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IMPACT OF THE REFORM OF LEGISLATION ON CONTROL AND SUPERVISORY ACTIVITIES ON THE GROUNDS AND CONDITIONS OF BRINGING CONTROLLED PERSONS TO ADMINISTRATIVE RESPONSIBILITY

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INTRODUCTION

Relevance of the research topic. One of the most significant directions of administrative reforms in Russia invariably remains the adjustment of legislation on control (supervision), which is one of the key means of governmental influence on economic activity[1]. In this regard, over the past decades the state has been taking measures aimed at reducing excessive regulation and excessive state intervention, inter alia through the modernization of control and supervision activities. The very change in the rules of control (supervision), reflecting the course for streamlining legal regulation in this area, follows from the fundamental for the domestic legal system requirements of fairness, proportionality, reasonableness and consistency of legal norms, which form indispensable conditions for maintaining mutual trust of economic entities and the state.

The above-mentioned objectives of normative transformations, as well as the subject unity of the relevant changes in legal regulation allow us to consider the process of consistent improvement of legislation on control and supervisory activities as its reform[2], in the framework of which statutes aimed at determining the procedure for exercising control (supervision) by executive authorities were adopted. The last stage of the systemic reform of the legislation on control and supervisory activities was a comprehensive update of the system of control and supervisory regulation in 2020, which was expressed in the adoption of two basic federal laws designed to form a system of mandatory requirements for economic

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[1] See, in particular: Decree of the President of the Russian Federation of June 29, 1998 № 730 «On measures to eliminate administrative barriers in the development of entrepreneurship» // CL RF. № 27. 06.07.1998. Art. 3148; Decree of the President of the Russian Federation of July 23, 2003 № 824 «On measures to carry out administrative reform in 2003–2004» // CL RF. 28.07.2003. № 30. Art. 3046; Passport of the priority program «Reform of control and supervisory activities» (annex to the Protocol of December 21, 2016 № 12 of the Presidium of the Council under the President of the Russian Federation for Strategic Development and Priority Projects) // Official website of the Government of the Russian Federation. URL: http://government.ru/projects/selection/655/25930/ (access date: 16.06.2024).

Popov L.L., Migachev Y.I., Tikhomirov S.V. Public administration and executive power: content and correlation / ed. by L.L. Popov. M.: Norma, Infra-M, 2011. Access from the «ConsultantPlus».

[2] With all the conditionality of the very category of «reform», difficult to be dogmatically described, in its content (in relation to administrative law) traditionally implied the aspect associated with the improvement of functions, forms and methods of activity of executive bodies of power. See: Administrative reform in Russia. Scientific and practical manual / E.K. Volchinskaya, N.A. Ignatyuk, N.M. Kazantsev and others; ed. by S.E. Naryshkin, T.Y. Khabrieva. M.: CONTRACT, INFRA-M, 2006. Access from the «ConsultantPlus».

activity[3] and to determine the procedure for the implementation of state control (supervision) and municipal control[4]. In this regard, the reform of legislation on control and supervisory activities is considered in this paper mainly as a result of systemic changes in the relevant area of administrative regulation that took place in connection with the adoption of the Federal Law on Mandatory Requirements and the Federal Law on Control (Supervision). At the same time, since a full-fledged comprehension of this large-scale revision of control and supervisory regulation (including in regard of its impact on the legislation on administrative responsibility) would be impossible in an isolated consideration of only the current norms without taking into account the previous regulation of control (supervision), this paper did not ignore the earlier legislation, which also reflected the process of reforming the control and supervisory activity.

Despite the update of the legislation on control (supervision) in 2020, the motives for its improvement remain relevant for the domestic legal system[5]. This, on the one hand, indicates that not all the problems in the field of control (supervision) have been solved (moreover, legislation, especially control (supervision) statutes, should be improved in accordance with the development of society and the state), and, on the other hand, can be regarded as confirmation of the insufficiency of modernization of the rules of control (supervision) activities alone to achieve the goals of administrative reforms.

In light of the above, the reform of legislation on control and supervisory activity is to be considered not just in the light of the modernization of the system of norms, which are assessed through such an activity (technical regulation,

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[3] Federal Law of July 31, 2020 № 247-FZ «On mandatory requirements in the Russian Federation» // CL RF. 03.08.2020. № 31 (Part I). Art. 5006. Hereinafter also – Federal Law on Mandatory Requirements.

[4] Federal Law of July 31, 2020 № 248-FZ «On state control (supervision) and municipal control in the Russian Federation» // CL RF. 03.08.2020. № 31 (Part I). Art. 5007. Hereinafter also – Federal Law on Control (Supervision).

[5] See in confirmation: National security strategy of the Russian Federation (subparagraph 24 of paragraph 67), approved by the Decree of the President of the Russian Federation of July 2, 2021 № 400 // CL RF. 05.07.2021. № 27 (Part II). Art. 5351; Order of the Government of the Russian Federation of December 21, 2023 №. 3745-r «On Approval of the Concept of Improvement of Control (Supervisory) Activities until 2026» // CL RF. 01.01.2024. № 1 (Part IV). Art. 285.

mandatory requirements[6]), but also in connection with synchronous changes in the field of legislation on administrative responsibility – an effective protective means of impact on social relations[7], including economic ones. The conditioned by the current legislation nature of administrative responsibility, which can occur in connection with the violation of not only administrative-law norms, but also provisions of other branches of law, emphasizes that it is a universal way of ensuring compliance with legal prescriptions, and that characteristic, as noted in the literature, is constantly increasing[8]. By the status and specific parameters of administrative-offence regulation it is possible to determine the level of «administrative pressure»[9] in general[10], which, among other things, explains the indication in the conceptual documents accompanying the preparation of the draft of the new Code of the Russian Federation on Administrative Offenses that the improvement of legislation in this area cannot be carried out in isolation from the regulation of control (supervision)[11]. The fairness of this approach is confirmed by the researched in the paper changes that have already been introduced in the Code of the Russian Federation on Administrative Offences[12] in connection with the reform of legislation on control and supervisory activities or should be introduced in the future for its intra-sectoral harmonization with legal provisions on control (supervision).

Consequently, the assessment of the achievement of the declared goals of administrative reforms – deregulation and reduction of the burden on the subjects

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[6] See: *Filatova A.V.* Organizational-law foundations of regulation of administrative procedures of control and supervisory activities in the field of economy: abstract dis. … doct. of legal sciences. Saratov, 2010. P. 3, 14.

[7] *Serkov P.P.* Administrative responsibility in Russian law: modern comprehension and new approaches: monograph. M.: Norma, Infra-M, 2012. P. 10.

[8] Modernization of administrative legislation (goals, tasks, principles and actual directions): a monograph / A.M. Abakirova, M.A. Abdyraev, G.A. Vasilevich, et al; ed. by A.F. Nozdrachev. M.: Infra-M, 2019. P. 282.

[9] This term, although it does not have a certain legal content, is nevertheless used in official analytical documents to characterize the actual and legal position of subjects of economic activity. See: Official website of the Authorized Representative under the President of the Russian Federation for the Protection of Entrepreneurs' Rights. URL: http://doklad.ombudsmanbiz.ru/ (access date: 16.06.2024).

[10] Control-supervisory and permitting activities in the Russian Federation. Analytical report – 2019 / S.M. Plaksin, I.A. Abuzyarova et al; M.: National Research University Higher School of Economics, 2020. P. 70.

[11] Concept of the new Code of the Russian Federation on Administrative Offenses (paragraph 5.1.5) // Official website of the Government of the Russian Federation. URL: http://static.government.ru/media/files/KVhRVrFpSydJQShBIwlAY7khO7NAt9EL.pdf (access date: 16.06.2024). Hereinafter also – Concept of the new CAO of the Russian Federation.

[12] Code of the Russian Federation on administrative offenses of December 30, 2001 № 195-FZ // CL RF. 07.01.2002. № 1 (Part I). Art. 1. Hereinafter also – CAO of the Russian Federation.

of economic activity while maintaining the level of safeguarding of protected values (in particular, the rights and freedoms of other persons, security, etc.)[13] – is impossible without a systematic analysis of the changes that took place in the field of legislation on administrative responsibility under the influence of the reform of control and supervisory activity, especially since both control (supervision) and proceedings on the case of an administrative offense allow to evaluate compliance of controlled persons[14] with mandatory requirements (Article 1 of the Federal Law on Mandatory Requirements).

Therefore, the problems of the impact of the reform of legislation on control and supervisory activities on the grounds and conditions of bringing controlled persons to administrative responsibility, inter alia in the aspect of internal consistency of the relevant legislation, obviously need doctrinal reflection, providing an adequate legal analysis of the provisions that have already appeared in the CAO of the Russian Federation or can potentially be enshrined in this Code in connection with the improvement of the order of control (supervision). However, a study of the relevant provisions of administrative-offence regulation, necessary to clarify their effectiveness and consistency in terms of achieving the specified above goals of administrative reforms, has not been carried out.

The degree of development of the research field. Control and supervisory activity and the problems, connected with reform of its rules, can hardly be regarded as deprived of attention of administrative-law experts: there are many fundamental scientific works and thematic legal publications devoted to them, the mere systematization of which can constitute an independent research task. However, most works on this topic appeared before the reform of 2020 (its results, inarguably, require independent study) and they, therefore, do not take into account the current state of normative regulation in this area.

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[13] On this direction, reflected in the Federal Law on Control (Supervision) and its constitutional and legal prerequisites see: *Spiridonov A.A.* State and public control in the Russian Federation: constitutional-law study: dis. ... doct. of legal sciences. M., 2023. P. 63–64 etc.

[14] Hereinafter in the work under controlled persons are understood subjects (natural and legal persons) in respect of which it is possible to assess compliance with mandatory requirements in the course of control (supervision) and proceedings on a case of administrative offense.

As for administrative responsibility, the necessary level of doctrinal development is provided practically to any issue in this area. Nevertheless, the problem of the influence of legislation on control (supervision) on administrative-offence regulation in the science of administrative law has not been thoroughly investigated. Though there are separate works, in which some independent aspects of the relationship of control and supervisory activity and administrative-offence proceedings are touched upon (for example, in terms of competition of control (supervision) and administrative investigation) in the doctrine, the issues of the impact of the reform of legislation on control and supervisory activity on the legislation on administrative offenses, the correlation of the relevant types of proceedings (control-supervisory and administrative-offence), including on the issue of their position in the system of state management measures, the evolution of the grounds and conditions of bringing to administrative responsibility in the light of the mentioned reform in the literature, in fact, have not been investigated or investigated in insufficient detail. Moreover, there remain without the necessary analysis of specific provisions enshrined in the CAO of the Russian Federation in connection with the reform of legislation on control and supervisory activity, which need to be studied (including taking into account the extensive law enforcement practice) in terms of their legal quality and consistency with other administrative and legal principles and norms.

The present study is aimed at filling the designated gap in the doctrine of administrative law.

Object and subject of the study. The object of the study is relations arising in connection with bringing controlled persons to administrative responsibility on the basis of the rules enshrined in the CAO of the Russian Federation taking into account the reform of legislation on control and supervisory activities. The subject of the study, respectively, are the provisions of administrative legislation (on control (supervision) and on administrative offenses) and their interpretation, reflected in the jurisprudence of the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, other courts, as well as in clarifications of the authorized federal executive bodies.

Aims and objectives of the research. The purpose of this dissertation research is to study the prerequisites and legal expression of the impact of the reform of the legislation of control and supervisory activities on the grounds and conditions of bringing controlled persons to administrative responsibility. To achieve this goal it was necessary to solve the following tasks:

– to establish the correlation of control and supervisory proceedings with proceedings on the case of administrative offense;

– to point out the stages consequent historical development of the legislation on administrative responsibility in the context of reforming the legislation on control and supervisory activity;

– to form an idea of violation of mandatory requirements as a basis for bringing to administrative responsibility;

– to correlate changes of the rules of appointment and enforcement of administrative penalties for administrative offenses committed by controlled persons, with the developments of the legislation on control and supervisory activities;

– to define the essence of the model of initiating proceedings on an administrative offense expressed in the violation (non-compliance) of mandatory requirements, the assessment of which is also carried out within the framework of control (supervision);

– to evaluate the rules of prevention of administrative offenses enshrined in the CAO of the Russian Federation and to determine the prospects of their development in the context of the modern system of special measures of prevention of violations of mandatory requirements;

– to identify the provisions of legislation on administrative responsibility, providing improvement of the situation of controlled persons brought to administrative responsibility in some foreign countries.

