

# Legal support of individual entrepreneurship in the area of inspections by state authorities: practice and prospects

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**Abstract**—The article is devoted to the application of forestalling and mediation institutions in ensuring the rights of individual entrepreneurship in the area of inspections by state bodies. We presented a clarification of the definitions of "state control" and "inspection" terms by establishing the connection of universal and special principles of material and procedural origin, which are relevant for individual entrepreneurship due to the minimization of administrative risks. The efficiency of the forestalling institute as a tool of prevention and impact on individual entrepreneurs behavior is substantiated. In terms of ensuring the rights of individual entrepreneurship, the principle of evidence of the reasons for the preliminary inspections is proposed. The efficiency of the mediation institute to ensure the rights of individual entrepreneurship in the area of public law is given proof.

**Keywords**—*institute of prevention, the mediation institute, individual enterprise, state operational check*

## I. INTRODUCTION

The relevance of forestalling and mediation institutions use is due to business and administrative risks, legal nihilism of individual entrepreneurs, taking into account legal status and features of legal responsibility, as well as the entered by legislative authorities amendments regarding self-employed people, equated to IE [1]. The effectiveness of individual entrepreneurship interaction mechanism in the field of inspections by state bodies is stipulated by law-enforcement actions. In turn, the imperative of lawful inspections is subject to threats of offenses by officials, including those arising from the legal nihilism of individual entrepreneurs, namely:

- obtaining evidence illegally in the case of an administrative offense, punishable (part 3 of article 26.6 Code of Administrative Offenses RF (CoAO RF) , part 1, art. 20 of the Law № 294-FZ);

- obtaining the results of inspections with a gross violation (without the consent of the prosecutor's office, in the absence of an administrative document of a higher body) can not serve as an evidence, and accepted procedural documents are subject to cancellation in extrajudicial and judicial order (part 2 of article 20 of the Law № 294-FZ);

- the substitution of inspections results, including unscheduled ones for administrative investigation - without any reason, punishable (article 17.7 CoAO RF);

- non-compliance by officials to the legislation documents governing the areas of control and inspections shall entails administrative responsibility (article 19.6.1 CoAO RF) as well as punitive measures in the form of a fine or disqualification. In general, these threats form a public danger and act as risks for entrepreneurship.

In connection with the above mentioned, it is important to clarify the understanding of the definitions of "state control" and "inspection", to identify the principles and signs of the forestalling institution, criteria for the effectiveness of the mediation institution based on the institutional approach in the area of state audits to ensure the rights of individual entrepreneurship.

## II. METHODS AND RESULTS

On the legal analysis basis of the Law № 294-FZ by means of technical-legal and formal-logical methods, an attempt is made to reveal the legal nature of the definitions "state control" and "inspection" by highlighting the universal and special principles. By means of statistical method on the example of the Laws №135 and № 294-FZ standards the effectiveness of the forestalling institution is justified for the purpose of law enforcement, including the regarded certain types of individual entrepreneurs (IE). Based on the analysis and legal analogy of art. 28.1, 26.11, 19.6.1 CoAO RF, art. 67 Code of Civil Procedure RF (CCP RF) and art. 10 of the Law No. 294-FZ the evidence principle concerning reasons for preliminary inspections for the purpose of legality actions of supervisory authorities officials and protection of the rights of IE is offered. On the basis of intersectoral, criteria-based and institutional approach the efficiency of the mediation institute of IP rights in the field of public law according to articles 1-3, 16 № 193-FZ, article 423 Civil Code RF (CC RF).

## III. DISCUSSION

Under the art. 26.1 of the Law № 294-FZ, inspections of individual entrepreneurs by state bodies are provided. At the same time, in respect of individual entrepreneurs for the period from 01.01.2016 to 01.01.2020, a moratorium has been declared as a measure (part 9 of art. 9 № 294-FZ), in the form of "supervisory holidays" (№ 408-FZ) taking into consideration the conditions. In particular, the achievement of limit values of annual income of 120 000 RUB (clause 3, part 1.1, art. 26.1), without hired labor force, on the basis of the patent tax is one of the conditions. The exception of

"supervisory holidays" are the subjects involved in administrative measures of restraint as a result of offenses.

