

### ADMINISTRATIVE SUSPENSION OF OPERATIONS FOR VIOLATIONS OF INDUSTRIAL SAFETY: THEORETICAL AND PRACTICAL ISSUES

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The subject. The main issues of law enforcement activity on the application of administrative punishment in the form of administrative suspension of operations for identified offenses in the field of industrial safety of hazardous production facilities.

The purpose of the article is to confirm or disprove hypothesis that Russian legislation allows the resumption of activities after the expiration of the period of its suspension without eliminating violations of industrial safety.

The methodology of research is logical analysis of Russian legislation, statistical data and judicial decisions concerning enforcement of administrative suspension of operations in Russia.

The main results. There is an ambiguous approach in the scientific literature to fixing the administrative suspension of operations in the system of administrative penalties. The effectiveness of its application is noted by some authors. At the same time, there are adverse consequences associated with the application of administrative suspension of operations for the further production activities of economic entities. Social tension in the collective of enterprises, difficulties of recovery after forced downtime, unclear prospects for further economic activity – this is not a complete list of problems arising in connection with the administrative suspension of activity. When making a court decision, judges often appoint a fine as a penalty and rarely a penalty in the form of suspension of operations. This is due to the complexity of the actual realization of suspension of operations, the special social significance of objects; the lack of a specialist's conclusion about the real danger of an offense. But if violations of industrial safety are detected during the operation of hazardous production facilities, it is initially possible to assume a high probability of serious consequences for the life and health of people, the environmental safety. Administrative suspension of activities is carried out by both judicial and non-judicial control authorities. In authors' opinion, the application of this type of administrative punishment should be exclusively in the judicial jurisdiction. The law enforcement judicial practice concerning administrative suspension of operations in Russia is not uniform.

Conclusions. There is a legal uncertainty in the mechanism of imposing administrative punishment in the form of administrative suspension of operations for violations of industrial safety of hazardous production facilities (Article 9.1 of the Russian Code of Administrative Offences). The uncertainty is manifested in the fact that the economic entity does not always eliminate the detected violations within the legally established period and after the expiration of the period for which the activity was suspended, the company resumes its activities nevertheless. Such opportunity reduces the preventive value of this punishment.

## 1. Introduction.

Law enforcement practice in modern Russia raises many questions [1, p. 68], associated with the ambiguity of legislative consolidation [2, p. 106], the activities of individual state bodies [3, p. 229], the peculiarities of meaning formation [4, p. 46], spaces in the law [5, p. 184] ambiguity in the interpretation of legal norms [6; with. 163], the possibility of a different approach to the existing problem [7, p. 46].

An important area of administrative and legal regulation is the application of administrative responsibility established by the Code of Administrative Offenses of the Russian Federation (hereinafter referred to as the Code of Administrative Offenses of the Russian Federation), and the appointment of an administrative penalty to the person who committed the offense [8; with. 73]. One of the measures of administrative punishment is the administrative suspension of activities (Article 3.12 of the Administrative Code of the Russian Federation) [9; p. 36], introduced into the system of administrative punishments by the Federal Law of May 9, 2005 No. 45-FZ "On Amendments to the Administrative Code of the Russian Federation and Other Legislative Acts of the Russian Federation, as well as on invalidating some provisions of legislative acts of the Russian Federation" [10] ... This punishment involves the temporary termination of the activities of persons engaged in entrepreneurial activities without the formation of a legal entity, legal entities, their branches, representative offices, structural divisions, production sites, as well as the operation of units, objects, buildings or structures, the implementation of certain types of activities (work), rendering services [11]. The Law contains requirements for the application of this type of punishment, in particular, it can be imposed only in cases provided for by articles of the Special Part of the Administrative Offenses Code of the Russian Federation [12].

