FEATURES OF QUALIFICATION OF ADMINISTRATIVE OFFENCES IN WHICH STRUCTURES THERE ARE INSTRUCTIONS FOR TERMS OF COMMISSION OF ILLEGAL ACT
ADMINISTRATĪVO PĀRKĀPUMU KVALIFIKĀCIJAS IEZĪMES STRUKTŪRĀS, KURĀS IR NORĀDĪJUMI PAR NELIKUMĪGA AKTA KOMISIJAS NOTEIKUMIEM

Elena Zykina
Candidate of Law Sciences, Associate Professor of Pskov State University,
chernosliv60@mail.ru, Pskov, Russia

Abstract. *In the article, the author focuses on the problematic issues of determining the end of administrative offenses, in which the circumstances of time (deadlines) play a role for proper qualification. The author draws attention to the need to improve the composition of administrative offenses, containing an indication of a certain period. The topic of the article is relevant, as there are discussions about the structure of elements of administrative offenses depending on the time of expiration of the term specified in the law, as well as establishing the end of administrative offenses that contain an indication of a certain period. The novelty of the article lies in the analysis of controversial issues of determining the moment of termination of an administrative offense, in which the circumstances of time play a role for proper qualification.*
Keywords: *administrative liability, administrative offence, structure of administrative offence, temporary terms of commission of illegal act.*

Introduction

The establishment of time frames for an illegal act in administrative and tort law is directly related to the stages of commission, the prescription of administrative prosecution, etc. In the theory of law, there are discussions about the construction of administrative offences depending on the end of the act, as well as the establishment of the end of the act in administrative offences, which contain an indication of a certain period. The article is devoted to the analysis of controversial issues of determining the end point in the compositions of administrative offences in which the circumstances of the time play a role for the correct qualification.

Main body

In the theory of administrative law, much attention is paid to the construction of administrative offences, its elements and features. The structure of administrative offence (administrative tort) is one of the basic categories of administrative and tort law. In scientific literature, there are two grounds for administrative liability – the law as a regulatory basis, and the offence as the actual basis. Within the meaning of the Russian Federation Code of Administrative Offences *(The Russian Federation Code of Administrative Offences, 2001)* the basis of administrative liability is the commission of an administrative offence, i.e. an act containing all the evidence of the offence provided for by the Russian Federation Code of Administrative Offences. However, the legislation does not contain the concept of the administrative offence and its features.

The legislator uses optional features, such as timing, when designing only individual formulations in addition to the main features, to highlight the specific properties of a particular tort. The absence of an optional feature does not exclude liability for the act, if there are basic features. However, their presence obliges the law enforcement officer to consider it, i.e. to include it in the subject of the proof.

In the Russian Federation Code of Administrative Offences time circumstances, acting as a mandatory feature of the offence, are present in a number of norms: Articles 5.1., 5.3., 5.5.,

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5.13., 5.15., 5.17., 5.21., 5.25., 5.28., 5.29., 5.36., 5.50., 5.56., 5.63., 5.63.1., 5.64., 5.67., 6.32., 7.23.2., 7.29., 7.29.3.,7.30., 7.31.1., 7.32., 7.32.1., 7.32.3., 7.32.4., 7.32.5., 7.34., 8.8., 8.26., 8.37., 8.41., 9.5., 9.5.2., 9.15., 15.5., 15.25.of the Russian Federation Code of Administrative Offences and many others.

In these structures of offences, the administrative and tort law solves the following problems:

1) establishes guarantees of observance of certain rules established by the norms of various branches of law, encouraging their compliance by indicating to the administrative offences of the Russian Federation Code of Administrative Offences for a specified period, acting as the border of an illegal conduct *(The Russian Federation Code of Administrative Offences, 2001, art. 8.37)*;
2) limits legal relationship to time frames, beyond which the damage to the public relations, protected by Law, is caused *(The Russian Federation Code of Administrative Offences, 2001, art. 8.41)*;
3) attaches special legal importance to certain time stages (periods), increasing (reducing) the degree of social harmfulness of acts *(The Russian Federation Code of Administrative Offences, 2001, art. 20.5)*;
4) establishes the duration of the phenomena as one of criteria of an assessment of the caused harm (duration of loss of health) *(The Russian Federation Code of Administrative Offences, 2001, art. 11.5)*.

