

THE CONCEPT AND MEANING OF THE QUALIFICATION OF ADMINISTRATIVE OFFENCES

ADMINISTRATĪVO PĀRKĀPUMU KVALIFIKĀCIJAS JĒDZIENS UN NOZĪME

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Abstract. *In this article, the author focuses attention on problematic problems of qualification of administrative crimes. The author also pays attention to the requirement of improvement of methods of qualification of administrative crimes. Article is relevant as the choice of a measure of punishment depends on qualification of administrative crime. The correct qualification does possible release from administrative responsibility, depends on it. Thus, the mistake in qualification of crime can entail the wrong decision on case of administrative crime. Such error noticed by superior court involves change or cancellation of the resolution. The novelty of a subject is explained with the aspect chosen by the author.*

Keywords: *administrative liability, administrative offence, qualification of administrative offence, structure of administrative offence.*

Introduction

Mental logical activity of a law enforcement official (a person who qualifies administrative offence on the way to the solution of an ultimate goal) goes through several stages, the complex of which is called the process of qualification. The qualification process provides a summary of different procedural documents (the order of a police officer, or a judge) which establish the detected compliance of the characteristics of the offence with strictly defined norm, or norms of the Special part of the Russian Federation Code of Administrative Offences. This article is devoted to the analysis of problematic issues of process of qualification of administrative offences.

Main body

The basis of qualification of administrative offences (administrative torts) includes a complex of questions, the answers to which are designed to provide a lawyer – a law enforcement official - with initial knowledge and methodology of application of administrative law to each case of commission of socially harmful and administratively punishable act – the administrative offence - by a guilty person.

The basis of administrative liability is the commission of an act containing all features of the administrative offence provided by the Russian Federation Code of Administrative Offences (*The Russian Federation Code of Administrative Offences, 2001*), or by the law of a subject of the Russian Federation on administrative offences. It is necessary to establish and precisely specify what administrative and legal prohibition is broken and what structure of administrative offence contains this violation, to bring the guilty person to administrative liability and to define the measure of just punishment. Such objectives are achieved by means of qualification of administrative offences.

“To qualify” administratively punishable offence means to decide under which of the existing rules of administrative law the act on which the case of an administrative offence is initiated and proceedings are conducted; to give it a legal assessment from positions of the Russian Federation Code of Administrative Offences or the law of a subject of the Russian Federation on administrative offenses; to specify most precisely in the relevant procedural document (the protocol on administrative offence, the resolution on the case of administrative

offence, etc.), where exactly, in what article, a part of an article, paragraph and subparagraph, if those in this article are available, this provision is enshrined (*Tikhomirova, 2018, p.36*).

The consequences of incorrect qualification of the act of the case are determined differently at different stages of the proceedings. The plenum of the Supreme Court of Arbitration of the Russian Federation indicated it in the Resolution of 02.06.2004 No.10 "On some issues arising in judicial practice in cases on administrative offences" (Subparagraphs 8 - 9) (*The resolution of the Plenum of the Supreme Court of Arbitration of the Russian Federation, 2004, No. 10*).

If the statement of an administrative body for administrative prosecution or the protocol on administrative offence contain the wrong qualification of committed offence, the court has the right to make a decision on administrative prosecution according to appropriate qualification. At the same time, the offence event specified in the protocol and the evidence should be sufficient for definition of other qualification of illegal act.

Thus, it is possible to draw a preliminary conclusion that the qualification of an administrative offence should be understood as the definition of its legal nature, i.e. its assessment in terms of the law correlated to the Russian Federation Code of Administrative Offences, or the law of a subject of the Russian Federation on administrative offences and the judgment of certain facts of objective reality.

Qualification of an administrative tort by the official of the executive authority, by other subject of an administrative jurisdiction or by the court in which production the case is and by the official who according to the law possesses supervising or control functions over the proceedings in this case of an administrative offence is called legal, or official. It has legal value, the movement and the fate of a case of administrative offence depends on it in many respects.

The qualification of the act, which the parties who protect and defend their legitimate interests in administrative proceedings express, has also the official character. An important role has the legal qualification of administrative offences, which is given by the Supreme judicial authority of the country - the Supreme Court of the Russian Federation, in decisions on the administrative cases, considered in a cassation and supervisory procedure with publication of the position in the official publication - the Bulletin of the Supreme Court of the Russian Federation. Without being a source of case law, which does not exist in Russia, and without having the nature of obligation of lower courts, such publications are of great importance for the correct and uniform application of the legislation on administrative offences in the most difficult cases (*The Resolution of the Plenum of the Supreme Court of the Russian Federation, 2018, No. 28; The Resolution of the Plenum of the Supreme Court of the Russian Federation, 2017, No. 46*).

Qualification of administrative offences which is offered in scientific and educational literature by experts in the field of administrative law - both scientists - theorists, and practicians, is called doctrinal. It has no legal significance in a particular case.

Written conclusions of legal experts, who are sometimes submitted by the parties to the court in support of their position on the qualification of an administrative offence in the most complex cases (when, in particular, in connection with the blanket disposition of the legal norm, some knowledge in the field of not only administrative law, but also, for example, financial, business or environmental law is required) have no legal value and do not generate any legal relations. Such conclusions are the result of confidential consultation of one lawyer with another; it is incorrect to refer to it in the proceedings on an administrative offence, since legal expertise in the proceedings on an administrative offence is impossible.

Conclusions and suggestions

Thus, it is possible to draw a conclusion that the qualification of an administrative offence should be understood as the definition of its legal nature, i.e. its assessment in terms of the law correlated to the Russian Federation Code of Administrative Offences, or the law of a subject of the Russian Federation on administrative offences and the judgment of certain facts of objective reality. Qualification of an administrative offence in a particular case is essential for the solution of this case. The choice of a measure of punishment concerning the prosecuted person and the possibility of release from administrative responsibility depends on it. Thus, the error in qualification of the act leads to the wrong judgment on the case of administrative offence. Such error noticed by superior court leads to a change or cancellation of the judgment.

The full responsibility for the legal qualification of an administrative tort, as well as for the other issues on the case of an administrative offence, is solely borne by the one who has the case in production at the moment.

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Kopsavilkums

Raksts veltīts administratīvo pārkāpumu kvalifikācijai. Rakstā autors pievēršas administratīvo pārkāpumu kvalifikācijas problemātiskajiem jautājumiem un vērš uzmanību uz nepieciešamību pilnveidot administratīvo pārkāpumu kvalifikācijas metodes.

Autors secina, ka administratīvā pārkāpuma kvalifikācija jāsaprot kā tā juridiskā rakstura definīcija, t.i. tā vērtējums no likuma viedokļa, pielīdzināms Krievijas Federācijas Administratīvo pārkāpumu kodeksam vai likuma subjektam Par Krievijas Federācijas administratīvajiem pārkāpumiem, spriedumam par noteiktiem objektīvās realitātes faktiem.

Darbā ir pamatots, ka administratīvā pārkāpuma kvalifikācijai konkrētā gadījumā ir izšķiroša nozīme lietas izšķiršanā pēc būtības. No tās ir atkarīgs izvēlētais soda mērs attiecībā uz personu, kas saukta pie atbildības, vai iespējas atbrīvot no administratīvās atbildības. Tādējādi kļūda kvalificējot aktu, nozīmē kļūdaina lēmuma pieņemšanu administratīvā pārkāpuma gadījumā. Šāda kļūda, ko atklājusi augstāka tiesa, nozīmē lēmuma mainīšanu vai atcelšanu.