## 2. General theoretical provisions on the imposition of punishment under Article 9.1 of the Code of Administrative Offenses of the Russian

## Federation.

This punishment is applied in areas of activity, violations in which can lead to serious consequences, in particular in the area of operation of hazardous production facilities. At such enterprises, an industrial safety system is being created, which implies the creation of a security system at hazardous production facilities, which is provided for by Federal Law No. 116-FZ of July 21, 1997 "On industrial safety of hazardous production facilities" (hereinafter FZ - No. 116). At the same time, violation of industrial safety requirements or conditions of licenses for carrying out activities in the field of industrial safety of hazardous production facilities (Article 9. 1 of the Code of Administrative Offenses of the Russian Federation) is the basis for the application of administrative suspension as a measure of administrative punishment. Administrative suspension of activity as the main punishment under this article of the Code of Administrative Offenses of the Russian Federation acts as an alternative measure of punishment - a fine, and in the third part of article 9.1 of the Code of Administrative Offenses of the Russian Federation there are still disqualifications. In a note to the article, the legislator explains the gross violation of industrial safety requirements for hazardous production facilities, which is understood as a violation of industrial safety requirements that led to an immediate threat to human life or health.

An exhaustive list of gross violations of licensing requirements is provided for by part 11 of Article 19 of the Federal Law dated 04.05.2011 No. 99-FZ "On licensing of certain types of activities." At the same time, for those types of activities that are subject to licensing, a provision is adopted that provides for the conditions and procedure for licensing a specific type of activity. Such violations of licensing requirements may include violations that entailed: the emergence of a threat of harm to life, health of citizens, harm to animals, plants, the environment, cultural heritage sites (historical and cultural monuments) of the peoples of the Russian Federation, as well as the threat of technogenic emergencies; casualties or grievous harm to the health of citizens, moderate harm to the health of two or more citizens, harm to animals, plants, the

environment, cultural heritage (historical and cultural monuments) of the peoples of the Russian Federation, emergence of man-made emergencies, damage to the rights, legitimate interests of citizens, the defense of the country and the security of the state.

As you can see, this list is wide enough and is of an evaluative nature in relation to a specific situation. In this regard, the scientific literature correctly, in our opinion, emphasized the need to study all the circumstances of the case, allowing to assess the need for this type of punishment [13; p. 117]. Ambiguous law enforcement practice [14; p. 202] on the application of administrative punishment in the form of administrative suspension of activities, was the basis for the adoption by the Plenum of the Supreme Court of the Russian Federation of the Resolution of June 10, 2010 No. 13, in which a number of explanations were given on the application of this type of punishment. In particular, clause 23.1 of the resolution stated that "Punishment in the form of administrative suspension of the activities of an individual entrepreneur or legal entity may be ... if a less severe type of punishment cannot ensure the achievement of the goal of an administrative punishment, which should be motivated in a decision on an administrative offense case (paragraph the second part 1 of article 3.12, clause 6 of part 1 of article 29.10 of the Code of Administrative Offenses of the Russian Federation)".

It should be noted that these explanations of the highest judicial body remain relevant at the present time when deciding on the possibility of applying administrative punishment in the form of administrative suspension of activities. Establishing a threat to the state of industrial safety of hazardous production facilities is of an evaluative nature, while heterogeneous facilities are assessed in the form of consequences as a result of the operation of hazardous production facilities: human life and health, the state of the environment, and environmental safety. In the case of detecting industrial safety violations during the operation and operation of hazardous production facilities, one can initially assume a high likelihood of grave consequences for human life

and health, the environment, and environmental safety. Russian legislation determines measures related to accidents and incidents occurring at especially hazardous industries. According to the regulatory legal documents, the main of which is Federal Law of 21.07.1997 No. 116 "On Industrial Safety of Hazardous Production Facilities", a procedure is established for investigating the causes that led to an accident or incidents that resulted in the destruction of structures or technical devices or their technical damage. An exhaustive list of production facilities classified as hazardous is defined in Appendix 1 to Federal Law No. 116.

According to the law, all hazardous production facilities must be registered in the state register. Registration of such objects is carried out in accordance with the procedure established by the Government of the Russian Federation. Resolution of the Government of the Russian Federation No. 1371 of November 24, 1998 approved the Rules for the registration of hazardous production facilities in the state register of hazardous production facilities, which are registered by Rostekhnadzor. The certificate of registration of an object in the state register includes information about its hazard class. In addition, to resolve the issue of administrative suspension, documents must be submitted confirming the presence of a hazardous production facility. In this regard, the conclusion suggests itself that the use of this type of administrative punishment is justified in the area under study and allows to prevent possible negative consequences.

