about an adversarial fair trial, which is of fundamental constitutional and at the same time conventional significance.

In cases of administrative offences, it remains a problem to provide a person brought to administrative responsibility with legal assistance from a defender (lawyer), since it is associated with various difficulties (rulings of the constitutional Court of the Russian Federation No. 236-O of February 5, 2015, No. 214-O of February 9, 2016, etc.).

The administrative code of the Russian Federation (part 1 of Article 25.1 and Article 25.5) provides for the right of a person brought to administrative responsibility to use the assistance of a defender (lawyer) from the moment the case is initiated, but does not specify cases when such assistance can be obtained free of charge. But the Constitution of the Russian Federation (Article 48, part 1), and the European Convention (Article 6, paragraph 3, subparagraph "C") based on the fact, in particular, that the lack of funds to pay for the services of a lawyer, held responsible person is not deprived of the opportunity to benefit from legal advice for free, especially when it is in the interests of justice.

It is clear that paying for the services of a "free" lawyer in the proceedings on administrative offenses requires the state to spend, probably significant, even if they are limited to the judicial form of production. Let's also take into account that even in criminal proceedings there are conditions for providing accused persons with free protection. In cases of administrative offences, free protection (lawyer services) could be linked, for example, to cases where administrative arrest, other severe punishments (mandatory work, administrative expulsion, confiscation), as well as to the status of the poor. In any case, it should not be forgotten that the European Court of human rights considered the absence of the right to use the services of a lawyer appointed by it free of charge in the Russian legislation for persons who are being tried for an administrative offense to be a violation of Article 6 of the Convention for the protection of human rights and fundamental freedoms, which establishes guarantees of a fair

ISSN 2542-1514 (Print)

trial, at least if they are brought to justice under Article 19.3 of the administrative Code of the Russian Federation.

In accordance with Article 27.1 of the administrative Code of the Russian Federation, the damage caused by the illegal application of measures to ensure proceedings in cases of administrative offenses is subject to compensation under the rules of civil law. However, with regard to the illegal imposition of administrative penalties, the Code does not define the grounds, conditions and procedure for compensation for damage caused by their imposition or execution. This in itself does not prevent interested parties from seeking protection of their violated rights in civil proceedings, but it is clear that the real possibilities of persons affected by illegal administrative punishment to receive proper compensation for the damage caused, especially moral, under the existing procedures are not so significant. Compensation for damages is complicated, in particular, by the condition of guilt of subjects (bodies or officials) who made an illegal decision (Articles 151, 1064, 1069 and 1070 of the Civil code of the Russian Federation), even when this guilt is conditionally required to presume.

State responsibility for abuse of power and illegal actions of state authorities and officials (Articles 52 and 53 of the Constitution of the Russian Federation) still implies, in view of the specific status of victims of illegal administrative punishment, special conditions for the restoration of rights violated by illegal administrative sanctions, without, of course, canceling civil compensation for harm. From the legal positions of the constitutional Court of the Russian Federation regarding compensation to a citizen (legal entity) for damage caused by the erroneous use of state coercion, it follows that the victim, by virtue of the presumption of innocence, cannot be obliged to prove the guilt of the authorities and officials who caused him harm, in the sense that their guilt forms the basis for his compensation (resolution No. 9-P Of June 16, 2009).

The specialized Code of administrative offences does not have a special procedure for compensation for damage caused by illegal administrative prosecution and the use of punishments. It remains incomplete in this part and is awaiting the introduction of rules that allow, by analogy with criminal procedure rehabilitation, to compensate such damage in an appropriate manner with guarantees for the restoration of the rights and freedoms of victims. This is crucial in compensating for damages caused by illegal fines, confiscations, compulsory labor, deprivation of a special right, administrative expulsion and administrative arrest (Resolution of the constitutional Court of the Russian Federation of July 15, 2020 36-P).

**8. Conclusions**

In conclusion, we note that the constitutional obligation of the state to keep the legislation on administrative responsibility in good condition is voluminous and diverse. Everything described here allows us to present it only in a General way and not with all, but only with some important details. From a near-term retrospect twenty years deep and in the constitutional and legal perspective, administrative and tort legislation does not deserve to be blamed as a complete failure of the national legal system. But it can't be called successful either-neither in the way it is presented, nor in the fact that it is sometimes too mobile and tends to be coercive and repressive in legislative moods and law enforcement interpretations. In the thorough restructuring that seems to be ahead of it, it is impossible to miss the urgent challenges and move away from its constitutional foundations.