The methodology and methods of the study were conditioned by the aim and objectives of the thesis research. In the work, accordingly, the following methods were used:

– methods of analysis and synthesis, without which it would be impossible to formulate the conclusions of the study;

– methods of induction and deduction, which allowed, based on the study of specific examples from practice, to form a general idea of the real model of administrative-law regulation and identify possible ways of its development;

– empirical method, the use of which was particularly important for the present study, in which specific provisions of normative regulation were studied, among other things, taking into account their law enforcement implementation, which made it possible to determine the features and defects of the analyzed legal norms in a meaningful way;

– historical method, which provided the study of the consistent development of legislation on control (supervision) and on administrative offenses;

– dogmatic method, the use of which was necessary to assess the content and identify the meaning of the provisions of the legislation and doctrinal concepts.

Normative and empirical bases of the study are represented by federal normative acts (laws and bylaws) and their drafts, as well as jurispudence of the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, commercial courts and courts of general jurisdiction (as a rule, of cassation instance).

In regard of analyzing statutes, the main focus was on three key federal laws (adopted in 2001, 2008 and 2020) that defined the general rules of control (supervision), as well as the provisions of the CAO of the Russian Federation and federal laws that it was amended and supplemented with in the period from 2005 to 2022.

Taking into account the fact that within the framework of the study the attention was paid mainly to the modern legal regulation, to solve the tasks of this work, as a rule, court acts adopted during the period of validity of the Federal Law on Control (Supervision), i.e. in the period from 2021 to 2024, were used; to assess the earlier legislation, law enforcement materials of the previous period were also involved. Priority was given to analyzing the practice of courts of the highest possible level (the Supreme Court of the Russian Federation, cassation courts of

general jurisdiction, commercial courts of circuits), which allowed to identify the dominant approaches in judicial practice. In total, more than 130 acts were studied, most of which were adopted in the order of commercial proceedings, which is explained by the nature of mandatory requirements checked in the framework of control (supervision) and bringing to administrative responsibility, which are associated with the implementation of entrepreneurial and other economic activities.

The theoretical basis of the dissertation is represented by the works of I.E. Andreevsky, D.N. Bakhrakh, V.P. Belyaev, S.N. Bratus, N.D. But, A.F. Vasilieva, N.V. Vitruk, I.A. Galagan, V.M. Gorshenev, K.V. Davydov, A.A. Dzhagaryan, E.A. Dmitrikova, B.V. Dreishev, M.I. Eropkin, A.B. Zelentsov. S.M. Zubarev, S.M. Zyryanov, A.I. Kaplunov, A.V. Kirin, S.D. Knyazev, P.I. Kononov, M.N. Kudilinsky, V.N. Kudryavtsev, B.M. Lazarev, O.E. Leist, I.V. Maximov, N.S. Malein, A.V. Martynov, L.A. Mitskevich, A.F. Nozdrachev, I.A. Panova, L.L. Popov, B.V. Rossinsky, N.G. Salishcheva, P.P. Serkov, L.N. Smorchkova, V.D. Sorokin, A.A. Spiridonov, Yu.N. Starilov, A.I. Stakhov, M.S. Studenikina, I.T. Tarasov, Yu.A. Tikhomirov, D.S. Fesko, I.B. Shakhov, A.P. Shergin, O.A. Yastrebov, etc.

Scientific novelty of the dissertation research lies in the fact that it: analyzed the impact made by the reform of the legislation on control and supervisory activity on the grounds and conditions of bringing controlled persons to administrative responsibility, on the basis of which the model of coordinated implementation of control (supervision) and proceedings on cases of administrative offences, which is to be taken into account in the relevant administrative-law regulation, has been doctrinally substantiated; revealed the problems of modern administrative-offence regulation, arising in connection with the emergence of norms in it, aimed at improving the situation of controlled persons (intra-branch inconsistency of the rules of imposition and execution of administrative penalties, imperfection of the procedure for initiation of cases on administrative offenses in respect of controlled persons); identified potential areas for improving the rules for bringing controlled persons to administrative

responsibility (refusal of mechanisms provided for by the legislation on administrative offenses to prevent administrative offenses committed by controlled persons in favor of preventive measures provided for by the legislation on control and supervisory activities).

Theoretical and practical significance of the dissertation research is predetermined by its topic, within which both doctrinal and applied issues of the correlation of control (supervision) and proceedings in cases of administrative offenses were considered. Accordingly, the significance of the dissertation study of the impact of the reform of legislation on control and supervisory activity on the grounds and conditions of bringing controlled persons to administrative responsibility is dictated by the substantiation of the need for coordinated reform of legislation on control and supervisory activity and on administrative offenses, identification of topical problems in the legislation on administrative offenses, which was changing under the influence of control and supervisory regulation, revealed the existence of a number of problems in the system of current legal regulation of control (supervision) and administrative offenses.

The results of the study, which allowed to identify a number of problems in the system of current legal regulation of control (supervision) and proceedings on cases of administrative offenses, can be used to improve the relevant branches of legislation, the formation of law enforcement approaches to the interpretation of rules that determine the order of control and supervisory and administrative-offence proceedings. At that, the demand for the conducted theoretical comprehension of the accumulated defects in the legal regulation of control (supervision) and administrative responsibility is conditioned by the planned comprehensive reform of the legislation on administrative offenses, during which these defects can be eliminated.

In addition, the arguments and conclusions presented in the work can be used for further research in the field of administrative law, including in terms of studying the theory of control activity of the state, the particular types of control (supervision), the development of legislation on administrative offenses, as well as in the development of educational literature.

Degree of reliability and approbation of the results of the study. The reliability of the results of the dissertation research is provided by the choice of suitable methods, the study of normative and law enforcement materials correlated with the object of research with the use of appropriate information resources and reference bases, as well as the necessary approbation of the results of the work.

The key provisions of the dissertation were discussed at the Department of Administrative and Financial Law of the Law Faculty of St. Petersburg State University (May 16, 2024). Some conclusions of this study have been scientifically examined within the framework of realization of the scientific project № 23-28-01756, supported by the Russian Science Foundation according to the results of the competition «Carrying out fundamental scientific research and search scientific research by small individual scientific groups» (2022).

The main provisions and conclusions of the dissertation are reflected in four publications in scientific journals recommended by the Higher Attestation Commission under the Ministry of Education and Science of the Russian Federation.

Some provisions of the dissertation research were approbated in the framework of scientific conferences:

1. XXVIII International Conference of Students, Postgraduates and Young Scientists «Lomonosov» of the Lomonosov Moscow State University (April 15, 2021);

2. II International Scientific and Practical Conference «Governance through Law» of the Institute of Legislation and Comparative Law under the Government of the Russian Federation on the topic «Permit activity in the mechanism of public administration» (March 2, 2022);

3. V Summer School of Administrative Law of St. Petersburg State University «State Control and Supervision» (June 22–24, 2023);

4. XXIV International Scientific and Practical Conference «Kutafin Readings» of the O.E. Kutafin Moscow State Law University (MSLA) and XXIV International Scientific and Practical Conference of the Faculty of Law of the

Lomonosov Moscow State University on the topic «Legal Support of the Sovereignty of Russia: Problems and Prospects» (November 21–24, 2023).

The structure of the dissertation is represented by an introduction, three chapters, which unite six paragraphs, conclusion and bibliographic list.

The main scientific results:

1. A study of the legal nature of control and supervisory activities, including from the point of view of its constitutional foundations, was conducted, which allowed us to conclude that the Federal Law on Control (Supervision) formed a new model of control (supervision) based on the constitutional principles of proportionality of government interference in economic activity, maintaining confidence in the law and actions of the state[15].

2. The normative connection between control and supervisory activities and proceedings in cases of administrative offenses is substantiated, by virtue of which the regulation of these types of administrative process must be carried out systematically and consistently, since otherwise the goals of administrative reforms, consisting in optimizing state intervention in economic activity, will not be achieved[16]. In particular, the consistency of the application of these measures of intervention in the activities of controlled persons should be ensured at the regulatory and law enforcement levels by defining the rules for initiating cases of administrative offenses against them: administrative-offence proceedings should strictly follow the implementation of control (supervision), which is proposed to be called «subordination» of proceedings in cases of administrative offenses in relation to control and supervisory production[17].

3. The intra-industry inconsistency of the legislation on administrative offences (in terms of the rules for the appointment and execution of administrative penalties) with the legislation on control (supervision) in terms of the use of the

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[15] *Karitskaya A.A.* Legislation on control and supervisory activities in the constitutional-justice dimension // Journal of constitutional justice. 2021. № 3. P. 21, 23, 25.

[16] *Karitskaya A.A.* The institute of initiating cases of an administrative offense in the light of control (supervision) reform // Bulletin of the Moscow State University. Series 11: Law. 2023. № 4. P. 136–136

[17] Ibid. P. 140, 147, 150, 150.

concept of «state control (supervision), municipal control» in the CAO of the Russian Federation has been revealed[18].

4. It is stated that it is necessary to ensure the priority of preventive measures of influence on controlled persons provided for by the legislation on control (supervision) in relation to administrative-offence measures to prevent administrative offenses provided for by the CAO of the Russian Federation (introducing submissions to controlled persons about eliminating the causes and conditions that contributed to the commission of an administrative offense)[19]. Taking into account the identified regulatory and law enforcement defects in the procedure for making such a submission, the proposal to abandon the use of that measure to prevent violations by controlled persons is justified[20].

Main provisions put forward for defence:

1. The reform of legislation on control and supervisory activity, which is based on the constitutional principles of proportionality of power intervention in economic activity, maintaining confidence in the law and actions of the state, has influenced the grounds and conditions of bringing controlled persons to administrative responsibility. This influence was predetermined by the normative interrelation of control and supervisory proceedings and proceedings on cases of administrative offences, which are independent forms of exercising the control function of the state, implemented mainly by executive authorities, conducted in a similar procedural order and imply the authoritative resolution of an administrative and legal dispute regarding the presence or absence of violation of mandatory requirements by a controlled person. The coordinated regulation of the mentioned types of administrative process caused by this interrelation has in its basis the constitutional requirements of fairness, proportionality, reasonableness, certainty of legal norms and is necessary to achieve the goal of administrative reforms, which is to optimise state intervention in economic activity.

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[18] Karitskaya A.A. Rules for the imposition and payment of administrative fines: current problems in the constitutional-law context // Journal of constitutional justice. 2024. № 2 (96). P. 23.

[19] Karitskaya A.A. Defects in the mechanism of prevention of administrative offenses in the context of the reform of control and supervisory activities // Journal of Russian law. 2024. Vol. 28. № 7. P. 158.

[20] Ibid. P. 157, 159.

2. The impact of the reform of the legislation on control and supervisory activities on the grounds and conditions for bringing controlled persons to administrative responsibility was manifested in the introduction for controlled persons of special rules for the imposition and enforcement of administrative penalties, restrictions on the initiation of proceedings on an administrative offence expressed in non-compliance with mandatory requirements. However, despite the consistent implementation in the course of reforming the legislation on control and supervisory activities (in the framework of three consecutive stages of comprehensive revision of the relevant basic legislative acts) of the model of administrative and legal policy aimed at improving the situation of controlled persons, the legislator limited himself only to point adjustments of the legislation on administrative offences and did not form a system of norms that would ensure the unambiguous application of the relevant provisions of the law.