Administrative suspension of activities is carried out by both judicial and authorized control and supervisory bodies. Although, in our opinion, the application of this type of administrative punishment should be exclusively in judicial jurisdiction. It is the court that should have the authority to make a decision to suspend the activities of an economic entity. Some researchers, in our opinion, absolutely reasonably believe that the possession by officials of the executive authorities of the authority to apply administrative punishment contributes with a high degree of probability to the corruption component. In particular, AA Reznikova, analyzing the activities of the control and supervisory authorities for the appointment of this punishment, notes that the

result of the activities of the control and supervisory authorities was a significant number of abuses, unfair and illegal decisions, hence their result was the damage that was caused to the enterprise [15]. Despite the fact that at present, authorized officials rarely use this type of punishment when detecting administrative offenses at hazardous production facilities, nevertheless, they have such a right. For example, the Federal Service for Environmental, Technological and Nuclear Supervision within the framework of joint scheduled inspections with the Federal Service for Supervision of Natural Resources in the first half of 2020 would have carried out scheduled inspections at 38 hazardous production facilities owned by 21 legal entities. As a result, 1566 violations of the mandatory requirements of the legislation of the Russian Federation in the field of industrial safety were revealed. For committed violations, 233 administrative measures were applied, including: administrative suspension of activities - 15 cases; administrative fines for officials - 199; administrative fines for individuals - 1; administrative fines for legal entities - 15.

In the scientific literature, there is an ambiguous approach to the consolidation of the administrative suspension of activities in the system of administrative punishments: the effectiveness of its application is noted [16; p. 66-67], emphasizes the socially significant goal of this norm - the state of safety of the most significant objects, which include: life and health of people, environment, ecology [17], proposals are made to increase the value of administrative suspension of activities [18; with. 30], including with regard to the inclusion of this type of administrative punishment in the sanctions of new articles, in particular in the field of subsoil use [19; with. 24]. At the same time, there are adverse consequences associated with the use of administrative suspension of activities for further production activities of economic entities [20; with. 76]. Social tension in the collective of enterprises [21, p. 23], the difficulties of recovery after the forced downtime in work, unclear prospects for further economic activity - this is not a complete list of problems arising in connection with the

administrative suspension of activities. Proceeding from the fact that the hazardous industries under Art. 9.1 of the Code of Administrative Offenses of the Russian Federation are mainly large coal and oil companies, the use of this punishment is associated, as a rule, with high social tension. In addition, in the scientific literature it was noted that when passing a court decision, judges often prescribe a fine as a punishment, and rarely a punishment in the form of suspension of activities, which is associated with the complexity of the actual suspension of activities, the special social significance of objects; lack of expert opinion on the real danger of an offense [22; with. 152]. In this regard, I.F. Tyufeeva [23; with. 2], D. Martasov [24; with. 89] Yu.V. Shilov [25; with. 30] and other scientists have expressed an opinion on the exclusion of administrative suspension of activities from the system of administrative punishments.

3. Law enforcement activity for the appointment of punishment under article 9.1 of the Administrative Code of the Russian Federation. Statistical data on the activities of federal courts of general jurisdiction and justices of the peace for 2018-2020 testifies that under Article 9.1 of the Code of Administrative Offenses of the Russian Federation for violation of industrial safety requirements or the conditions of licenses to carry out activities in the field of industrial safety of hazardous production facilities by the judicial authorities were considered in: 2018 - 3199 cases, 2019 - 2835 cases, in 2020 - 1057 cases.

Terminated proceedings with exemption from administrative responsibility: 2018 - 166, 2019 - 106, 2020 - 57. Applied by the courts as a measure of administrative punishment under Art. 9.1 Administrative Code of the Russian Federation administrative suspension of activities: 2018 - 1683 times, 2019 - 1645 times, 2020 - 571 times. Cases were returned to eliminate the shortcomings of the protocols (Article 29.4, Part 1, Clause 4 of the Code of Administrative Offenses of the Russian Federation): 2018 - 280, 2019 - 257, 2020 - 88.

