

The Concept and Features of a Physical Person as a Subject of an Administrative Offence

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Abstract—In the article, the authors focus on the problematic issues of legal regulation of the status of an individual as a subject of an administrative offence. They also pay attention to the need to improve the status of an individual as a subject of an administrative offence in the Russian Administrative Law. The authors offer appropriate solutions to the identified problems in the field of legal regulation of the status of an individual as a subject of an administrative offence.

Keywords—*administrative liability, an individual as a subject of an administrative offence, the composition of an administrative offence, the sanity of the subject of an administrative offence*

I. INTRODUCTION

Administrative law is characterized by national Russian specifics, as this branch of law was not, to a large extent, subject to international legal influence. This is explained by the vector of regulation of administrative law, which is aimed at regulating management relations, organization and functioning of the Russian public administration. At the same time, recently there have been changes due to the international legal integration in the European - Asian space.

II. RESEARCH METHODOLOGY

In the course of the work, general scientific methods of cognition were used: a comparative legal method, a method of analysis and synthesis, a concrete sociological method, a system-structural method, a logical method, and others.

III. RESULTS

The Treaty on the Eurasian Economic Union (hereinafter - the EAEU) signed by Belarus, Kazakhstan and Russia has entered into force on January 1, 2015 [1]. Later it was joined by Armenia [2] and Kyrgyzstan [3]. There is reason to believe that the integration association will further expand in the future. The law of the EAEU contains, among other things, separate protective norms providing for public legal responsibility. It is, in particular, the sphere of protection of competition and cross-border antitrust violations (section XVIII of the Treaty on the EAEU and Protocol No.19 thereto).

The law of the Union in relation to the activities of the EAEU provides:

- law enforcement powers of the Commission represented by the relevant structural unit:

consideration of claims of violation, investigation, consideration of cases of violations;

- the composition of violations and penalties for them in the form of fines, with the differentiation of their size in relation to legal entities, officials and sole proprietors, individuals (paragraph 16 of Annex No. 19 to the Treaty on the EAEU);
- conditions for exoneration.

In this regard, the issues of development of legal regulation of the status of participants in administrative legal relations become relevant, taking into account the international legal acts.

The structure of an administrative offence represents a set of several elements: the subject, the subjective party, the object, the objective party. Elements of the composition reflect the necessary conditions under which it is possible to give a legal assessment of any act as an administrative offence. Implementation of the theoretical model enshrined in the offence is the actual basis for bringing to administrative liability.

The General part of the Russian Federation Code of Administrative Offences [4] contains the features of the subject and the subjective side of administrative offences, as a rule, unified for all compositions, while the Special part is focused on the characteristics of the object and the objective side of the committed acts.

As noted in the legal literature, the subject of an administrative offence is an individual or legal person, whose actions contain administrative offence. [5, p.312] However, the Russian Federation Code of Administrative Offences does not define the meaning of "a subject of administrative offence". For its definition, the following words and phrases are used: "the Person who committed an administrative offence", "the Person against whom the proceedings are conducted in the case of an administrative offence", "the Person brought to administrative liability".

A single concept of the subject of an administrative offence in the Russian Federation Code of Administrative Offences is missing. However, some of its features are fixed. So, according to Art. 2.3. of the Russian Federation Code of Administrative Offences, a person who has reached the age of sixteen at the time of committing of an administrative offence shall be subject to administrative liability. In addition, in accordance with Art. 2.8. of the Russian

Federation Code of Administrative Offences, an individual, who at the time of committing of illegal actions (inaction) was in a state of insanity, i.e. could not realize the actual nature and illegality of his actions (inaction) or commit them due to chronic mental disorder, temporary mental disorder, dementia or other mental illness, is not a subject of administrative liability.