3. As a result of the reform of legislation on control and supervisory activities in the Russian legal regulation the issue of admissibility of parallel (and at the same time potentially contradictory) assessment of violation of mandatory requirements based on the results of control (supervision) and within the framework of bringing the controlled person to administrative responsibility remained normatively unresolved. Basic principles of administrative-law regulation allow to recognize that one act of a controlled person, expressed in terms of objective signs in violation (non-observance, non-fulfillment) of mandatory requirements, as a general rule, should entail both the application of measures provided by the control and supervisory regulation (for example, issuance of a prescription), and bringing the controlled person to administrative responsibility (at least in relation to formal corpus delicti of administrative offenses), if there are no other circumstances precluding the proceedings on the relevant case. Equally, the statement of absence of violation (non-observance, non-fulfillment) of mandatory requirements within one proceeding should, as a general rule, exclude the realization of administrative measures within another proceeding.

4. The reform of legislation on control and supervisory activities has not finally resolved the problem of procedural coordination of competing control

(supervisory) and administrative-offence proceedings, as a result of which law enforcement authorities retain the ability to legally bypass rather strict limitations, imposed by the legislation on control (supervision) to assess compliance with mandatory requirements by a controlled person by initiating a case of administrative offense against the controlled person. However, the rules of such coordination of the named administrative proceedings – despite their independent status in the system of administrative activities – are necessary to ensure legal certainty and to achieve the declared by the state goal of reducing administrative interference in economic activity.

The consistent development of provisions of the CAO of the Russian Federation, determining the rules of initiation of cases on administrative offenses, allows us to talk about the formation of a normative model of subordination of administrative-offence proceedings in relation to control and supervisory proceedings by limiting the reasons for initiation of cases on administrative offenses expressed in non-compliance with mandatory requirements. The consequence of the systematic implementation of such a model is to provide a mechanism in which bringing to administrative responsibility as administrative-process proceedings, within which measures of administrative coercion are applied, should strictly follow the conduct of verification activities, not ahead of them.

5. The reform of legislation on control and supervisory activity, based on the idea of the priority of prevention of violations of mandatory requirements, rather than punishment for their commission, created the basis for the consolidation in the CAO of the Russian Federation of special rules for the imposition and enforcement of administrative penalties for offenses identified in the course of control (supervision): mandatory replacement under certain conditions of an administrative fine imposed on the person under control with a warning; the possibility of imposing one administrative penalty for a violation of mandatory requirements; the possibility of paying a fine in a half size).

However, the relevant rules were not fully harmonized with the system of modern legislation of control and supervisory activities, as well as with other

provisions of the CAO of the Russian Federation, because they contained a normatively uncertain concept of «state control (supervision), municipal control», which gave rise to difficulties in determining the range of subjects to whom the said rules should apply. This uncertainty, reinforced by the divergent law enforcement practice, in which the specified concept is perceived in different ways, should be eliminated (for example, by normatively specifying the content of the named concept for the purposes of application of administrative-offence legislation), because otherwise there are risks of arbitrary bringing to administrative responsibility. At the same time, the nature of changes introduced in administrative-offence regulation allows us to talk about the constitutional need to universalize the scope of some novelties (for example, the rules on the replacement of an administrative fine with a warning) and their extension to other (in addition to controlled persons) subjects brought to administrative responsibility.

6. The reform of control and supervisory activity has laid the foundation for the abandonment of the mechanism provided for by the CAO of the Russian Federation for the prevention of administrative offenses by making a submission to the controlled persons on the elimination of causes and conditions that contributed to the commission of an administrative offense. In the existing procedure for making such a submission there are systemic defects, which consist, among other things, in the absence of normative criteria for determining the range of persons to whom such a submission can be made, requirements to the content, procedure and procedural conditions for making a submission. In this regard, taking into account the model of subordination of proceedings on cases of administrative offences in relation to control and supervisory proceedings, substantiated in the work, and in order to prevent unjustified and excessive state coercion, it is proposed to exclude the possibility of making submissions to supervised persons to eliminate the causes and conditions that contributed to the commission of an administrative offense, and to provide for the need to state the circumstances that led to the violation of mandatory requirements in a prescription issued as a result of control and supervisory activities.

CHAPTER 1. CORRELATION OF CONTROL AND SUPERVISORY ACTIVITIES REGULATION AND LEGISLATION ON ADMINISTRATIVE OFFENSES

Paragraph 1. Control (supervisory) activities and rules for their implementation in the system of administrative-law regulation

The Constitution of the Russian Federation[21] guarantees, as the foundations of the constitutional system, the unity of the economic space, traditional for the modern constitutional order, the free movement of goods, services and financial resources, support for competition, freedom of economic activity, recognizes and protects property (including private) – the civilized basis and expression of human freedom[22], and among the constitutional rights and freedoms directly enshrines the right to freely use one's abilities and property for entrepreneurial and other economic activities not prohibited by law (Articles 8, 34 and 35) and implies the freedom of contract arising from these provisions[23]. Such a constitutional model of a market economy, which has been widely enshrined in the constitutional acts of many states[24], is often perceived (in its most simplified version) as a basis for completely denying the state the opportunity to interfere in and influence «free» economic relations: in the literature it is noted that the *laissez-faire* concept has largely acquired the character of a dominant attitude in relation to the issue of state

[21] The Constitution of the Russian Federation (adopted by popular vote on December 12, 1993 with amendments approved by all-Russian vote on July 1, 2020) // Official Internet portal of Legal Information. URL: http://pravo.gov.ru (date of application: 16.06.2024). Hereinafter also – Basic Law.

[22] Judgement of the Constitutional Court of the Russian Federation of 16 July 2008 № 9-P «On the case of verification of the constitutionality of the provisions of Article 82 of the Criminal Procedure Code of the Russian Federation in connection with the complaint of citizen V.V. Kostylev» // CL RF. 28.07.2008. № 30 (Part 2). Art. 3695.

[23] Judgement of the Constitutional Court of the Russian Federation of 23 February 1999 № 4-P «On the case of verification of the constitutionality of the provision of the second part of Article 29 of the Federal Law of 3 February 1996 «On Banks and Banking Activities» in connection with the complaints of citizens O.Y. Veselyashkina, A.Y. Veselyashkin and N.P. Lazarenko» // CL RF. 08.03.1999. № 10. Art. 1254.

[24] On the relevant provisions in the constitutional regulation of foreign countries see: *Yakimova E.M.* The concept of freedom of entrepreneurial activity as an element of the economic basis of the constitutional order in Russia and in the world: the search for an optimal solution // Journal of Foreign Legislation and Comparative Law. 2018. № 1. P. 47–51.

involvement in regulating economic processes[25]. In the Russian legal system this approach is associated by some researchers with a false impression that arose after the transition from a command economy to economic freedom and competition[26].

Meanwhile, the constitutional status of the Russian Federation as a law-governed and social state, whose duty is to recognize, respect and protect rights and freedoms, presupposes the creation of a system of state regulation that equally ensures both the implementation of the freedom of economic activity proclaimed by the Basic Law and compliance by subjects of this activity with mandatory conditions for its performing, introduced to ensure the safeguarding of constitutionally significant values, sustainable economic growth of the country with the indispensable observance of the balance of rights and obligations of all participants in the relevant relations, which follows from the Constitution of the Russian Federation (primarily from its Articles 1, 7, 8 (part 1), 34, 35 (parts 1 and 2), 45 (part 1), 55 (part 3) and 75^{1}). Accordingly, there is hardly any reason to consider the above-mentioned provisions of the Basic Law as a kind of «security certificate» blocking the impact of public authority on economic activity, which is implemented, in particular, through state regulation of the economy and the appropriate control[27]. The systemic perception of the current constitutional and legislative regulation determines the need for these measures to be implemented by the state so that human and civil rights are protected, constitutional duties are fulfilled and sustainable economic growth and economic solidarity are guaranteed. At the same time, a balance is important, since the proper economic order in a constitutional state is equally harmed by both unlimited freedom and unlimited

[25] *Blanc F.O.M.* From chasing violations to managing risks: origins, challenges and evolutions in regulatory inspections: doctoral thesis. Leiden University, 2016. P. 112. URL: https://hdl.handle.net/1887/44710 (access date: 16.06.2024); *Plotnikova I.N.* Genesis of theoretical concepts and legal foundations of economic freedom of the individual // Actual problems of Russian law. 2021. № 6. P. 31–47.

[26] It is noted that later a more rational view of the necessity of coexistence of the free market and state regulation turned out as a basic. See: *Studenikina M.S.* State control and application of administrative responsibility as forms of state regulation of economic processes / Administrative-law regulation in the sphere of economic relations / Academic Law University at the Institute of State and Law of the Russian Academy of Sciences; ed. by I.L. Bachilo, N.Y. Khamaneva. M., 2001. P. 41.

[27] *Dmitrikova E.A., Karitskaya A.A., Trofimov A.A.* Constitutional foundations of differentiation of control and supervisory proceedings and proceedings on administrative offences// Law. 2023. № 5. P. 188.

state paternalism[28], which places the direct provision of material production under the responsibility of public authorities[29].

Assigning to the state the status of the main subject of influence on economic relations (as well as the key subject of these relations themselves) was characteristic of the Soviet administrative-law system of managing the production of goods, which connected planning, regulation, general management in the economic sphere with the activities of state bodies[30]. However, within the framework of the current constitutional concept of state administration, the implementation of economic processes is associated with the functioning of independent economically active entities, which, acting primarily in their own interest, simultaneously provide a contribution to the common good[31].

However, the above does not mean that the state remains in the status of a passive observer of economic processes. On the contrary, it is designed to ensure the proper functioning of a free economy and the protection of other values by limiting economic freedom in favor of protecting the rights and freedoms of others (for example, by introducing technical standards), taking measures to maintain competition, industrial and technical safety, etc. The task of public authorities, accordingly, is to create, including by administrative-law means, conditions for coordinating the realization of economic rights and freedoms with other constitutionally significant values[32], which corresponds with the idea of transforming the role of the state, which, along with protective functions, also performs the functions of active support for activities in the economic sphere[33]. It is no coincidence that the Constitutional Court of the Russian Federation

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[28] On the limits of realisation of the rights of entrepreneurs and the limits of state intervention in the economy arising from the constitutional principles of state regulation of the economy, which constitute the constitutional economic order, see, in particular: *Gadzhiev G.A.* Protection of basic economic rights and freedoms of entrepreneurs abroad and in the Russian Federation (experience of comparative study). M.: Manuscript, 1995.

[29] On this position see: *Chirkin V.E.* Public Administration. Elementary course. M.: Yurist, 2001. P. 140.

[30] Soviet administrative law. Forms and methods of state administration / ed. by Y.M. Kozlov, B.M. Lazarev et al. M.: Yuridicheskaya Literatura, 1977. P. 21.

[31] Constitutional Economics / ed. by G.A. Gadzhiev. M.: Justitsinform, 2010. P. 96.

[32] As R. Stober notes, the «economic supervision» of the state, i.e. its activities aimed at ensuring compliance with the requirements for economic activity, is a means of «improving economic freedom in the interests of the common good». See: *Stober R.* Economic Administrative Law. Fundamentals and problems. World Economy and Domestic Market. M.: Wolters Kluwer, 2008. P. 243.

[33] *Cassese S.* New paths for administrative law: a manifesto // International Journal of Constitutional Law. 2012. Volume 10. Issue 3. P. 604.

emphasizes that the duties of the state include legal regulation of economic activity aimed at creating the most favorable conditions for the development of economic relations, for which a system of measures to protect the rights of both subjects of this activity and other persons should be created[34].

In solving this task, the state, on the one hand, imposes specific requirements on economic entities and, on the other hand, establishes a mechanism for assessing compliance with these requirements. This, accordingly, dictates the consolidation in legislation of special rules defining the requirements for economic activity themselves (the so-called «mandatory requirements») and the procedure for their assessment by authorized authorities implementing the general control function of the state in the economic sphere[35].

Traditionally, the functions of public authority in the literature include political, economic, protective functions, the function of maintaining public order[36]. The Constitutional Court of the Russian Federation has also repeatedly spoken about the social law enforcement and other functions that are carried out by the Russian Federation through a state authorities[37]. The allocation of control which is defined in the doctrine as a means of ensuring legality, a form of exercising an administrative function, an institution, competence, etc.[38], as an independent function of the state may not seem indisputable, especially since some

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[34] Decision of the Constitutional Court of the Russian Federation of 16 January 2018 № 10-O «On the complaint of citizens Lebedik Zoya Olegovna, Melnikov Dmitry Alekseevich and Shatshneider Vladimir Ivanovich on the violation of their constitutional rights of Articles 2 and 10 of the Federal Law «On the basis of state regulation of trade activities in the Russian Federation» and paragraph 4 of the Decree of the President of the Russian Federation «On freedom of trade». Hereinafter the decisions of the Constitutional Court of the Russian Federation are given with the use of the SPS «ConsultantPlus».