ISSN 2658-4050 (Online)

## *REFERENCES*

1. Ignatenko V.V. *Legal quality of laws on administrative offenses*. Irkutsk, IGEA Publishing House, 1998. 210 p. (In Russ.).

2. Knyazev S.D. Constitutional standards of administrative responsibility in the legal system of the Russian Federation. *Administrativnoe pravo i process = Administrative law and procedure*. 2014, no. 2, pp. 16–22. (In Russ.).

3. Zorkin V.D. *Constitutional and legal development of Russia.* Moscow, Norma: INFRA-M Publ., 2011. 719 p. (In Russ.).

4. Knyazev S.D. Constitutional Court in the legal system of the Russian Federation. *Zhurnal rossijskogo prava = Journal of Russian Law,* 2013, no. 12, pp. 5–13. (In Russ.).

5. Aranovskiy K.V., Knyazev S.D. Not in vain constitutional justice. *Sud'ya = Judge*, 2017, no.12, pp. 40–46. (In Russ.).

6. Romanov M.L. *Decisions of the Constitutional Court of the Russian Federation as a source of administrative law*. Cand. Diss. Thesis. Saratov, 2011. 26 p. (In Russ.).

7. Kirin A.V. *On some aspects of the concept of development of the administrative legislation of the Russian Federation. Modern concepts of administrative law and process*. Moscow: RANEPA Publ., 2017. Pp. 136–137. (In Russ.).

8. Shishunova E.V. *Delineation of competence between the Russian Federation and its subjects for the establishment of administrative responsibility: a comparative analysis of the provisions of the Code of Administrative Offenses of the RSFSR and the Code of Administrative Offenses of the Russian Federation*, in: Bachilo I.L., Hamaneva N.Yu (eds.). *Administrativnoe i informacionnoe pravo (sostoyanie i perspektivy razvitiya). = Administrative and information law (state and development prospects).* Moscow, Publishing house of the Academic Legal University, 2003. Pp. 146–154. (In Russ.).

9. Rossinskiy B.V. *Administrative responsibility: a course of lectures*. Moscow, Norma Publ., 2004. 345 p. (In Russ.).

10. Knyazev S.D. Administrative and legal status of Russian citizens: constitutional and legal foundations of reforming. *Zhurnal rossijskogo prava = Journal of Russian Law*, 2004, no. 2, pp. 27–28. (In Russ.).

11. Starilov Yu.N. (ed.) *General administrative law. Part 2: Administrative and tort law (Code of Administrative Offenses of the Russian Federation). Administrative proceedings (Code of Administrative Proceedings of the Russian Federation)*. Voronezh, Voronezh State University Publishing House, 2017. 820 p. (In Russ.).

12. Rukavishnikova I.V. On improving the legal regulation of delimiting the jurisdiction of the Russian Federation and the constituent entities of the Russian Federation in the field of legislation on administrative offenses. *Publichnoe pravo segodnya,* 2018, no. 3, pp. 38–43. (In Russ.).

13. Kirina A.V., Pligin V.N. (ed.*) Reform of administrative responsibility in Russia*. Moscow, Publishing house of the Higher School of Economics, 2018. 476 p. (In Russ.).

14. Esakov G.A. From administrative offenses to criminal offenses, or the existence of criminal law in a broad sense. *Biblioteka kriminalista*, 2013, no.1, pp. 37–45. (In Russ.).

15. Kirin A.V. Once again about the genesis of administrative responsibility in Russian law (or a response to the supporters of "broad" criminal law). *Administrativnoe pravo i process = Administrative law and procedure,* 2013, no.7, pp. 53–57. (In Russ.).

16. Shishkina O.E. Litigation in cases of administrative offenses: search for a constitutional framework and standards of justice (based on the practice of the Constitutional Court of the Russian Federation). *Zhurnal konstitucionnogo pravosudiya = Journal of Constitutional Justice,* 2015, no.3, pp. 22–23. (In Russ.).

17. Administrative prejudice in criminal law: the case of Ildar Dadin. *Zakon,* 2017, no. 2, pp. 21–29. (In Russ.).

18. Dugenets A.S. *Administrative responsibility in Russian law*. Doct. Diss. Thesis. Moscow, 2005. 34 p. (In Russ.).

19. Morozova N.A. *Administrative responsibility of legal entities: history, theory, practice*. Cand. Diss. Thesis. Yekaterinburg, 2004. 22 p. (In Russ.).