An attention should be paid to the conceptual apparatus in terms of inspections legal nature. In accordance with art. 2 of the Law № 294-FZ the "state control" is a comprehensive category of the mechanism for compliance with the law, prevention, establishment, elimination, monitoring, analysis, forecast. In particular, the state control is a set of monitoring actions by authorized persons in supervision, research, measurement and delivery of results/warnings/submissions (part 4-6, art. 8.3 of the Law № 294-FZ). Inspections are carried out on the basis of secured principles (art. 9 of the Law № 294-FZ). We will conclude the understanding of the definition of "inspection" as a sequence of procedural actions by the controlling state authorities for consideration, preliminary verification of information and persons, justification of reasons for identifying the composition of offenses, making a reasoned submission to the court/or a reasoned decision on the fact of the offense, prior to the administrative investigation on the basis of the inspection act.

It is reasonable to note the specifics of monitoring activities in the need for the presence of the business entity, especially in the technical, technological, resource aspects to obtain objective results from the regulatory authorities and the actual elimination of violations found. In fact, the control is analytical and proactive in combating offenses. At the same time, the composition of state control measures is determined by the sequence of procedural actions of inspections. Therefore, for the purpose of objective interpretation, it is advisable to apply the principles represented in art. 8.3 of the Law № 294-FZ as follows: "Control measures without interaction with legal entities, individual entrepreneurs are carried out by authorized officials of the state control (supervision) body, the municipal control body within its competence on the basis of the principles in accordance with parts 1,2,3, art. 3 on the basis of tasks...". This understanding will legally ensure the rights of entrepreneurs by regulatory authorities.

The provision of IE rights stipulated in parts 1,2,3, art. 3 of the Law № 294-FZ, the basic principles of notification, openness, accessibility, presumption of good faith in the application of inspections are set out. The notification principle is mutual both for individual entrepreneurs and controlling state bodies. In particular, an individual entrepreneur notifies the authorities about the beginning of the economic activity (article 8 of the RF Government Decree) on the basis of the approved list of works and services [1]. Information and digital technologies are effective means of ensuring the principles of openness and accessibility.



Fig. 1. Effectiveness signs of forestalling institute

In practice, with regard to IE, on the basis of the requirements of tax, customs and other authorities, prosecutor's office, on the appeals of applicants, unscheduled inspections are accompanied by a request / submission of information and materials (paragraph 3.2, part 3, art. 10 № 294-FZ) as well as determination of applicant persons (part 3, art. 10 № 294-FZ). Such an approach is envisaged in order to prevent administrative pressure, including the intent of competitive forces. At the same time, the procedure of unscheduled inspections is already a preventive measure in limiting and occurrence of risks in idle production for the entrepreneur, expressed in cost value. At this stage, the forestalling institution contains measures to limit business activity, has a sufficient degree in the amount of lost profits cost, thus acting as a tool to influence the behavior of IP entities and minimize administrative penalties (see Fig.1). Confirmation is the positive dynamics of the forestalling institution under art. 10, 14.1-14.8, of the Law № 135-FZ, art. 20 of the Law № 294-FZ (see Fig. 2) [2].