[35] *Dmitrikova E.A., Karitskaya A.A., Trofimov A.A.* Review of scientific research on control and supervision activities in Russia and China // Bulletin of Nizhny Novgorod University named after N.I. Lobachevsky. 2023. № 4. P. 86.

[36] *Bredikhin A.L.* On the functions of the state // History of state and law. 2013. № 22. P. 17–20.

[37] Judgement of the Constitutional Court of the Russian Federation of 11 January 2018 № 1-P «On the case of verification the constitutionality of part one of Article 81^1 and paragraph 31 of part two of Article 82 of the Code of Criminal Procedure of the Russian Federation in connection with the complaint of limited liability company «Sinklit» // CL RF. 22.01.2018. № 4. Art. 685; Judgement of the Constitutional Court of the Russian Federation of 16 July 2004 № 14-P «On the case of verification of the constitutionality of certain provisions of the second part of Article 89 of the Tax Code of the Russian Federation in connection with the complaints of citizens A.D. Egorov and N.V. Chuev» // CL RF. 26.07.2004. № 30. Art. 3214.

[38] Administrative Reform in Russia. Scientific and practical manual. Access from the SPS «ConsultantPlus».

researchers call it a necessary, but at the same time a «secondary and auxiliary» function[39].

Meanwhile, the peculiarities of control activities, which are of a public-law, power-binding nature[40] and are embodied in the corrective, preventive and protective effect of the state on public relations[41], allow us to state that, along with the traditionally allocated functions, the state also performs an independent unified control function, which has a constitutional-law nature, derived from the meaning of the legal positions of the Constitutional Court Of the Russian Federation from the regulatory impact of the state on public relations[42]. The constitutional nature of the general control function of the state is also indicated by the text of the Basic Law, which speaks about budgetary (Article 101, part 5), parliamentary (Article 103^1) and constitutional (Article 125, part 1) types of control, and also provides for monitoring compliance with federal laws (Article 71, subpart «a») and the implementation of state powers delegated to local governments (Article 132, part 2).

Consequently, although the control function does not find a systematic and generalized consolidation in the text of the Constitution of the Russian Federation, it, being an integral element of governmental administration[43], is, according to the fair remark of researchers, an indispensable component of the system of public power[44] and follows from its very essence[45]. The exercise of power in the state is invariably associated with governance, and it hardly requires additional

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[39] Legal regulation of state control: a monograph / ed. by A.F. Nozdrachev. M.: Institute of Legislation and Comparative Law under the Government of the Russian Federation; «Ankil», 2012. Access from the SPS «Garant»; Control in modern Russia: issues of theory and practice of legal regulation: a monograph / V.P. Belyaev, O.V. Brezhnev et al. M.: Yurlitinform, 2013. P. 25.

[40] *Melnikov N.V.* To the question of the need for constitutional consolidation of the control power in Russia // Journal of constitutional justice. 2012. № 4. P. 18.

[41] *Gorshenev V.M., Shakhov I.B.* Control as a legal form of activity. M.: Yurid. lit., 1987. P. 33–35.

[42] Judgement of the Constitutional Court of the Russian Federation of 18 July 2008 № 10-P «On the case of verification the constitutionality of the provisions of paragraph fourteen of Article 3 and paragraph 3 of Article 10 of the Federal Law «On Protection of the Rights of Legal Entities and Individual Entrepreneurs in the course of state control (supervision)» in connection with the complaint of citizen V.V. Mikhailov» // CL RF. 04.08.2008. № 31. Art. 3763.

[43] *Gorshenev V.M., Shakhov I.B.* Op. cit. p. 29.

[44] *Dzhagaryan A.A.* Constitutional-law bases of the state control in the Russian Federation. M.: Formula prava, 2008. P. 20–22.

[45] *Danshina N.A.* To the question of control power // Administrative and Municipal Law. 2008. № 2. Access from SPS «ConsultantPlus».

justification that the administrative activities of public authorities are reflected in the functionality of all relevant bodies. This activity, in turn, implies the need to assess how the relevant public authority decisions are being implemented, and whether the behavior of legal entities is consistent with the rules of conduct established in a normative or individually binding form, i.e. the need for control[46]. Control, as B.M. Lazarev emphasized, is an administrative function designed to detect and assess the compliance or non-compliance of the actual state and activities of managed facilities with their presupposed state, as well as to eliminate identified deviations from such a state[47].

The control function, which manifests itself in general in the activities of all state bodies[48], in relation to economic relations, is most fully revealed in the activities of the executive branch, which is built in a «vertical»[49] hierarchical system, suitable for systematic control and having the necessary resources (organizational, information, etc.). The bulk of administrative functions are performed in the activities of the executive branch[50], which, as noted in the literature, will not be able to fulfill its purpose without systematic state control[51]. Pre-soviet jurists also associated control with the executive branch, who saw in the so-called «police activity of the state» the implementation by the executive branch of «overwatch» of private entities in order to create conditions of security and well-being and take the necessary measures for this[52].

Executive bodies exercise «control power» (inter alia in the economic sphere) in various forms, one of which is specific control and supervisory

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[46] *Dzhagaryan A.A.* Op. cit. P. 16.

[47] *Lazarev B.M.* Competence of administrative bodies. M.: Yuridicheskaya Literatura. 1972. P. 38.

[48] *Savenko O.E.* Control function of the state bodies: abstract dis. ... cand. of legal sciences. M., 2004. P. 9.

[49] *Zyryanov S.M.* State control (supervision): monograph. M.: CONTRACT, 2023. Access from SPS «ConsultantPlus».

[50] *Rossinsky B.V.* Problems of state management from the position of the theory of systems. M.: Norma, Infra-M., 2021. P. 200–202; Control and supervision as guarantees of legality: theoretical and legal aspect: monograph / S.G. Nistratov, A.A. Redko. M.: Norma; Infra-M, 2022. P. 73.

[51] *Gurin A.I.* State control as a form of realisation of executive power: abstract dis. ... cand. of legal sciences. M., 2005. P. 11.

[52] *Andreevskiy I.E.* Police law / Russian police (administrative law): the end of XIX – the beginning of XX century: a textbook / comp. and intro. art. by Yu.N. Starilov. Voronezh: Voronezh State University Publishing House, 1999. P. 49.

activities[53]. Current legal regulation connects the activities of executive authorities with control (tax, antimonopoly, border, licensing, etc.) and supervision (in the field of construction, activities of non-profit organizations, nuclear energy, etc.) in a variety of areas, so different, that only on the basis of listing all formally fixed types of control and supervision to determine a single legal the content of such activities is difficult. Moreover, the terms «control» and «supervision» are often used as having the same meaning, which at the same time does not allow us to unambiguously determine what kind of activity the relevant body carries out. For example, the Federal Service for *Supervision* of Natural Resources within the established limits exercises powers over federal state forest control (supervision), which in the Forest Code of the Russian Federation (part 1 of Article 96) is abbreviated as «state *supervision*»[54]; in addition, this body is authorized to carry out federal state *environmental control (supervision)*, for which the abbreviation «state environmental *control*» is used[55]. At the same time, in addition to terminological discrepancies in regulation[56], the use of the concepts of «control» and «supervision» remains very contradictory in doctrine (experts, analyzing the problems of control and supervisory activities, speak of both «administrative supervision»[57] and «state control»[58]), which prevents unambiguous perception of the essence of these types of activities that obliges the placement of some accents and clarifications.

The problem of defining and differentiating control and supervision (or, as it was called before, revision) was raised in pre-soviet legal science[59]; it was not

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[53] *Martynov A.V.* Control power in Russia: concept, forms and legal significance // Vestnik of Nizhny Novgorod Lobachevsky University. 2009. № 3. P. 209.

[54] Forest Code of the Russian Federation of December 4, 2006 № 200-FZ // CL RF. 11.12.2006. № 50. Art. 5278.

[55] Item 1 of the Regulations on federal state environmental control (supervision) (approved by Decision of the Government of the Russian Federation of June 30, 2021 № 1096) // CL RF. 12.07.2021. № 28 (Part I). Art. 5526.

[56] On the contradictions similar to those described, but in relation to the sphere of banking activities, see: *Kurdyumov M.D.* On the problem of correlation of the terms «control» and «supervision» on the example of power activity to ensure competition in the banking sector // Russian Justice. 2021. № 2. P. 23–26.

[57] *Zyryanov S.M.* Administrative supervision of executive authorities: abstract dis. ... doct. of legal sciences. M., 2010.

[58] *Oslyakov V.G.* State control over the implementation of entrepreneurial activity (legal aspect): abstract dis. ... cand. of legal sciences. M., 2010.

[59] *Tarasov I.T.* A brief outline of the science of administrative law: lecture notes. Volume 1. Yaroslavl: Tipo-lithography of G. Falk, 1888. P. 348–358.

ignored by the Soviet legal scholars, that is attentive to the comparison of concepts[60]. However, to date, no significant unity of positions has been formed on this issue either in the literature or in regulatory regulation, which would form a confident conceptual basis: scientists separate[61], combine[62] or equalize[63] control and supervision according to certain criteria, and the legislator, following, probably, the established state-legal tradition, separates prosecutor's supervision, but at the same time uses the terms «control» and «supervision» as interchangeable and synonymous (in particular, in the Federal Law on State Control (Supervision).

Such doctrinal uncertainty, coupled with existing legislative practice, has led to the emergence of a rather radical point of view that «the separation of the concepts of «control» and «supervision» is devoid of practical meaning[64]. Moreover, the rejection of scholastic searches for a watershed between control and supervision, experts believe, will allow us to concentrate research efforts on studying «the generic function of executive authorities carried out by them in relation to independent, unsubordinate economic entities, inter alia in relation to citizens»[65]. In modern administrative-law doctrine, one can already find examples of monographic studies in which the concepts of «state control» and «state supervision» are used as one-order terms in relation to the description of the activities of executive authorities[66].

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[60] Thus, control and supervision, along with the verification of performance, the Soviet administrative-law science attributed to the methods of ensuring legality in administration. It was noted that supervision is a specific type of state control, which differs from control by the absence of subordination between the supervisory body and the subject under inspection. See: Administrative law (General and Special parts) / ed. by Y.M. Kozlov. M.: Yurid. lit., 1968. P. 275.

[61] See: *Belyaev V.P.* Control and supervision: problems of differentiation // Actual problems of Russian law. 2017. № 4. P. 199–207.

[62] Y.A. Tikhomirov, for example, attributed administrative supervision to a type of state control exercised by executive authorities. See: *Tikhomirov Y.A.* Course of administrative law and process. M.: Yurinformcentre, 1998. P. 533.

[63] *Bratashova Y.A.* Problems of improving the system of state control in modern conditions // Laws of Russia: experience, analysis, practice. 2018. № 11. Access from SPS «ConsultantPlus».

[64] *Kudilinsky M.N.* Control as a type of state-administrative activity. Correlation of the concepts of «control» and «supervision» // Actual problems of Russian law. 2015. № 8. P. 52.

[65] *Nozdrachev A.F., Zyryanov S.M., Kalmykova A.V.* Reform of state control (supervision) and municipal control // Journal of Russian law. 2017. № 9. P. 34–46.

[66] See inter alia: *Fesko D.S.* Administrative-law guarantees of ensuring the rights of citizens and organisations in the implementation of state control (supervision): theory and practice: monograph / edited by V.V. Chernikov. M.: Prospect, 2023; *Zyryanov S.M.* State control (supervision): monograph.

