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CRITERIA FOR DEFINING ADMINISTRATIVE VIOLATIONS AS MINOR

SUMMARY. Current administrative legislation contains a number of evaluative categories. One of these is the notion of the "administrative offence insignificance". In the case of insignificance of an administrative offence, the person who committed it may be released from administrative responsibility. However, the definition of insignificance of an administrative offence is not given in the legislation, the criteria of insignificance are not determined. To develop the theme of the article, the author examines legal practice and scientific approaches to solving the specified problem. This article presents an evaluation of the definition of the insignificance of an administrative offence given in the Supreme Court of the Russian Federation's Plenary Meeting Resolution No. 10 "On some issues that occurred in the court's practice during the investigation of cases of administrative offence", dated June 2nd 2004, and Resolution No. 5 "On some issues that occurred in courts when applying the Code of Administrative Offences of the Russian Federation" dated March 24th 2005. To examine the subject of research, the author used and analyzed scientific investigations by I.O. Podvalny, O.N. Sherstoboev, A.V. Neprinzev and V.V. Stepanov. As a result of the research, the author determined the criteria of insignificance of an administrative offence. The main criteria are: minor loss, minor degree of violation and minor threat of negative effects. Secondary criteria are: guilt of negligence and the non-significant or accidental role of the offender in the committed offence.

KEY WORDS. De minimis of an administrative offence, administrative offence, administrative responsibility.

Effective prevention of administrative offences and respecting the rule of law in administrative and jurisdictional procedure depend much on the degree of scientific development of notions and terms contained in the standards of legislation on administrative responsibility as a fundamental base for its improvement and further development. [1; 222].

The current Code of the Russian Federation on Administrative Offences [2] (henceforth CAO RF), despite its many advantages, contains a number of approximate categories, one of which is "administrative offence insignificance".

In jurisprudence there has been traditionally an idea that the state supports the general living conditions of society in a form with obligatory force. However, a society cannot be guided only by coercion and punishment. The state also uses such instruments of influence on public relations as encouragement, motivation [3; 83]. Article 2.9 of CAO RF belongs to this instrument.

According to Article 2.9 of CAO RF, the judge, the agency, the official, the person authorized to solve an administrative offense case can, in the event of insignificance

of the committed administrative offence, release the person who has committed the offence from administrative responsbility and make only oral remarks.

However, the legislator does not reveal the notion of insignificance of an administrative offence nor determine the criteria of such insignificance.

Contrary to an "ideal" model of law-enforcement process, the application of regulations concerning the insignificance of an administrative offence is characterized by the fact that the norm, consolidated by the legislator in Article 2.9 of CAO RF, is dispositive, does not contain detailed legal instructions, and is not a "standard model". All this demands from the law-enforcer active legal behaviour aimed at choosing legal means, of which the correct determination influences the achievement of the legal regulation objectives, in this case differentiation and individualization of administrative responsibility. [4]

To determine the criteria of insignificance, let us turn to the court practice and doctrinal approaches.

The Superior Court of Arbitration of the Russian Federation and the Supreme Court of the Russian Federation undertook some steps in this direction.

The Supreme Court of the Russian Federation Plenary Meeting Resolution No. 10 "On some issues that occurred in the court's practice during the investigation of cases of administrative offence", dated June 2nd 2004 [5] estimated that when determining an offence as insignificant, it is necessary to take into consideration the specific circumstances of its commission. Insignificance of an offence exists in the absence of an essential threat to protected public relations. Such circumstances, for example, as the personality and the property status of a person made responsible, a voluntary elimination of consequences of the offense, compensation for damage caused are not circumstances indicating insignificance of an offence. These circumstances, according to parts 2 and 3 of Article 4.1 of CAO RF, are considered as imposing an administrative punishment. Determining an administrative offence as insignificant, the courts should take into consideration that the Article 2.9 of CAO RF does not contain any limitations on its non-use with regard to any elements of an offence provided for by the CAO RF. The opportunity or impossibility of qualifying an act as insignificant cannot be established abstractly, proceeding from the elements formulated in the CAO RF concerning an administrative offence for which responsibility is established. So an administrative offence cannot *not* be classified as insignificant on the grounds that in the article of the relevant part of the CAO RF, responsibility is defined for non-execution of any duty and does not depend on any circumstances.