Thus, the mandatory indication of a person who is able to bear the administrative liability are formulated in two articles of the Russian Federation Code of Administrative Offences. These features of an individual are legal, i.e. directly affect the qualification of an administrative offence. Depending on the possession of Russian citizenship, the subject of an administrative offence can be any person - a citizen of the Russian Federation, or a stateless person or a foreign citizen. It should be noted that the Russian Federation Code of Administrative Offences provides for the liability of not only an individual but also a legal person (article 2.10. of the Russian Federation Code of Administrative Offences).

In accordance with article 4.3 of the Code of administrative offences of the Republic of Belarus, an individual who has reached the age of sixteen at the time of committing an offence shall be subject to administrative liability. However, an individual who has committed a prohibited act at the age of fourteen to sixteen years, is subject to administrative liability only: for intentional infliction of bodily injury and other violent acts; for petty theft; for intentional destruction or damage to property; for violation of requirements of fire safety in forests or peatlands; for cruelty to animals; for campfires in prohibited areas; for disorderly conduct and other offences.

Returning to the state of insanity, a deranged person is a person who is in such a mental state that it is impossible to impute a misdemeanor or a crime. [9, p.188]. The concept of "insanity" is now enshrined in criminal and administrative law. The state of insanity is established at the time of the commission of a particular wrongful act, the harmful effects of which may be directed at an individual, society, the activities of the State and its authorities.

The category of "insanity" has been studied quite thoroughly in criminal law [6, p.33]. In administrative law, less attention is paid to this concept, although the number of manifestations of illegal behavior of persons with mental disorders is steadily growing in the sphere of administrative legal relations [11, p.48]. The insanity of an individual who has committed illegal actions (inaction) indicates the absence of an administrative offence that, by virtue of article 24.5 of the Russian Federation Code of Administrative Offences, is recognized as a circumstance precluding the proceedings in the case of an administrative offence. In this case, the proceedings in the case of an administrative offence does not begin, and the initiated proceedings are subject to termination. Insanity thus leads to an exemption from administrative liability.

For example, considering the case of an administrative offence, provided by article 6.1.1 of the Russian Federation Code of Administrative Offences, against Petrov A.P. the judge had taken into account that the conclusion of Legal-Psychiatric Commission of experts was presented in the case materials, from which it follows that Petrov A.P. suffers from an organic personality disorder due to epilepsy. It was

decided to stop the proceedings in the case of an administrative offence against Petrov A. P. due to the absence of the administrative offence in his actions [13].

In another case, Vaulin O. N., in violation of paragraph 2.7 of the traffic rules of the Russian Federation, drove the vehicle in a state of intoxication. Signs of intoxication: the smell of alcohol from the mouth. The result of the medical examination on the state of intoxication examination - 0,20 mg/l. Vaulin said in the court that he had a mental disorder, and therefore there was a need to check his sanity at the time of the offence. A complex stationary psycho-psychiatric judicial examination was appointed. According to the conclusion of the examination, Vaulin was declared sane. The offender was found guilty of an administrative offence according to part 1 of article 12.8 of the Russian Federation Code of Administrative Offences, and he was sentenced to an administrative fine of 30,000 rubles with deprivation of the right to drive vehicles for a period of 1 year and 6 months. [14]

General provisions about the examination are contained in article 26.4. of the Russian Federation Code of Administrative Offences, however, this Code of Administrative Offences does not provide for certain types of expertise. Noskov B.P. [8, p.27], Orlov I.V. [10, p.26], Vats S.E. [14, p.3] give the opinion in their works that the appointment of a psychiatric examination is necessary to establish the state of mind of the person committed the offence. It is obvious that the failure to establish the mental state of the person brought to administrative liability prevents the lawful and reasonable decision of the case. A psychophysiological examination on a polygraph could conduct to the increase of the objectivity and impartiality in the evaluation of the evidence base in cases of administrative offences in accordance with Art. 26.4 of the Russian Federation Code of Administrative Offence.

The state of intoxication caused by the use of alcohol, drugs or other intoxicating substances is not a circumstance precluding the recognition of a person as a subject of an administrative offence. It may be an aggravating circumstance (part 1 of Article 4.3. of the Russian Federation Code of Administrative Offence) or a mandatory feature of the administrative offence (Art. 6.9., 11.5., 11.9., 12.8. of the Russian Federation Code of Administrative Offence).