The consistency of this approach is justified by the fact that some of the features (for example, assessment of the activities of controlled persons, focus on ensuring rights and freedoms) are common to control and supervision – this is explained by their unified nature of the forms of exercising the control function of the state. At the same time, the signs by which control and supervision were separated in Soviet administrative law (an assessment of expediency or legality; the presence or absence of hierarchical relations between the inspector and the person, being checked) were relevant within the framework of the previously existing system of administrative regulation, but now they can no longer be used as the basis for classifying ways to implement the state control function. In the modern Russian legal system, all inspection bodies – both control and supervisory – carry out their activities in relation to subjects that are not subordinate to them, as a general rule, and do not assess the economic feasibility of their activities. The absence of clear criteria for distinguishing control and supervision may also indicate that the substantive difference between these concepts is so elusive that the legislator deliberately does not undertake the obviously impossible task of distinguishing them. According to some authors, legal science also capitulates to this task, in which there is no clear distinction between the essence of the concepts of «control» and «supervision»[67].

In the context of this study, even under conditions of some normative and doctrinal categorical uncertainty, control (supervision) is understood as the activity of authorized bodies, defined as «state control (supervision), municipal control» in accordance with the basic legislative act – Federal Law on State Control (Supervision). This allows, basing on normative material, to study changes (reforms) in the regulation of control (supervision) in its composition, in which it is formally recognized as such, and exclude from consideration other manifestations of the general state control function – parliamentary control, prosecutor's supervision and other activities not classified by law as state control (supervision), municipal control (i.e. tax or antitrust control).

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[67] *Petrov A.V., Epifanov A.E.* Legal nature of state control and supervision // Journal of Russian law. 2013. № 7 (199). P. 43.

To assess the position of control (supervision) in the system of modern administrative law, it is necessary to analyze the normative provisions determining its relationship with other types of administrative activities.

From a normative point of view, the functions of executive authorities for control and supervision include: actions to control and supervise the execution by public authorities, officials, organizations and citizens of generally binding rules of conduct established by normative legal acts; issuance of permits (licenses) to carry out a certain type of activity and (or) specific actions; registration of acts, documents, rights, objects, as well as the adoption of individual legal acts[68]. Among the above types of activities, control (supervision) actions differ in that they are carried out by virtue of mandatory provisions of the law and on the initiative of government entities, and their result may be the application of special measures (for example, the issuance of an prescription to eliminate a violation). At the same time, other activities formally attributed to the functions of control (supervision), on the contrary, represent the commission of positive and conflict-free[69] administrative actions due to the voluntary and proactive (excluding coercion) expression of the will of the applicant for the relevant administrative action, which, in case of non-fulfillment of certain requirements, will only be denied his request to commit such a actions without evaluating his activities in terms of the presence of signs of illegality[70]. Taking into account the noted difference, control (supervision) in this work is understood exclusively in a narrow sense, i.e. as an activity within which the authorized authorities evaluate the established rules and requirements.

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[68] Decree of the President of the Russian Federation of March 9, 2004 № 314 «On the system and structure of federal executive authorities» (subparagraph «b» of paragraph 2) // CL RF. № 11. 15.03.2004. Art. 945.

[69] As A.B. Zelentsov emphasises, a legal conflict is «a confrontation of subjects of law, in which they justify their claims or refusal to satisfy their claims on the existing legislation or act contrary to the established legal prohibitions and legal obligations». See: *Zelentsov A.B.* Theoretical bases of legal dispute: dis. .... doct. of legal sciences. M., 2005. URL: https://www.dissercat.com/content/teoreticheskie-osnovy-pravovogo-spora (access date: 31.05.2024).

[70] In the literature such activity is characterised as administrative proceedings (*Kononov P.I.* Administrative proceedings in the sphere of state regulation of economic activity / Administrative-law regulation in the sphere of economic relations. P. 91) or administrative procedures (Administrative procedures: monograph / ed. L.L. Popov, S.M. Zubarev. M.: Norma; Infra-M., 2017. P. 17–18, 27 et al.; *Davydov K.V.* Administrative procedures: the concept of legal regulation: dis. ... doct. of legal sciences. Nizhny Novgorod, 2020. P. 75).

The current Russian control and supervisory regulation is represented by various acts that determine the procedure for state and municipal control (supervision) of compliance with mandatory requirements in various fields. The basis of this regulatory body is currently the Federal Law on Control (Supervision), which in Article 1 (part 1) defines, for the purposes of this Federal Law, state control (supervision), municipal control in the Russian Federation as the activity of control (supervisory) bodies aimed at preventing, detecting and suppressing violations of mandatory requirements, carried out within the powers of these bodies through the prevention of violations of mandatory requirements, assessment of compliance by citizens and organizations with mandatory requirements, to identify their violations, to take measures provided for by the legislation of the Russian Federation to suppress the identified violations of mandatory requirements, eliminate their consequences and (or) restore the legal situation that existed before the occurrence of such violations. The basic nature of this Federal Law is indicated by its direct indication that the normative legal regulation of relations arising in connection with the organization and implementation of state control (supervision), municipal control is carried out by this Federal Law, as well as – in cases and within the limits established by this Federal Law – by other normative legal acts (part 1 of Article 3).

The model of regulation of the control and supervisory activities of public authorities laid down by the Federal Law on Control (Supervision) did not form a systematic and unified set of rules for control (supervision), although the achievement of this goal was determined as the motive for the next (latest at the moment) revision of the regulatory system in this area[71]. The named Federal Law in Article 1 excludes, for the purposes of this Federal Law, a number of activities from the content of state and municipal control and supervision (exceptions include mainly specific law enforcement activities in their essence – crime investigation, state protection, etc.). Taking into account the above exceptions, the Federal Law on Control (Supervision) regulates relations on the organization and

[71] See: Passport of the priority program «Reform of control and supervisory activities».
On the stages of administrative reform also see: *A.F. Nozdrachev, S.M. Zyryanov, A.V. Kalmykova,* Op. cit.

implementation of state control (supervision), municipal control, establishes guarantees for the protection of the rights of citizens and organizations as controlled persons subject to mandatory requirements. At the same time, the provisions of this Federal Law, according to its own prescriptions, do not apply to a number of types of control and supervisory activities, which could potentially be regulated by a general legislative act, but for one reason or another fell out of the area covered by the Federal Law on Control (Supervision).

Such a decision of the legislator is dictated by the need to take into account the specifics of certain types of control (supervision), the differences in tasks solved within the framework of the relevant administrative-process activities[72]. The Constitutional Court of the Russian Federation, in turn, emphasized that the definition of the specifics and procedure for the application of control and supervisory procedures belongs to the discretion of the legislator, who must take into account the specifics and nature of the relevant relations and is bound by the general constitutional principles of the organization of the system of public authorities; the regulation carried out by it should correspond to the legal nature and nature of public relations in the field of state control (supervision) [73]. At the same time, it should also be noted that the presence of many regulatory legal acts that define the scope of guarantees for controlled persons and the procedures for conducting control measures in different ways is somewhat at odds with aim of the unification of legislation on control (supervision), which was stated to be achieved by the reform that took place in 2020.

The rules stipulated by the Federal Law on State Control (Supervision) assume, according to its article 15, the assessment of compliance with mandatory requirements; requirements contained in permits (for example, a permit for the transportation of dangerous goods[74]); requirements of documents, the execution of which is necessary in accordance with the legislation of the Russian Federation

[72] *Karitskaya A.A.* Legislation on control and supervisory activities in the constitutional-justice dimension. P. 23.

[73] Judgement of the Constitutional Court of the Russian Federation of 18 July 2008 № 10-P.

[74] Federal Law of July 24, 1998 № 127-FZ «On State Control over International Road Transport and Liability for Violation of the Procedure of International Road Transport» (Article 4) // CL RF. 03.08.1998. № 31. Art. 3805.

Federations (for example, standardization documents[75]); execution of decisions taken based on the results of control (supervisory) measures (for example, assessment of the execution of a previously issued prescription). For such an assessment, by virtue of article 16 of this Federal Law, control (supervision) is carried out with respect to activities, actions (inaction), within which mandatory requirements must be met; results of activities (including products (goods), works and services), which are subject to mandatory requirements; specific production facilities (buildings, premises, equipment, materials, components of the natural environment) to which mandatory requirements are imposed.

By virtue of the Federal Law on Control (Supervision), a specific expression of control (supervision) activities are control and supervisory measures carried out with or without interaction with a controlled person (Article 56) by performing control and supervisory actions provided for in Article 65 of this Federal Law (inspection; overlooking; interview; receipt of written explanations; requesting documents; sampling; instrumental examination; testing; examination; experiment). This Federal Law defines in detail the procedure for carrying out these measures (Chapter 13) and actions (Chapter 14), and also establishes that the results of a control (supervisory) event include assessment of compliance by a controlled person with mandatory requirements, creation of conditions for preventing violations of mandatory requirements and (or) termination of their violations, restoration of the violated situation, sending information to authorized bodies or officials for consideration of the issue of bringing to responsibility and (or) application by the control (supervisory) body of measures to prevent harm (damage) to legally protected values or to stop its infliction (Article 87). At the same time, the said Federal Law also establishes the procedure for reviewing the act of a control and supervisory event, which assumes that the controlled person has the opportunity to challenge the conclusions of the controlling entity on the existence of violations of mandatory requirements to a higher authority (higher

[75] Federal Law of June 29, 2015 № 162-FZ «On standardisation in the Russian Federation» // CL RF. 06.07.2015. № 27. Art. 3953.

official) by filing a complaint containing disagreement with the act of a control (supervisory) event (Articles 39–43 and 89).

As follows from Article 90 of the Federal Law on Control (Supervision), the detection of violations of mandatory requirements by a controlled person during a control (supervisory) event entails the issuance of a prescription to eliminate the detected violations; taking measures to prevent harm (damage) to legally protected values or termination of its infliction, bringing information about it to the attention of citizens, organizations. At the same time, if during such an event signs of a crime or an administrative offense are revealed, the inspector of the supervisory authority sends the relevant information to the state body in accordance with his competence or independently takes measures to bring the perpetrators to the responsibility established by law. In addition, the inspector is also considering the issue of issuing recommendations on compliance with mandatory requirements, carrying out prevention of risks of harm (damage) to legally protected values.

It follows from the above regulatory prescriptions that the specified Federal Law defines in detail the circle of participants in control (supervision) relations and refers to them as subjects of relevant events and controlled persons, as well as witnesses, experts, and also regulates in detail the status of relevant persons in these relations (or determines the possibility of specifying this status in other normative documents acts); in addition, the Federal Law on Control (Supervision) strictly regulates the types, grounds and procedure (including deadlines) for conducting control measures, establishes the types of decisions taken based on their results, their legal consequences and the procedure for execution. This makes it possible to correlate the control (supervision) carried out in accordance with the named Federal Law with the category of administrative process, which, from a doctrinal point of view, developed back in Soviet administrative and legal science under the influence of V.D. Sorokin's works, is considered as the activity of public administration bodies to resolve all categories of individual legal cases under their

jurisdiction (related and unrelated to the resolution of disputes and conflicts) within the framework of certain proceedings[76].

The analysis of approaches to the definition of the administrative process, especially in the part in which its content does not relate to control (supervision) and proceedings in cases of administrative offenses, is not included in the subject of this study. However, it should be noted that the mentioned «administrative» concept of the administrative process has been repeatedly criticized, inter alia from the position of attributing to the administrative process such activities as consideration by judges of cases of administrative offenses or administrative cases within the framework of the relevant type of legal proceedings[77]. In addition, pointing to the «methodological impasse» (connected precisely with the inconsistency of the position of the court exercising administrative jurisdiction) in which this concept of administrative process found itself, some authors emphasized the prospects of an integrated approach to the administrative process as an activity covering both the exercise of administrative functions by administrative bodies, and administrative judicial proceedings[78].

The noted shortcomings of the concept under consideration, however, do not in themselves refute the administrative-process nature of control and supervisory activities, which is generally recognized in the modern doctrine of administrative law[79]. At the same time, it is stated that control (supervision) has the characteristics of production, which is defined as a set of interrelated actions united by a common

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[76] *Sorokin V.D.* Problems of administrative process: monograph. M.: Yuridicheskaya Literatura, 1968. P. 53, 71–76.