According to paragraph 6 of the Supreme Court of the Russian Federation's Plenary Meeting Resolution No. 5 "On some issues that occurred in courts when applying the Code of Administrative Offences of the Russian Federation" dated March 24th 2005 [6], an insignificant administrative offence is an act or omission formally having features of an administrative offence, but where, taking into account the nature of the committed offence and the role of the offender, the extent of damage and the gravity of the consequences are not an essential violation of protected public relations. Such circumstances as, for example, the personality and the property status of the

person made responsible, voluntary elimination of the offence's consequences, compensation for damage caused, do not indicate the insignificance of an offence. These circumstances, according to parts 2 and 3 of Article 4.1 of CAO RF, are considered as imposing an administrative punishment.

Nevertheless, the given interpretation of Article 2.9 does not allow us to understand the notion of insignificance comprehensively.

The cumulative analysis of the specified judicial explanations allows to come to the following conclusion. The issue of insignificance of such and such an administrative offence (regardless of whether its structure is material or formal) has to be resolved individually, proceeding from the concrete circumstances of its commission. Thus, the law-enforcer needs to clear up the issue concerning the existence or lack of an essential threat to the protected public relations through an assessment of such elements as the nature of the committed offence and the role of the offender (not his personality), the extent of damage and the gravity of the consequences. In other words, the highest judicial authorities incline to determine an offence as insignificant mainly through the objective aspect of the administrative offence, not rejecting directly its other components.

Now it is reasonable to examine what has been undertaken to solve this problem in Administrative Law Science.

Thus, I.O. Podvalny as a starting point for the analysis takes the specified explanations of the supreme courts. In his opinion, the nature of an offence is the nature and extent of its social danger. The nature of the social danger is defined by the object of violation (administrative offences violate the order of public administration) and can be established proceeding from the law structure (estimating the place of the correspondent chapter in the particular part of the CAO RF on a scale of more dangerous to less dangerous). A degree of public danger of an offence is defined with a concrete sanction and a guilty form (forethought, negligence). A deliberate offence with a degree of public danger is considered a more serious illegal action (omission) than a careless offence. The lower and upper limits of the sanction, the presence of such and such a type of administrative punishment (Article 3.2 of CAO RF) in the concrete sanction also show the degree of public danger.

The role of the offender is likely to be treated broadly: not as a role of partnership (organiser, accomplice, executor), and as a set of objective and subjective signs of the offender's behaviour. Here the next questions should be put: what kind of behaviour is being dealt with, what is the role of the offender in the objective reality, is s/he in real life a malicious, hardened, active and intentional offender or his representative (legal person), or a person having committed an illegal act for the first time, inexperienced, without enough professional knowledge, as the result of a mistake, etc.

The extent of the damage and gravity of the consequences, from the theoretical point of view, belong to the objective signs of the act. Thus it is necessary to remember that not only real damage (actual negative consequences: property damage, harm to the health or life of people), but also only the potential to cause such damage, if by good fortune there are no material consequences of the act, are admitted as socially dangerous. Thus, when considering the gravity of consequences, both must be kept

in mind: in many cases only a threat of damage can and has to be perceived as a serious consequence of an act [8; 114-115].