Statistical data of the Judicial Department at the Supreme Court of the Russian Federation, on consideration by courts of general jurisdiction of cases under Article 9.1 of the Code of Administrative Offenses of the Russian Federation in terms of the

suspension of activities by region are as follows:

Table

Регион	2018	2019	2020 (по декабрь)
Republic of Buryatia	2	4	1
Murmansk region	0	0	0
Khabarovsk region	5	1	3
Primorsky Krai	8	2	3
Republic of Khakassia	4	5	0
Krasnoyarsk region	4	9	7
Kemerovo region	559	618	459
Zabaykalsky Krai	1	0	0

As you can see, there is a decrease in the number of cases considered under Art. 9.1 of the Administrative Code of the Russian Federation, and, if in 2018 and 2019 there was a slight decrease in the cases considered under Art. 9.1 of the Code of Administrative Offenses of the Russian Federation, then in 2020 the number of cases considered in comparison with 2018 has been reduced by 3 times. These data, in our opinion, may indicate an increase in the level of organization of industrial safety of hazardous production facilities, providing for the introduction of new technologies and the implementation by business entities of the requirements of the relevant regulatory legal acts. Attention is drawn to the reduction in the number of returned cases to eliminate shortcomings in the protocols on administrative offenses, which most likely means an increase in the professionalism of employees of the relevant services in the process of control and supervisory activities when drawing up protocols on identified violations in the field of industrial safety.

It should be noted that currently the law enforcement judicial practice under Art. 9.1 of the Code of Administrative Offenses of the Russian Federation is not uniform. The most common type of administrative punishment applied to business entities is a fine, the amount of which is set depending on the type of entity, or administrative suspension of activities for up to ninety days. When imposing a punishment in the form of administrative suspension of activities in the field of environmental protection by the court, it is often emphasized in the reasoning part of the decision that offenses in the field of industrial safety related to the activities of especially

hazardous industries violate the procedure for regulating public relations. They encroach on the procedure for carrying out economic and other activities established by regulatory legal acts. If a court case is being considered related to the impact on the natural environment, the plot of which is violations in the functioning of especially dangerous objects associated with the implementation of the constitutional rights of citizens to a favorable environment and reliable information about its condition, then the decision on the case must indicate the cause-and-effect the connection between those actions (inaction) of the relevant officials or legal entities that created a threat to existing social relations and the resulting consequences. In particular, in one of the cases, the judge determined that the accumulation of waste in the absence of a specially designated place for their temporary accumulation can contribute to the emergence and spread of fire and create a threat of harm not only to the environment, but also to the life and health of the population. the decision takes into account the nature and degree of the administrative offense, the legal status of the subject of administrative responsibility, the object of administrative encroachment, the absence of mitigating and aggravating circumstances, other data characterizing the subject of administrative responsibility within the sanction of the article. The substantiation also emphasizes the fact that a different type of punishment will not ensure the achievement of the goals of administrative punishment established by Art. 3.1 of the Administrative Code of the Russian Federation.

In another case, the court noted that taking into account the above, given that non-compliance with the industrial safety requirements of hazardous production facilities (provided for in Articles 7, 9 of the Federal Law of 21.07.1997 No. 116-FZ, paragraphs 2.5.13, 2.5.16, 2.8.4, 2.8.7, 2.8.8, 3.3.6, 3.3.7, 3.6.7, 3.6.8, 3.6.9, 4.21, 5.6, 5.9 Federal norms and rules in the field of industrial safety "Industrial safety rules warehouses of oil and oil products", approved by the Order of 07.11.2016 No. 461, part 11 of Art. 5 of the Technical Regulations of the Customs Union TR CU 010/2011" On the safety of machinery and equipment", approved by the Decision of the Commission of the Customs Union

dated 18.10.2011 No. 823 ) poses a threat to the life and health of people, the continuation of the operation of reservoirs and can lead to an accident, as a result of which significant harm can be caused to the state and quality of the environment and an ecological catastrophe can occur, since these reservoirs are located on the coastal line and the Amur River, the judge comes to the conclusion that it is necessary to appoint PJSC NNK-Khabarovsknefteprodukt a punishment in the form of an administrative suspension of tanks, believing that the appointment of a less severe type of administrative punishment will not ensure the achievement of its goal.

The courts of the Kemerovo region, as well as the Krasnoyarsk, Khabarovsk and Primorsky Territories, refer to justifying the need to apply punishment in the form of administrative suspension of activities to circumstances aggravating administrative responsibility and, first of all, in accordance with Art. 4.3 of the Administrative Code of the Russian Federation - repeated commission of a homogeneous administrative offense.