The fact, that a complex research of these features in the administrative and tort law was not carried out, leads to contradictions in the establishment of their role and importance. In particular, such issues are the establishment of the end of administrative offence in those structures where there is an indication of the circumstances of time. The solution to this issue in theory and in practice causes difficulties. This happens due to the diversity and complexity of normative legal acts regulating the relevant relations in which certain time frames are established.

For example, one of qualification cases in the presence of circumstances of time represents the structure provided for by Article 5.50. of the Russian Federation Code of Administrative Offences on “Violation of the rules of transfer of funds contributed to the electoral Fund, the referendum Fund”. First, in the disposition of this article it is directly indicated on the non-return of donations (or of their part) listed in the electoral Fund, the referendum Fund with violation of the requirements of the legislation on elections and referendums, to the donor within the period established by the legislation on elections and referendums, and on the non-transfer of the donations from anonymous donors within the period specified in the appropriate budgets.

Secondly, the relatively small amount of legal norms regulating these legal relations also contributes to the establishment of a time period of legal significance. According to the Federal Law of the Russian Federation of 22.02.2014 No. 20-FL "On elections of deputies of the State Duma of Federal Assembly of the Russian Federation" *(On elections of deputies of the State Duma of Federal Assembly of the Russian Federation, 2014)*, a political party, its regional office, or a candidate has the right to return to the donor any donation in an election fund, except for the donation brought by the anonymous donor. If a voluntary donation to the electoral Fund is made by a citizen or a legal entity that does not have the right to make such a donation, or the donation is made in violation of the requirements, or the donation is made in an amount exceeding the maximum amount of such donation, the political party, its regional office, or a candidate must return it to the donor in full or that part of it, which exceeds the established maximum of donation amount (less postage costs), no later than 10 days from the date of receipt of the donation to the relevant special electoral account, indicating the reason for the return.

Thus, the offence is considered ended from the moment of the expiry of the prescribed period of the return to the donor of donations (or of their part) listed in electoral Fund, referendum Fund in violation of the requirements of the legislation on elections and referendums in established by the legislation on elections and referenda period, the non-transfer of the donations from anonymous donors within the period specified in the appropriate budgets.

Let's consider another example. Part 2 of Article 15.25 of the Russian Federation Code of Administrative Offences establishes administrative liability for the submission by a resident to the tax authority in violation of the deadline and (or) not in the prescribed form of notification of opening (closing) of an account (or deposit) or changing of account details (or deposit details) in a bank located outside the territory of the Russian Federation. In this case, the terms are established in Part 2 of Article 12 of the Federal Law of the Russian Federation of 10.12.2003 No. 173-FL "On currency regulation and currency control" *(On currency regulation and currency control, 2003)*, according to which residents according to their registration are obliged to notify tax authorities on opening (closing) of accounts (deposits) and on change of details of accounts (deposits) specified in the first part of the present article no later than one month from the date of respectively opening (closing) or change of details of such accounts (deposits) in the banks located outside the territory of the Russian Federation in the form approved by Federal executive authority, authorized for control and supervision in the field of taxes and fees.

In our opinion, increase of liability of participants of currency legal relations will be promoted by the indication in disposition of the article of the Russian Federation Code of Administrative Offences on such circumstances of time in this structure as the term established by the currency legislation. This instruction focuses attention to the need of timely execution of duty.

Thus, it is necessary to recognize the considered offence ended from the moment of the expiration of one month from the date of opening (closing) or change of details of such accounts (deposits) in the banks located outside the territory of the Russian Federation.

The task of determining the end of illegal acts in the tax sphere seems to be more difficult, despite the fact that the procedure for paying taxes is regulated by the Tax code of the Russian Federation *(Tax Code of the Russian Federation: part two, 2000)*, which establishes strict periods in which the relevant tax should be paid.

Article 15.5. of the Russian Federation Code of Administrative Offences provide administrative liability for violation of terms of submission of the tax declaration (calculation of insurance premiums). The main point of view in the Law is the recognition of tax evasion as completed on the basis of the deadline for payment of taxes and fees established by tax legislation. At the same time, there are other approaches.