O. N. Sherstoboev also takes into consideration the explanations of the highest judicial authorities, but does not limit his analysis to only following them. He notes that the insignificance of an offence is closely connected with the elements of its structure. The positions of the supreme courts in which all facts of administrative and punishable act must be taken into consideration show it indirectly. Moreover, stating a degree of evaluation of the harm caused shows that signs of the objective aspect of an offence have crucial importance for the classification of an act's insignificance. Classification of an offence as insignificant should not be limited only by estimating objective signs of its structure. The structure of an administrative offence is made as an ideal model of an illegal punishable act. The offence is a set of all its constructive elements; the lack of one of them makes impossible the application of the corresponding sanction. The degree of harm of an illegal act should be estimated through all of its elements, instead of any one part. Article 2.9 of CAO RF speaks moreover about the "insignificance of a committed administrative offence". It means that insignificance is a quality of the whole administrative offence.

However, A.V. Neprinzev disagrees with O. N. Sherstoboev's approach to the question of recognition of an administrative offence as insignificant, offering his own vision of the problem.

He sees the main flaw in O.N. Sherstoboev in not paying attention to the semantic value of the notion "insignificance". Each statutory act is a set of words, expressions, turns of phrase, whose combination defines the meaning of the rule of law, and as a result the will of the legislator.

Having carried out the semantic analysis of the mentioned notion, A.V. Neprintsev says that it is possible to judge the significance or insignificance of an administrative offence only on the intensity of its external emergence, the extent of its negative impact and influence on the public relations protected by the law, that is, it is exclusive to the objective party of an offence [9].

However, disproving O. N. Sherstoboev's arguments, A.V.Neprintzev did not take into account that the first one, concerning the necessity to define an administrative offence as insignificant through the prism of an assessment of all elements of the structure of the offence, accurately specifies that the objective aspect should be accepted as of crucial importance for the application of the standard of Article 2.9 of the CAO RF. But, in his opinion, it is not necessary to underestimate subjective elements.

The sense of encouragement (release from punishment) of the person guilty of a punishable act is unclear. Insignificance as an element of the objective aspect, instead of the offence as a whole, would depend on concurrency [10].

V. V. Stepanov pays attention to the necessity to establish and estimate all circumstances characterizing an offence and the identity of the guilty party, of adjudication in the matter of norm application concerning the insignificance of an offence in each case [11; 120].

Thus V. V. Stepanov offers release from administrative responsibility in light of the insignificance of an offence, and sets a caution as the liability for this [11; 136].

Let us dare to disagree with the proposal to apply the norms about insignificance only to such administrative offences for which administrative punishment is provided. Life situations are various and they do not always fit the "letter of the law", but at the same time do not leave the limits of the "spirit of the law". The law should not be especially formal, it has to be "alive", reflect and consider all aspects of public relations. The existence of such a norm without any restrictions on its application urges us to consider all varieties of life situations in modern society as within its scope.

Thus, dealing with the matter of whether the administrative offence is insignificant or not, it is necessary to establish the existence or lack of an essential threat to the protected public relations. The establishment of this fact must be carried out individually by estimating the objective aspect of the administrative offence in close interrelation with all other formal elements of administrative offence. Thus, the norms of insignificance must be applied in exceptional cases answering to the purposes of legal responsibility. The pronouncement of an oral caution must be a sufficient and expedient response on the part of the state, and achieve the purpose of the prevention of new offenses.

The author thus suggests the following criteria of recognition of an administrative offence's insignificance:

Essential (basic) criterion (in the case of its absence an administrative offence cannot be insignificant): minor extent of damage caused by an administrative offence with financial interest, or minor impact of offence on public relations, minor threat of negative consequences when the administrative offence is considered with formal components.

Additional criterion: guilt in the form of negligence; subjective and objective features of the offender's behaviour, determining his role in the committed offence as insignificant, inessential (an act of commission does not have the expressed character, does not become strongly apparent, the offender's behaviour does not possess signs of rage, rudeness, negligence towards the protected public relations).

In the end, it is necessary to mention that the absence of general criteria of the insignificance of an administrative offence is an important problem for the institution of administrative responsibility in general. The author has tried to analyse the existing opinions on solving this problem and determining the criteria of such insignificance. At the same time, the given criteria of the insignificance of administrative offences are not final and the problem presented is subject to further research.

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