[77] The considered concept of administrative process was opposed to the positions on the identification of administrative process exclusively with the activity on the resolution of administrative-law disputes (the so-called «jurisdictional concept»; see: *Salishcheva N.G*. The best works. M.: RAP, 2011. P. 19) or with administrative justice (*Starilov Yu.N.* Administrative Justice: Problems of Theory. Voronezh: Voronezh State University Publishing House. 1998. P. 44, 53, 55, etc.).

Meanwhile, the very «administrative» concept of administrative process has been adjusted over time. See about it: *Kaplunov A.I.* The importance of the works of V.D. Sorokin for the development of scientific ideas about administrative process and the status of administrative procedural legislation // Administrative law and process. 2014. № 3. P. 28–35.

[78] *Zelentsov A.B., Kononov P.I., Stakhov A.I.* Administrative process and administrative-procedural law in Russia: conceptual problems of modern development // Administrative law and process. 2013. № 12. P. 3–15.

[79] See about it: Control in modern Russia: issues of theory and practice of legal regulation: monograph. P. 37–43; *Zubarev S.M.* Procedural nature of control and supervision // Administrative law and process. 2016. № 2. P. 10–14; *Zyryanov S.M.* Procedural form of implementation of administrative supervision // Journal of Russian law. 2010. № 1 (157). P. 74–83.

subject, corresponding to certain substantial relations, mediating the procedure for clarifying and evaluating the circumstances of the case and assuming the official registration of the result of these actions[80]. The signs of administrative proceedings in science also include the limited time of actions and decisions of bodies (authorized officials) of public administration on the application of administrative-directive and administrative-protective measures in an extrajudicial manner; the complex of such actions and decisions includes, in particular, control and supervisory activities as a type of administrative process[81].

Thus, taking into account the provisions reflected in the legislation on the rules of control and supervisory activities, the circle of participants in the relevant legal relations, the procedure and stages of control and supervisory measures, the requirements for registration of decisions taken based on their results, it can be stated that the current legislation has received its regulatory formalization of control and supervisory proceedings, which is part of the structure of the administrative process.

At the same time, the reflected in the doctrine of administrative law difficulties of an unambiguous defining the structure of the administrative process[82] and the ongoing scientific discussion[83] on this issue make it difficult to fully characterize control and supervisory proceedings, including from the point of view of its correlation with other types of administrative proceedings. The literature notes, for example, that executive authorities, solving the tasks of preventing, detecting and eliminating administrative offenses and other violations of administrative legislation, perform an administrative-jurisdictional function by conducting verification measures in established forms, issuing prescriptions as

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[80] *Panova I.V.* Administrative-procedural activity in the Russian Federation. Monograph. Saratov: Privolzhskoe book edition, 2001. P. 69.

[81] *Stakhov A.I.* Administrative process in cases arising from control and supervisory legal relations: monograph. M.: RGUP, 2023. P. 31.

Comparable assessments of control (control-procedural) proceedings were also given in the Soviet administrative-law science. See: *Gorshenev V.M., Shakhov I.B.* Op. cit. P. 78, 116–139.

[82] See about it: *Starilov Yu.N.* Administrative process in the works of Professor V.D. Sorokin: «Administrative» concept and its significance for the science of administrative law // Administrative law and process. 2007. № 1. Access from the SPS «ConsultantPlus».

[83] *Leshchina E.L.* Modern approaches to the definition of the structure of administrative process // Administrative law and process. 2021. № 1. Accessed from SPS «ConsultantPlus»

measures of administrative-law prevention, and bringing to administrative responsibility[84]. A.I. Martynov, stressing the related nature of administrative-offence and control (supervisory) proceedings, refers them to the administrative-jurisdictional proceedings, justifying it by the fact that «during the implementation of procedures of state control and supervision there is a legal assessment of the behaviour of controlled persons, as a result of which a legal conflict (dispute) may arise»[85]. Thus, control and supervisory activities are considered in the doctrine as administrative proceedings of a jurisdictional nature.

Although, P.P. Serkov, for example, refuses to recognize the jurisdictional status of any type of administrative process other than judicial[86]. M.N. Kudilinsky, in turn, notes that bringing to a responsibility as a jurisdictional proceeding and «control procedures» differ in sources of legal regulation, rights and obligations of participants in relations, and goals; the opposite, in his opinion, would mean that «jurisdictional, analytical, organizational, managerial, predictive and many other types of activities» would be mistakenly attributed to types of state control[87]. There are some similarities between the two types of proceedings (supervisory and jurisdictional), which consist in the introduction of restrictions on the powers of executive authorities, similar methodological approaches to regulation and the fact that these proceedings are an integral part of government activities, according to M.N. Kudilinsky, do not refute the fundamentally different nature of these proceedings, which consists in the fact that control proceedings are aimed at collecting information, and the assessment of the activities of a controlled person is secondary; for jurisdictional proceedings, in turn, such an assessment is a system-

[84] See: Forms and methods of public administration in modern conditions of development: monograph / ed. by S.V. Zapolsky. M.: Prometheus, 2017. P. 48.

[85] *Martynov A.V.* Control and supervisory proceedings as part of the modern administrative process // Actual problems of administrative and administrative-procedural law (Sorokin readings): Collection of articles on the materials of the international scientific-practical conference dedicated to the memory of Doctor of Law, Professor, Honoured Worker of Science of the Russian Federation Sorokin Valentin Dmitrievich in connection with the 100th anniversary of his birth, St. Petersburg, 29 March 2024. St. Petersburg: St. Petersburg University of the Ministry of Internal Affairs of the Russian Federation, 2024. P. 704–705, 711.

[86] *Serkov P.P.* Op. cit. P. 286.

[87] *Kudilinsky M.N.* To the question of the goals of state control // Vestnik of St. Petersburg State University. Series 14. Law. 2016. Vol. 3. P. 34.

forming task[88]. In a similar sense, L.A. Mickiewicz and A.F. Vasilieva believe that control (supervision) and bringing to administrative responsibility are independent functions of public administration and differ in «goals, bodies, procedures, procedural registration of results»[89].

Without denying the independence of control-supervisory activities and proceedings in cases of administrative offenses, it should be noted that control and supervisory proceedings involve the implementation of traditional functions of administrative and jurisdictional proceedings (protective, instructive and regulatory[90]). In addition, control and supervisory proceedings not only do not exclude[91], but, on the contrary, presuppose an imperative (authoritative) resolution of a management dispute[92] (by adopting a decision provided for in Article 90 of the Federal Law on Control (Supervision) on the presence or absence of a violation of mandatory requirements, which is subject to mandatory execution). At the same time, a decision issued to a controlled person in the event that violations of mandatory requirements are detected during a control (supervisory) event cannot be regarded as a «proposal to improve management activities, eliminate identified deficiencies» as some researchers suggest[93]. It is obvious that the nature of the act of the supervisory authority on the elimination of violations of mandatory requirements excludes its qualification as a «proposal» aimed at «improving» or «eliminating shortcomings» of the activity (unlike, for example, a warning that can be announced to a controlled person and indeed contains a «proposal to ensure

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[88] *Kudilinsky M.N.* Correlation of control and jurisdictional proceedings // Journal of Constitutional Justice. 2021. № 2 (80). P. 6.

[89] *Mitskevich L.A., Vasilieva A.F.* State control (supervision) in the sphere of entrepreneurship and administrative responsibility: criteria of correlation // Laws of Russia: experience, analysis, practice. 2017. № 6. Access from the SPS «ConsultantPlus».

[90] On these functions see: *Galagan I.A.* Administrative responsibility in the USSR: process regulation. Voronezh: Izd-vo Voronezhskogo un-ta, 1976 / Ivan Aleksandrovich Galagan and his scientific heritage / ed. by Yu.N. Starilov. Voronezh: Voronezh State University Publishing House, 2010. P. 399.

[91] O.V. Pankova, for example, believes that control and supervisory activities are not associated with conflict resolution. See: *Pankova O.V.* Modern concept of administrative jurisdiction: the experience of critical rethinking // Lex Russica. 2019. № 2 (147). P. 59.

[92] Such a dispute can be understood not only as a contradiction between the parties to an administrative-law relationship, necessarily resolved by a third party (arbitrator), but also any disagreement between the subjects of administrative law on the issue of differently understood rights and obligations, the legality of legal acts of administration. See about it: *Zelentsov A.B., Yakhin F.F.* On the subject of administrative-law dispute // Jurist. 2003. № 11. Access from the SPS «ConsultantPlus».

[93] Administrative procedures: monograph. P. 179.

compliance with mandatory requirements»). The prescription of the control (supervisory) body is subject primarily to voluntary execution, but nevertheless it is ensured by the threat of potential prosecution for its non-fulfillment, as well as the possibility of taking measures to enforce this order (paragraph 4 of part 1 of Article 90 of the Federal Law on Control (Supervision).

Accordingly, although the decisions of the supervisory authority taken in this order, stating the existence of a violation of mandatory requirements, do not have the quality of compulsory execution[94], they nevertheless reflect the governmental assessment of the behavior of the controlled person and entail legal consequences for him. This allows us to support judgments about the existence of a common administrative procedural form, within which control and supervisory proceedings and proceedings on administrative offenses are considered as jurisdictional administrative proceedings that provide an opportunity to resolve a conflict that has arisen in the field of public administration[95].

The qualification of control and supervisory proceedings as protective jurisdictional administrative proceedings is largely based on the thesis of its connection with the use of state coercion measures[96]. As related, along with the proceedings on an administrative offense, to the administrative-protective process of a compulsory nature, the control-supervisory (in the author's terminology, «administrative-supervisory» proceedings) proceedings are considered, for example, by P.I. Kononov[97]. S.M. Zubarev states that in modern legislation on control and supervisory activities, signs indicating its connection with state coercion are fixed[98]. Some authors, while also recognizing the possibility of

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[94] See about it: *Vasilyeva A.F.* Execution of instructions of control (supervisory) bodies in Russian administrative law // International Symposium on Administrative Law and Administrative Jurisdiction, 24–26 May 2021: collection of reports ISALAJ. Istanbul Ticaret Universitesi, 2021. P. 167–175.

[95] *Dmitrikova E.A., Karitskaya A.A., Trofimov A.A.* Constitutional foundations of differentiation of control and supervisory proceedings and proceedings on administrative offences. P. 190.

[96] Control (supervision) refers to «interfering» or «coercive» administrative activity. See: *Zelentsov A.B., Yastrebov O.A.* The concept of public administration in modern administrative law (comparative legal study) // Bulletin of St. Petersburg University. Law. 2019. T. 10. Vol. 4. P. 644–655.

[97] *Kononov P.I.* Administrative process: approaches to the definition of the concept and structure // State and law. 2001. № 6. P. 23–24; *Kononov P.I.* Problems of administrative law and process: monograph. Kirov: Avers, 2013. P. 324.

[98] *Zubarev S.M.* Is there administrative coercion in the implementation of control, quasi-control and supervision in the field of public administration? // Bulletin of O.E. Kutafin University (MSAL). 2021. № 6. P. 31.

attributing control (supervision) to types of administrative coercion (noting the controversy of such a classification), point out that control and supervisory activities constitute administrative influence, allow coercion within the framework of control measures and are aimed at suppressing or preventing an offense[99]. There is also a position according to which control and supervisory activities and actions do not have the character of state coercion, while the measures of preventive, restorative and punitive nature (provided for in Article 90 of the Federal Law on Control (Supervision) and the CAO of the Russian Federation) taken in connection with violations of mandatory requirements, identified as a result of such activities, are administrative coercion[100].

From the point of view of the doctrine of administrative law, control (supervision), indeed, does not fit into the classical triad of administrative coercion measures, represented, as M.I. Eropkin pointed out[101], by administrative penalties, administrative restraint measures and administrative preventive measures (in the concept of D.N. Bakhrakh, they are replaced by administrative restorative measures[102]). The Constitutional Court of the Russian Federation also stands on the logical inconsistency between an inspection conducted within the framework of control (supervisory) functions exercised by public authorities and state coercion restricting rights and freedoms, which may be required depending on the results of such an inspection[103].