20. Rogacheva O.S. *The effectiveness of the norms of administrative offences law*. Voronezh, Voronezh State University Publishing House, 2011. 356 p. (In Russ.).

21. Vinnitskiy A.V. On the need for legislative consolidation of the institution of legal entities of public law. *Zhurnal rossijskogo prava = Journal of Russian Law*, 2011, no.5, pp. 81–90. (In Russ.).

22. Panov A.B. *Administrative responsibility of legal entities*. Moscow, Norma Publ., 2013. 192 p. (In Russ.).

23. Ignatenko V.V. Problems of improving individual institutions of the general part of the legislation on ad-

ISSN 2542-1514 (Print)

ministrative offenses. *Akademicheskij yuridicheskij zhurnal = Academic law journal from Irkutsk,* 2015, no.2, pp. 24–29. (In Russ.).

24. Miftakhov R.L. Reform of administrative responsibility in the Russian Federation in the context of a change in the paradigm of regulation of control and supervision activities*. Rossijskoe pravosudie = Russian justice*, 2020, no.5, pp. 20–25. (In Russ.).

25. Aranovskiy K.V., Knyazev S.D. Administrative fines and rules for their application (based on the practice of the Constitutional Court of the Russian Federation). *Pravovaya politika i pravovaya zhizn',* 2013, no. 2, pp. 106–115. (In Russ.).

26. Voronkov A.V. *Development of the system of administrative law in Russia (international and comparative legal aspects)*. St. Petersburg, St. Petersburg Publishing House, 2002. 84 p. (In Russ.).

27. Kramnik A.N. *Administrative-tort norms and their implementation*. Minsk, Publishing Center of the Belarusian State University, 2009, 359 P. (In Russ.).

28. Ibragimov S.I. Substantive and procedural legislation on administrative responsibility in the Republic of Tajikistan. *Publichnoe pravo segodnya,* 2018, no. 3, pp. 80–85. (In Russ.).

29. Panova I.V. *Administrative and procedural law of Russia*. Moscow, Norma Publ., 2016. 288 p. (In Russ.).

30. Chekalina OV *Administrative and jurisdictional process.* Cand. Diss. Thesis. Moscow, 2003. 23 p. (In Russ.).

31. Vasiliev F.P. *Proof in the case of an administrative offense*. Cand. Diss. Thesis. Moscow, 2005. 49 p. (In Russ.).

32. Knyazev S.D., Mikulin A.I. The right to defense in proceedings on cases of administrative offenses in the light of decisions of the Constitutional Court of the Russian Federation. *Rossiiskii yuridicheskii zhurnal = Russian juridical journal*, 2010, no. 2, p. 156–159.

## INFORMATION ABOUT AUTHORS

***Sergey D. Knyazev*** – Honored Lawyer of the Russian Federation, Honoured Scientist of the Russian Feder- ation, Doctor of Law; [1] Professor, Department of Constitutional and Administrative Law; [2] Judge
[1] *Far Eastern Federal University*
[2] *Constitutional Court of the Russian Federation*
[1] 8, Sukhanova ul., Vladivostok, Russia, 690091,
[2] 1, Senatskaya pl., St. Petersburg, Russia, 190000 E-mail: knyazev@ksrf.ru
RSCI AuthorID: 344659

***Konstantin V. Aranovskiy*** – Honoured Lawyer of the Russian Federation, Doctor of Law; [1] Professor, Department of Constitutional and Administrative Law; [2] Judge
[1] *Far Eastern Federal University*
[2] *Constitutional Court of the Russian Federation*
[1] 8, Sukhanova ul., Vladivostok, 690091, Russia
[2] 1, Senatskaya pl, St. Petersburg, 190000, Russia E-mail: aranovsky@ksrf.ru
RSCI AuthorID: 261768

***Yuri M. Danilov*** – Judge, Honored Lawyer of the Russian Federation
*Constitutional Court of the Russian Federation*
1, Senatskaya pl., St. Petersburg, 190000, Russia
E-mail: ydan@ksrf.ru

ISSN 2658-4050 (Online)

**BIBLIOGRAPHIC DESCRIPTION**

Knyazev S.D., Aranovskiy K.V., Danilov Yu.M. Administrative offences law (constitutional prospects of codification). *Pravoprimenenie = Law Enforcement Review*, 2020, vol. 4, no. 3, pp. 123–138. DOI: 10.24147/2542-1514.2020.4(3).123-138. (In Russ.).