So, in one of the investigated cases of an administrative offense, it was noted that the court could not impose an administrative penalty in the form of an administrative fine or replace it on the basis of Part 1 of Art. 4.1.1 of the Code of Administrative Offenses of the Russian Federation on warning, since by virtue of Part 2 of Art. 3.4 of the Code of Administrative Offenses of the Russian Federation, a warning is established for the first time committed administrative offenses. When making a decision, the circumstances related to the absence or presence of harm, or the emergence of a threat of harm to the life and health of people, the security of the state, the threat of natural and man-made emergencies, as well as in the absence of property damage, are indicated. In this situation, the operation of a hazardous production facility does not meet the requirements of industrial safety in terms of the mandatory requirements contained in the regulatory technical documents, the observance of which ensures industrial safety, creates a threat to protected public interests, since the relevant measures in relation to the structure have not been carried out, and violations detected

in the process carrying out industrial safety expertise, without their timely identification and elimination, can lead to loss of life, accidents, destructions, accidents and other adverse consequences. Therefore, the court finds that it would be fair to impose an administrative suspension on a legal entity as an administrative penalty.

Note that in the Primorsky Territory, the court, on the contrary, having found that the elimination of the violations identified would require significant time and financial costs - considered the election of the administrative suspension of activities in relation to the Nakhodka branch of the thousand) rubles.

The difficulties of law enforcement in the issue under study are also associated with the resumption of the work of an economic entity after the application of this administrative punishment [26; with. eleven]. Administrative suspension of activities is established, as noted above, for up to 90 days. Naturally, the question arises about the measures taken after the expiration of the specified period in case of failure to eliminate the reasons that served as the basis for the administrative suspension of activities. On this issue, the legal position of the Deputy Chairman of the Supreme Court of the Russian Federation P.P. Serkov, who rightly believes that if the term for the application of this punishment has expired, and the violations have not been eliminated, then there is a new administrative offense, the commission of which by officials authorized in accordance with Art. 28.3 of the Administrative Code of the Russian Federation, a new protocol on an administrative offense should be drawn up. This legal position, despite the fact that it was expressed back in 2006, is still relevant in decision-making today. As noted above, based on the analysis of court cases under Art. 9.1 of the Code of Administrative Offenses of the Russian Federation, this situation is real, when the punishment is applied, the activity of an economic entity is suspended, but nothing is done to eliminate the violations that were the basis for the application of punishment in the form of administrative suspension of activity.

For example, by its decision of November 27, 2020, the Ust-Donetsk District Court of the

Rostov Region upheld the claim of the North Caucasus Department of the Federal Service for Environmental, Technological and Nuclear Supervision (Rostekhnadzor) in relation to a hazardous industrial facility of II hazard class "Mine-building site (specialized)" Sadkinskaya-Vostochnaya Mine LLC (managing organization of South Coal Company LLC), the operation of which poses a threat to the life and health of the service personnel. Earlier, by a court decision of August 25, 2020, the activity of this facility was suspended for 90 days. After the expiration of the established period, the North Caucasus Department of Rostekhnadzor carried out an inspection of the elimination of the circumstances that served as the basis for imposing a penalty in the form of administrative suspension of activities. During the verification activities, it was established that the violations of the mandatory industrial safety requirements were not eliminated. Materials on bringing LLC Sadkinskaya-Vostochnaya Mine to responsibility in the form of suspension of activities were sent to the court. By the decision of the Ust-Donetsk District Court of the Rostov Region dated November 27, 2020, the activities of the facility "Mine-building site (specialized)" of LLC "Shakhta Sadkinskaya-Vostochnaya" were again suspended for 90 days.

Due to the fact that the period specified in the norm of the current legislation is restrictive, therefore, upon the expiration of this period, LLC "Sadkinskaya-Vostochnaya Mine" had the right to start work, in the event that there was no repeated bringing to administrative responsibility for those the same grounds as before.

### 3. Conclusions

Thus, summing up, it should be noted that a certain legal uncertainty in the mechanism of imposing an administrative penalty in the form of administrative suspension of activities under Art. 9.1 of the Code of Administrative Offenses of the Russian Federation is manifested in the fact that an economic entity does not always eliminate the identified violations within the statutory timeframe after the expiration of the period for which the activities were suspended, the company resumes its activities. This reduces the preventive value of this punishment.

In addition, in our opinion, the application of a measure of administrative punishment - administrative suspension of activities should be in the jurisdiction of the judicial authorities. This will contribute to a more balanced decision-making on the application of punishment in the form of administrative suspension of activities.

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