At the same time, measures of state, inter alia administrative, coercion in the literature are considered as ways, means to guarantee the fulfillment of duties and compliance with prohibitions, as an additional burden arising in connection with illegal acts, which is implemented within the framework of protective legal

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[99] *Kostennikov M.V., Kurakin A.V.* To the question of the features and types of administrative coercion // Administrative law and process. 2024. № 3. Access from the SPS «ConsultantPlus».

[100] *Ivshina G.G.* Administrative coercion in the sphere of entrepreneurial activity: dis. ... cand. of legal sciences. Nizhny Novgorod, 2024. P. 74, 121 etc.

[101] Soviet administrative law. Forms and methods of public administration. P. 113–128.

[102] *Bakhrakh D.N.* Administrative coercion in the USSR, its types and main tendencies of development: abstract dis. ... doct. of legal sciences. M., 1972. P. 25–28. Cited from: *Yarkovoy S.V.* Administrative-law ways of restoring the legality of administrative law enforcement activity: concept and types // Bulletin of the O.E. Kutafin University (MSAL). 2019. № 6. P. 138.

[103] Decision of the Constitutional Court of the Russian Federation of 7 April 2022 № 821-O «On refusal to accept for consideration the complaint of the Limited Liability Company Trading House Platina Kostroma for violation of its constitutional rights by paragraph 2 of Article 93^1 of the Tax Code of the Russian Federation».

relations in «procedural forms»[104]. A distinctive feature of administrative coercion, including in the field of entrepreneurial activity, is considered to be that it involves influencing the will and behavior of natural and legal persons by imposing legal and factual restrictions on them, depriving them of subjective rights, property, imposing an obligation to fulfill a requirement (obligation), stop the violation and (or) eliminate it consequences[105]. State coercion is derived from the normative properties of the legal regulations themselves and is aimed at restoring the rule of law defined by them[106], protecting the individual, ensuring compliance with generally binding rules of conduct and combating offenses[107]. There is hardly any reason to believe that these characteristics are fundamentally incompatible with the legal nature of control and supervisory activities, which, as follows from the above regulations, involves interference in the activities of a controlled person in order to assess compliance with the requirements for economic activity in the public interest.

In addition, if we consider coercion as a way to ensure the unconditional implementation of legal norms in order to protect society and the state from potential and real threats[108], then it can be stated that control and supervisory activities, which also ensure the achievement of those goals, by their characteristics tend precisely to the category of administrative coercion. Moreover, taking into account the logical discrepancy between such methods of public administration as persuasion and coercion, control (supervision) [109], i.e. the activity of assessing compliance with mandatory requirements, the result of which may be the issuance of a mandatory prescription, despite the presence of provisions on the prevention

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[104] Formation and development of branches of law in the historical and modern legal reality of Russia. In 12 vol. T. VIII. Administrative law in the system of modern Russian law: a monograph / ed. by R.L. Khachaturov and A.P. Shergin. M.: Yurlitinform, 2022. P. 617.

[105] See: *Ivshina G.G.* Op. cit. P. 29–43.

[106] This has been convincingly proved already by S.N. Bratus. See: *Bratus S.N.* Juridical responsibility and legality (Essay of theory). M.: Yurid. lit., 1976. P. 61.

[107] *Rossinsky B.V.* The concept, classification and nature of measures of administrative coercion // Laws of Russia: experience, analysis, practice. 2021. № 11. P. 3–9.

[108] *Kaplunov A.I.* Administrative coercion applied by internal affairs bodies: system-legal analysis: abstract dis. ... doct. of legal sciences. M., 2005. P. 18; *Kaplunov A.I.* On the main features and concept of state coercion // State and law. 2004. № 12. P. 11.

[109] *Popov L.L.* Persuasion and administrative coercion as methods of public (state) management // Bulletin of O.E. Kutafin University (MSAL). 2021. № 6. P. 35–37.

of mandatory requirements in the relevant regulation[110], primarily reflects the coercive, rather than persuasive, influence of the public power on controlled persons.

Consequently, control and supervisory activities are currently carried out as an independent type of administrative proceedings of a protective nature, during which compliance by controlled persons with the requirements for economic activity contained in regulatory acts is assessed. The objectives of this proceeding are to safeguard legally protected interests and to terminate past and prevent future violations of mandatory requirements, and the result is a legally significant assessment of the behavior of the controlled person in terms of the presence or absence of violations of mandatory requirements in his actions (inaction). At the same time, although control and supervisory proceedings are not recognized by the doctrine as a kind of state coercion, it nevertheless should be considered as a comparable to it fairly serious interference in the activities of controlled persons[111], which is implemented in a system with other types of administrative activities and should be coordinated with them. It is no coincidence that the Constitutional Court of the Russian Federation emphasizes that the implementation of control (supervision) should not create unreasonable, excessive and insurmountable obstacles to economic activity, did not encroach on the very essence of economic freedom, and the regulation of this activity should meet the constitutional conditions of legality, necessity, proportionality (Part 3 of Article 55 of the Constitution of the Russian Federation)[112].

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[110] The mere fixation of preventive measures in the legislation on control (supervision), albeit in a structurally separate form, does not yet indicate that the activity of control (supervision) measures is persuasion. In addition, in the literature the formal attribution of preventive measures to control and supervisory activities is recognised as at least a non-controversial legislative decision. See about it: Administrative law in the system of modern Russian law: monograph. P. 183; *Peresedov A.M.* Institute of prevention in the legislation on control (supervision) // Administrative law and process. 2021. № 12. P. 51–54.

[111] *Trofimov A.A., Dmitrikova E.A., Karitskaya A.A.* Search for the optimal model of control and supervision activity: the experience of Russia and China // Bulletin of St. Petersburg University. Law. 2023. T. 14. Vol. 3. P. 799.

[112] Decision of the Constitutional Court of the Russian Federation of 14 May 2015 № 1076-O «On refusal to accept for consideration the complaint of the Closed Joint Stock Company «ARGUS-SPECTR» for violation of Constitutional rights and freedoms by paragraph 5 of Part 2 of Article 39 of the Federal Law «On Protection of Competition».

Taking into account the noted importance of control (supervision) to ensure compliance with mandatory requirements, the attention paid to the regulation of relevant administrative proceedings in the domestic legal system is understandable. At the same time, when modernizing the rules of control (supervision), it is necessary to take into account that this activity does not exist in isolation, but is in a systemic relationship with other types of administrative activities of the state. Thus, the achievement of the goals of administrative reforms (including the optimization of state intervention in the economy) is conditioned not only by the presence of effective control and supervisory regulation, but also by the state of other branches of administrative legislation, that can have an impact comparable to control (supervision) on economic activity – the requirements for such activities, the rules of licensing, legislation on administrative offenses, etc.

Special attention (from the point of view of harmonization with legislation on control and supervisory activities) is needed to be drawn to the norms of legislation on administrative responsibility, which determine the rules for proceedings in cases of administrative offenses, which is a jurisdictional administrative proceeding and – by virtue of the direct indication of the Federal Law on Mandatory Requirements – a means to ensure assessment compliance with mandatory requirements. The attribution of proceedings in cases of administrative offenses to the number of means of assessing compliance with mandatory requirements confirms the position formed in the doctrine that legislation on administrative offenses is considered as one of the effective means of public administration, ensuring order and security, including in the economic sphere[113].

The relations that develop in connection with bringing to administrative responsibility (administrative-offence relations) include legal relations that arise unilaterally on the initiative of an authorized body or official, representing a reaction to a violation of a legal norm providing for administrative responsibility, and related to the identification of an offence, consideration of the relevant case,

[113] See: *Rossinsky B.V.* Reflections on public administration and administrative responsibility // Administrative law and process. 2016. № 5. Access from SPS «ConsultantPlus».

the adoption and execution of a decision[114]. At the same time, the functions of public administration derived from its administrative and protective functions in the literature include the functions of countering administrative offenses – bringing to administrative responsibility, and control and supervisory activities of public administration, i.e. various types of state control (supervision) and municipal control[115].

This allows us to state that control (supervision) and bringing to administrative responsibility combine, in addition to the general administrative-law nature (they belong to the notion of administrative proceedings), a pronounced protective nature. At the same time, the above does not mean the identification of control (supervision) and proceedings in cases of administrative offenses – each of these proceedings retains its status as a separate method of assessing compliance with mandatory requirements, and preventive and restorative measures (control and supervisory activities) and preventive and punitive measures (administrative responsibility) have an independent status[116].

At the same time these proceedings are carried out mainly by executive authorities, are carried out in a similar (in terms of stages) procedural order and involve the authoritative resolution of an administrative and legal dispute. The main objectives of state control in general (ensuring legality[117], implementation of state policy and feedback; prevention, detection and suppression of violations of mandatory requirements, as well as elimination of their consequences and restoration of the original legal status[118], etc.) are achieved to a certain extent both within the framework of control and supervisory activities and within the framework of proceedings on an administrative offense.

The noted interrelation of control and supervisory and administrative-offence proceedings, which can be considered as forms of implementation of the

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[114] Administrative law in the system of modern Russian law: monograph. P. 381.

[115] *Stakhov A.I.* Administrative process on cases arising from control and supervisory legal relations: monograph. P. 37–39.

[116] *Stakhov A.I.* On the allocation of control and supervisory administrative proceedings in the sphere of activity of executive authorities // Issues of economics and law.. 2016. № 2. P. 32.

[117] *Kudilinskiy M.N.* To the question of the goals of state control. P. 34–35.

[118] *Ermolova O.N.* Obligatory requirements for entrepreneurial activity: issues of control and responsibility // Property relations in the Russian Federation. 2022. № 5. Access from the SPS «ConsultantPlus».

general control function of the state, allows us to assert that their regulation should be carried out systematically, and not only to achieve the goals of optimizing and reducing administrative pressure (administrative barriers) on economic entities[119], increasing the efficiency of administrative-offence authorities jurisdiction[120], but also by virtue of the general constitutional obligation of the state to create fair and proportionate rules for the use of state coercion so that it does not acquire the character of a means of suppressing economic freedom and independence (while ensuring the preservation of legally protected values).

Thus, being dictated by the regulatory impact of the state on public relations, the control function of the state involves assessment of established rules, inter alia in the form of special control and supervisory activities of executive authorities, during which compliance with mandatory requirements by controlled persons is reviewed. As an independent type of administrative process, control and supervisory proceedings have a number of common features with proceedings in cases of administrative offenses, which is, like control (supervision), an instrument of assessing compliance with mandatory requirements. In this regard, the achievement of constitutionally predetermined goals of optimizing state intervention in economic activity cannot be achieved through isolated reform of legislation on control and supervisory activities: its adjustment should be carried out subject to the introduction of corresponding changes (including conceptual, basic ones) in the legislation on administrative offenses. At the same time, the need to synchronize and coordinate reforms in these areas of administrative regulation goes beyond the discretion of the legislator and is a prerequisite, which must be abided when determining the procedure for bringing controlled persons to administrative responsibility.

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[119] *Agamagomedova S.A.* Administrative barriers for business: minimisation in the conditions of the reform of state control and supervision // Russian Justice. 2021. № 2. P. 6–9.

[120] *Khazanov S.D.* Modernisation of the legislation of the Russian Federation on administrative offences: methodology, theory, tools / Actual problems and prospects of administrative law and administrative-procedural law: a collection of scientific articles. M.: RGUP, 2019. P. 124.

Paragraph 2. Comprehensive reform of control (supervisory) regulation and legislation on administrative offences

Considering the consistent development of control and supervisory regulation in the Russian Federation, it can be noted that reforms in this area have always been conditioned by the intention to reduce the so-called administrative barriers in the economic sphere. In foreign countries, as experts note, the tendency to optimize state intervention in free market relations has also been consolidated by improving regulatory policy, stimulating voluntary compliance with mandatory requirements, and introducing preventive measures (the formation of the concept of the «*regulatory state*»)[121].