The existence of disagreements is explained by the possibility established in the tax legislation to include changes in the Declaration even after the deadline for submission of the Declaration and after the deadline for payment of tax. Thus, if the amended tax return is submitted to the tax authority after the deadline for filing the tax return and after the deadline for payment of tax, the taxpayer is exempted from liability in the following cases:

1) submissions of the specified tax declaration until the moment when the taxpayer learned about the discovery by the tax authority of non-reflection or incompleteness of the reflection of information in the tax return, as well as errors leading to an understatement of the amount of tax payable, or the appointment of an on-site tax audit for this tax period, provided that prior to submission of the specified tax declaration he paid the missing amount of tax and the corresponding penalties;
2) submissions of the specified tax declaration after an on-site tax audit for the relevant tax period, by results of which non-reflection or incompleteness of reflection of data in the tax declaration and also the errors leading to understating to the subject payment of the

amount of tax (Part 4 of Article 81 of the Tax Code of the Russian Federation) were not found.

From our point of view, based on the fact that in accordance with the provisions of tax legislation, the deadline for submission of the Tax Declaration and the deadline for payment of the tax (fee) may not coincide, the actual non-payment of taxes (fees) within the period established by tax legislation should be considered as the end of the administrative offence provided for by Article15.5. of the Russian Federation Code of Administrative Offences.

Besides, if the taxpayer for the purpose of tax evasion has not submitted a tax return (or has included deliberately false information), but before the expiration of the tax payment period has paid the amounts in full form, then his actions do not constitute a crime.

Conclusions and suggestions

The general conclusion when considering the issue of the moment of the end of illegal act with specified terms is the expiration of the deadline established by the legislation governing the specific sphere of legal relations. In our opinion, increase of liability of participants of currency legal relations will be promoted by the indication in disposition of the article of the Russian Federation Code of Administrative Offences on such circumstances of time in this structure as the term established by the currency legislation. This instruction focuses attention to the need of timely execution of duty. From our point of view, based on the fact that in accordance with the provisions of tax legislation, the deadline for submission of the Tax Declaration and the deadline for payment of the tax (fee) may not coincide, the actual non-payment of taxes (fees) within the period established by tax legislation should be considered as the end of the administrative offence provided for by Article15.5. of the Russian Federation Code of Administrative Offences. Besides, if the taxpayer for the purpose of tax evasion has not submitted a tax return (or has included deliberately false information), but before the expiration of the tax payment period has paid the amounts in full form, then his actions do not constitute a crime.

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Kopsavilkums

Rakstā autore pievēršas problemātiskiem jautājumiem par administratīvo pārkāpumu beigu momenta noteikšanu, kuros laika momenta noteikšana ietekmē pareizas kvalifikācijas piemērošanu. Autore vērš uzmanību uz nepieciešamību uzlabot administratīvo pārkāpumu sastāvu, kuri satur norādi uz noteiktu laika periodu.

Autores veiktā analīze parāda, ka likumdevējs, papildus galvenajām iezīmēm, izmanto izvēles iespējas, piemēram, termiņus, veidojot tikai atsevišķas kompozīcijas, lai izceltu konkrētā delikta īpašās īpašības. Izvēles pazīmes neesamība neizslēdz atbildību par savu rīcību,

ja ir pamata pazīmes. Tomēr to esamība liek likuma izpildītājiem to ņemt vērā, tas ir, iekļaut to pierādījumu priekšmetā.

Netika veikts visaptverošs šo pazīmju pētījums administratīvajā pārkāpumu likumā, kas rada pretrunas, nosakot to lomu un nozīmei. Jo īpaši šādi jautājumi ir administratīvā pārkāpuma izbeigšanas brīža noteikšana tajās kompozīcijās, kur ir norāde uz attiecīgiem laika periodiem. Šī jautājuma risinājums teorētiski un praksē rada grūtības. Tas ir saistīts ar normatīvo tiesību aktu daudzveidību un sarežģītību, kas regulē attiecīgas attiecības, kurās ir noteikti tie vai citi laika periodi.

Lai novērstu šo problēmu, rakstā tiek pamatota tēze, ka, apsverot jautājumu par prettiesiskas darbības izbeigšanas brīdi, kurā ietverti termiņi, ir pamatota termiņa izbeigšanās, kas noteikta tiesību aktos, kuri regulē konkrēto tiesisko attiecību jomu.