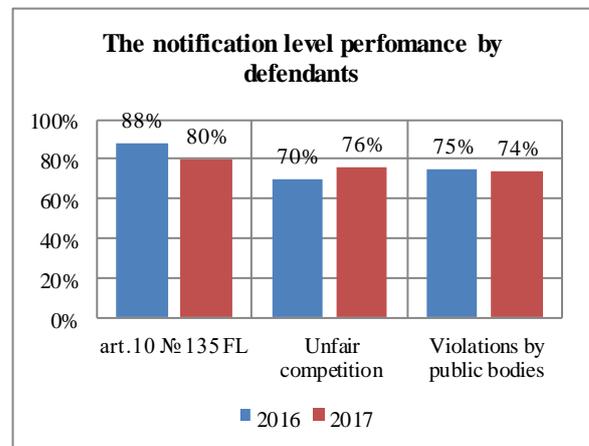


Fig. 2. Dynamics of the forestalling institute application

We conclude that the forestalling institution is a set of preventive measures to ensure the rights of individual entrepreneurs on the example of some types of individual entrepreneurs (see Fig. 3).



Fig. 3. The complex of preventive measures regarding IE

In its turn, warnings issuing to avoid manipulation of administrative resources is objective on the basis of the principle of evidence.

Reasons (art. 28.1, CoAO RF) for inspections on the treatment of citizens, legal entities, according to sources of state and law enforcement agencies, the media require justification for the reliability, completeness and relevance following the art. 67, CCP RF and art. 26.11, CoAO RF. As a result of these requirements violations, the official should be brought to administrative responsibility according to art. 19.6.1, CoAO RF. However, in respect of the entrepreneur as an injured party, the CoAO RF rules do not provide the secured measures to protect the rights, including the period of a court decision issuance on administrative violation by an official.

Besides, in case of failure to detect signs of violations by the control authorities in respect of IE, in our opinion, the principle of justice should be applied, in this situation ensuring the restoration of the limited business rights in the form of compensation for the threat and part of the risks incurred at the expense of the applicant. Therefore, in our opinion, clarification of the norm of paragraph 3.2, part 3, art. 10 of the Law №. 294-FZ "... In the course of the preliminary inspection of the information received, the actions are taken to request the additional information and materials (including oral testimony) from individuals who have submitted applications and appeals, having presented the information in accordance with b clause, paragraph 2 of part 2, and a clause, paragraph 2 of part 2, examination documents of the legal entity, individual entrepreneur is carried out..." will lead in accordance with b clause, paragraph 2 of part 2, and a clause, paragraph 2 of part 2, by introducing a principle of evidence. In pursuance of the principle of evidence, the compliance with the rules of art. 55, 56, 67, CCP RF by both the applicant and the official according to p. 3, art. 10 of the Law № 294-FZ should be provided. These proposals will minimize administrative and business risks, thus legally ensuring the rights.

In order to optimize the law enforcement activities with respect to IE, the mediation institute is proposed (p. 2, art. 1 № 193-FZ). The intersectoral approach of business, civil and administrative law, both private and public, allows to use mediation in dispute resolution, thereby reducing the load of courts of general jurisdiction, to maintain confidentiality [3], to increase efficiency by reducing administrative, judicial and business risks.

The advantage of mediation (art. 1 № 193-FZ) is the reduction of transaction costs of the contractual dispute parties, improvement of social partnership and business activity. So the result of judicial community survey respondents - entrepreneurs, is in figures obtained: 49% - for the notarization, 42% - for consolidation of court: in the amount of 91% for mediation [4, p. 120]. Therefore, we note the distinctive features of mediation in comparison with legal proceedings (see Fig.4).

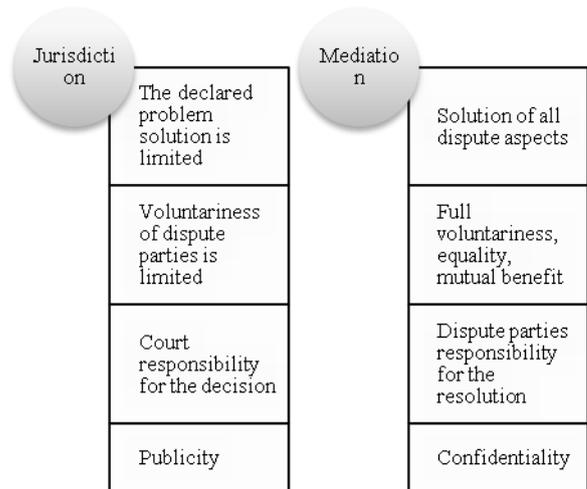


Fig. 4. Comparative classification of resolving business disputes principles

We obtain a system of elements of mediation conciliation procedure (see Fig.5). At the same time, the Supreme Court of the Russian Federation indicated "the absence of cases in relation to challenging mediation agreements" [5], including possible negative consequences of business rights violations.