The age of administrative responsibility is fixed in Article 2.3. of the Russian Federation Code of Administrative Offence, as a general rule this age is sixteen years old. Taking into account the circumstances of the case and the data on the person who committed an administrative offence at the age of sixteen to eighteen years, the Commission on Minors' Affairs and the Commission on the protection of the Minors' rights can release the person from administrative liability with the application of measures of influence, provided by the Federal Legislation on the protection of the Minors' rights, to this person[15].

IV. CONCLUSIONS AND SUGGESTIONS

It can be concluded that the absence of norms on establishing sanity in the Russian Federation Code of Administrative Offence negatively affects law enforcement practice. In our opinion, carrying out psychiatric (psychophysiological) examination is a prerequisite for the

elimination of doubts in the mental state of an individual in the proceedings on administrative offence.

REFERENCES

- [1] The Official Internet portal of legal information (2009) Treaty on the Eurasian Economic Union: Signed in Astana on May 29, 2014: as amended on May 8, 2015. Retrieved January 16, 2015 from <http://www.pravo.gov.ru>
- [2] Treaty on Accession of the Republic of Armenia to the Treaty on the Eurasian Economic Union of May 29, 2014: signed in Minsk on October 10, 2014, LRS "ConsultantPlus"
- [3] Treaty on Accession of the Kyrgyz Republic to the Treaty on the Eurasian Economic Union of May 29, 2014: signed in Moscow on December 23, 2014, LRS "ConsultantPlus"
- [4] The Official Internet portal of legal information (2009) The Russian Federation Code of Administrative Offences: Federal Law (30.12.2001) N 195-FL: in an edition of April 1, 2009. Retrieved April 1, 2009, from <http://www.pravo.gov.ru>
- [5] S.N.Bratanovsky, "Administrative Law. General part: textbook", Moscow: Direct Media, 2013
- [6] D.A.Garbatovich, "Qualification of socially dangerous acts of insane", Criminal Law, vol.2, pp.28-33, 2016
- [7] A.J. Bersh, "Insanity defense in criminal law", Law practice, vol.4, pp. 33-37, 2013
- [8] B.P.Noskov, "On the Classification of persons brought to administrative liability", Administrative Law and Procedure, vol.3, pp. 27-32, 2010
- [9] S.I. Ozhegov and N.Y. Shvedova, "Explanatory dictionary of the Russian language", Russian Academy of Sciences: Russian Cultural Foundation, 3rd ed., stereotyped, Moscow: AZ, 1995
- [10] I.V.Orlov, "Insanity as an exemption from administrative responsibility", Yurist, vol.1 pp. 26-31, 2003
- [11] T.M.Sekretareva, "Lunacy in Administrative Law and problems of its introduction into practice". Administrative Law and Procedure, vol.4, pp. 48-58, 2016
- [12] S.E.Channov, "Grounds for exemption from administrative liability", Grazhdanin i Pravo, vol.4 pp. 3-10, 2011
- [13] Judicial and normative acts of the Russian Federation. The resolution of the magistrate of the judicial site No. 162 of the Odintsovo District Court (The Moscow Region) of April 24, 2017 in the case No. 5-323/2017, Retrieved November 16, 2017 from <https://sudact.ru>
- [14] Judicial and normative acts of the Russian Federation. The resolution of the magistrate of the judicial site No. 12 of the Zuevo District Court (The Kirov Region) of May 26, 2017 in the case No. 5-185/2017, Retrieved October 8, 2017 from <https://sudact.ru>
- [15] The resolution of the Plenum of the Supreme Court of Arbitration of the Russian Federation of 02.06.2004 No. 10 (ed. by 21.12.2017) (2004). On some issues arising in judicial practice during the consideration of cases about administrative offences. Vestnik VAS RF, 8.2004.