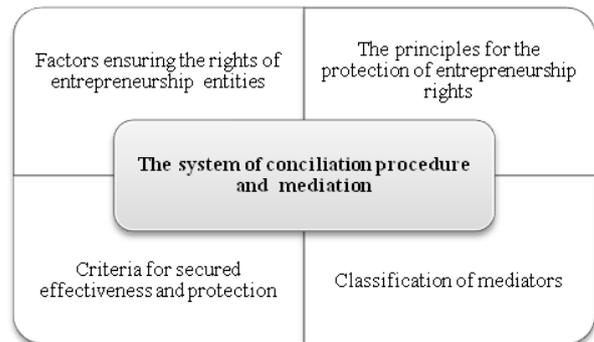


Fig. 5. The system of conciliation procedure and mediation

Mediator S. K. Zayganova notes the active work in mediation carried out by Chambers of Commerce and industry led by the arbitration and mediation Center of the Chamber of Commerce and industry of the Russian Federation [6]. In this case, in 2015 by means of mediation, the disputes in 1 115 cases were resolved, in 2014 - the help of mediators was used in 1329 cases [7, p. 95].

In its turn, to qualify the compromise, the parties to the dispute require the professionalism of the mediator in a particular branch of law as well as the presence of a permitting document for the right to resolve disputes. In this regard, the following wording should be introduced in p. 3, art. 2 №. 193-FZ: "an independent individual person with higher law education; independent individual persons with higher law education engaged by the parties as intermediaries in the settlement of the dispute to assist in decision development by the parties on the dispute essence". To amend p. 1, art. 15 of the Law №. 193-FZ by excluding "non-professional" with the following wording: "The activity of a mediator may be carried out on a professional basis". In addition, art. 16 of the Law № 193-FZ establishes requirements to professional mediators, including "those who have received additional professional education on the application of mediation procedures".

In general, the mediation agreement has a contractual feature, the regulation of which is provided by art. 420, Civil Code RF including free of charge (art. 423, Civil Code RF) on business disputes of private law. In the area of state audits of public law, it is appropriate to apply the institutional approach of mediation. This approach takes into account the interaction of the parties of the controlling state bodies and individual entrepreneurs (IE) through mediators - public organizations, other persons (mentioned above), whom with it is possible to provide for the establishment of contractual mediative legal relations in ensuring the rights of individual entrepreneurship, including preventive measures: in explaining the rules, legal support. In essence, the secure right-based actions of state bodies are separated from the actions of mediators ("instructive interaction"), namely with the exercise of the powers in licensing, certification, issuing warnings about the inadmissibility of violations. As a result, the procedure of mediation of rights-based activities is relevant in relation to individual entrepreneurship under state control and requires further research, including the application practice.

#### IV. CONCLUSIONS

In conclusion, we note the findings. The understanding of the definitions of "state control" as a complex category of the mechanism for compliance with the law, and "inspection" as a sequence of procedural actions by the state regulatory authorities, is presented. The inspections have peculiar proactive signs. The importance of the forestalling institute in minimizing the risks of individual entrepreneurs is substantiated. The proposals on the norms of the Law № 294-FZ in ensuring the principle of evidence and fairness in justifying the reasons for inspections are suggested. The

mediation institute is entered and grounded as a system of elements such as: factors, criteria, principles and classification of mediators in the implementation of IE rights in the comprehensive resolution of the dispute between the parties to contractual relations in the area of private and public law.

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