The relevance of solving these tasks, inter alia in the post-Soviet states, is evidenced, in particular, by the fact that a number of countries have gradually consolidated modern principles of control (supervision) in national legal regulation aimed at limiting the possibilities of interference by administrative authorities in the activities of economic entities[122]. As an illustrative example, we can mention the legislation of the Republic of Kazakhstan, which in a detailed and rather detailed form regulated the issues of the status of business entities, including in terms of state control over them and the introduction of requirements for entrepreneurial activity (Articles 80–90, 129–157 of the Entrepreneurial Code of the Republic of Kazakhstan[123]), which in terms of the content of the relevant legal norms in principle is comparable with modern control and supervisory regulation in the Russian Federation.

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[121] Regulatory policy of the Russian Federation: legal problems of formation and implementation: a monograph / ed. by A.F. Nozdrachev. A.F. Nozdrachev, S.M. Zyryanov, A.V. Kalmykova; Institute of Legislation and Comparative Law under the Government of the Russian Federation. M.: Infotropic Media, 2022. P. 250, 260–278; *Artemenko E.A.* «Regulatory guillotine»: analysis of projects of new regulatory structures / E.A. Artemenko // Issues of state and municipal management. 2021. № 1. P. 30–55.

[122] See: *Tkach Y.V. Principles* of control and supervisory activities of the CIS member countries // Bulletin of N.I. Lobachevsky Nizhny Novgorod University. 2021. № 6. P. 158–168.

[123] Code of the Republic of Kazakhstan of October 29, 2015 № 375-V «Entrepreneurial Code of the Republic of Kazakhstan» // Kazakhstanskaya Pravda from 03.11.2015. № 210 (28086). URL: https://online.zakon.kz/Document/?doc_id=38259854&pos=1333;-16#pos=1333;-16&sdoc_params=text%3D83%26mode%3Dindoc%26topic_id%3D38259854%26spos%3D1%26tSynonym%3D1%26tShort%3D1%26tSuffix%3D1&sdoc_pos=0 (access date: 16.06.2024). Hereinafter also – Entrepreneurial Code of the Republic of Kazakhstan.

In the context of the Russian legal order, one of the aims of administrative reforms in this area was the formation and structural isolation of the regulatory model of control and supervisory activities and the definition of its place in the system of administrative-law regulation. At the same time one of the key tasks that required resolution during the defining of the legal model of control and supervisory activities was to find a balance of private and public interests in the organization and implementation of control (supervision)[124]. The relevant legislation has overcome a number of successive stages of development, which are defined differently in the legal literature.

A.A. Spiridonov, for example, starting from the adoption of basic legislative acts in this area and the fundamental changes that took place in the regulatory system, identifies four periods[125]:

– the first stage (until 2001), within which the formation of control and supervisory regulation and the revision of Soviet institutions in this area took place;

– the second stage (until the early 2010s), covering the duration of the two basic federal laws adopted in 2001[126] and 2008[127];

- the third stage (2010s), during which, according to the author, the final formation of the control and supervisory regulation system took place;

– the fourth stage (from in the middle of 2022), reflecting the beginning of a new round of reform of control and supervisory activities.

However, it is difficult to see a single basis in such a classification, since the third and fourth stages, in essence, are not tied to specific changes in legislation and only reflect the process of continuous improvement of control and supervisory regulation.

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[124] *Trofimov A.A., Dmitrikova E.A., Karitskaya A.A.* Op. cit. P. 789.

[125] *Spiridonov A.A.* Complex reforming of control and supervision: domestic experience in the constitutional-law dimension // Actual problems of Russian law. 2022. № 10. P. 102–116.

[126] Federal Law of August 8, 2001 № 134-FZ «On Protection of the Rights of Legal Entities and Individual Entrepreneurs in the course of state control (supervision)» // CL RF. 13.08.2001. № 33 (Part I). Art. 3436. Hereinafter also – Federal Law on Control (Supervision) of 2001.

[127] Federal Law of 26 December 2008, № 294-FZ «On Protection of the Rights of Legal Entities and Individual Entrepreneurs in the Implementation of State Control (Supervision) and Municipal Control» // CL RF. 29.12.2008. № 52 (Part I). Art. 6249. Hereinafter also – Federal Law on Control (Supervision) of 2008.

In the literature, more strictly sustained classifications of the stages of development of the regulatory framework of control (supervision) based on the adoption of system-forming legislative acts for this area have been proposed from the point of view of the chosen criterion of separation[128]. Meanwhile, in such classifications, the changes that took place in the control and supervisory regulation, as a rule, were not linked to the synchronous measures that were taken to adjust the legislation on administrative responsibility, which does not allow a systematic assessment of the fundamental changes in the legislation on control (supervision) and compare them with the novelties that arose in administrative-offence regulation. At the same time, only such a systematic perception of the relevant legal regulations – taking into account the previously noted interrelation of control and supervisory and administrative-offence proceedings – will allow a comprehensive analysis of the measures that were aimed at achieving the goal of reforms – reducing administrative pressure on economic entities.

Accordingly, for the purposes of this study, periodization is proposed, which is based precisely on the adopted basic legislative acts on control (supervision) and connects the next stage of the reform of control and supervisory activities with the adoption of a new basic legislative act. At the same time the most significant adjustments to the legislation on administrative responsibility that took place at one stage or another of the reform of control and supervisory activities are simultaneously investigated, which will allow us to get a general idea of the measures taken to achieve the goal of reducing administrative pressure on controlled persons.

The first stage. The beginning of the processes of comprehensive revision of legislation on control and supervisory activities was initiated with the adoption of the Federal Law on Control (Supervision) of 2001, which for the first time systematically reflected the state's approach to the implementation of this activity, fixed the basic requirements for the organization and conduct of control measures,

[128] See such classification: *Fesko D.S.* Administrative-law guarantees of the rights of citizens and organisations in the implementation of state control (supervision): dis. ... cand. of legal sciences. Nizhny Novgorod, 2021. P. 110–115.

including their frequency, the grounds for scheduled and unscheduled inspections, some of the rights of the audited persons and launched the formation of a «new independent administrative and legal institute of state control (supervision)»[129]. The adoption of this Federal Law, as follows from the explanatory note to its draft, was aimed at solving problems associated with a significant number of inspections of legal entities and individual entrepreneurs by various bodies that duplicate each other, and the additional costs of entrepreneurs from carrying out such control.

The stage under consideration includes the first attempts to harmonize control and supervisory regulation and legislation on administrative responsibility[130], which was at that time a more appropriate means of government response to violations in the field of requirements for economic activity. Thus, in order to prevent abuses by officials endowed by the Federal Law on Control (Supervision) of 2001 (part 2 of Article 10) with the right to suspend the production (sale, performance) of goods (work, services), i.e., in essence, the ability to temporarily block economic activity, excluded these provisions from the control and supervisory regulation and included them – but already as an administrative punishment imposed by a judge, and measure to ensure the proceedings in an administrative offense case – in the CAO of the Russian Federation (Articles 3.12 «Administrative suspension of activities» and 27.16 «Temporary prohibition of activities»)[131]. At the same time, in order to ensure guarantees of the fulfillment of legal orders of control and supervisory authorities that have lost the authority to suspend the activities of controlled persons, administrative responsibility for non-fulfillment of such orders has been strengthened (Article 19.5 of the specified Code).

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[129] *Nozdrachev A.F., Zyryanov S.M., Kalmykova A.V.* Op. cit.

[130] It is noteworthy that the drafting and adoption of the Federal Law on Control (Supervision) of 2001 (draft law № 69471-3 introduced on 15 March 2001) coincided with the period of repeated consideration and adoption by the State Duma of the CAO of the Russian Federation (draft law № 96700255-2; the first version of this Code was rejected by the President of the Russian Federation on 20 December 2000 and was repeatedly considered by the State Duma during 2001), i.e. legislative activity in respect of these basic acts was carried out at the same time. See: System of ensuring lawmaking activities of the State Duma. URL: https://sozd.duma.gov.ru/ (access date: 16.06.2024).

[131] Federal Law of May 9, 2005 № 45-FZ «On Amending the Code of the Russian Federation on Administrative Offences and other legislative acts of the Russian Federation, as well as on the invalidation of some provisions of legislative acts of the Russian Federation» // CL RF. 09.05.2005. № 19. Art. 1752

In law enforcement practice, in turn, there were also issues related to the emergence of similar administrative and legal tools that allowed for verification measures on the basis of both the Federal Law on Control (Supervision) of 2001 and the CAO of the Russian Federation. In particular, the executive authorities interpreted the rules for issuing presciptions on the basis of the Federal Law on Control (Supervision) of 2001: As explained by Rospotrebnadzor, issuing a prescription on the basis of the Federal Law on Control (Supervision) of 2001 by the person, identified the offence, is not allowed when bringing to administrative responsibility, since confirmation of a culpable violation of established requirements and, consequently, the definition of the grounds for imposing obligations to eliminate these violations can be carried out only by subjects of administrative jurisdiction (an official or a judge), making a ruling on the case of an administrative offense and presentation (Articles 29.10 and 29.13 of the CAO of the Russian Federation)[132]. During the same period, the Supreme Court of the Russian Federation addressed the issue of the admissibility of using the results of control and supervisory measures carried out on the basis of the said Federal Law as evidence in the case of an administrative offense[133].

The study of control and supervisory regulation and legislation on administrative responsibility that were in action during the analyzed stage indicates that, in essence, both legislative arrays, as well as the activities regulated by them, existed in parallel and were perceived as almost completely autonomous from each other means of assessing compliance with legal regulations. Nevertheless, the appearance of the Federal Law on Control (Supervision) of 2001, of course, was a positive result of the relevant administrative reform, although the practice of applying its provisions showed that the expected and predictable results of the adoption of this Federal Law, as mentioned above (the creation of an effective mechanism for control (supervision) in relation to economic entities activities

[132] See: Letter of Rospotrebnadzor from 7 March 2006 № 0100/2473-06-32 «On clarification of some provisions of the current legislation» // Access from the SPS «ConsultantPlus».

[133] Review of judicial practice of the Supreme Court of the Russian Federation for the fourth quarter of 2005 (approved by the Decision of the Presidium of the Supreme Court of the Russian Federation of 1 March 2006). Here and hereinafter courts jurisprudence is given with the use of SPS «ConsultantPlus», unless otherwise specified.

guaranteeing the rights of such entities) have not been achieved. One of the main problems was the presence of a significant number of areas of activity to which this Federal Law was not applied (paragraph 3 of Article 1). In addition, there was no normative specification of the status of the inspection bodies, the procedure for conducting control and supervisory activities was determined in a lapidary form. All this did not allow us to talk about a thorough revision of the control and supervisory regulation system and a real reduction in the administrative burden on economically active entities (primarily small and medium-sized businesses, which, according to the legislator's plan, was to become the main beneficiary of the reform), which as a result caused the adoption of a new control and supervisory regulation[134].

The second stage. Taking into account the above circumstances, the following basic regulatory act was adopted – the Federal Law on Control (Supervision) of 2008, entered into force in the main part on May 1, 2009. This Federal Law gave a formal start to the second stage of reforming the control and supervisory legislation and has already regulated in more detail the powers of control and supervisory authorities and the procedure for conducting verification measures through which compliance with mandatory requirements by controlled persons was monitored, as well as consolidated a fairly detailed list of the rights of such persons.

Like the previous federal law on control and supervisory activities, the Federal Law on Control (Supervision) of 2008 paid great attention to the rights of controlled persons in the implementation of control and supervisory activities (this directly follows from its name). Its comparison with the Federal Law on Control (Supervision) of 2001 makes it possible to see a consistent processalization of control and supervisory activities, i.e. the formal consolidation of such aspects characteristic of the legal process as the stages and terms of this activity, a strictly defined subject composition of the relevant legal relations, etc. Over time, the

[134] On the reasons for the new reform see: Decree of the President of the Russian Federation of May 15, 2008 № 797 «On urgent measures to eliminate administrative restrictions in the implementation of entrepreneurial activity» // CL RF. 19.05.2008. № 20. Art. 2293.

relevant provisions of the Federal Law on Control (Supervision) of 2008 were clarified and supplemented, for example, in terms of applying a risk-based approach (Article 8^1); defining rules for the prevention of violations of mandatory requirements (article 8^2); conducting control measures without interaction with controlled persons (article 8^3); special regimes for the implementation of state control (supervision) (Article 13^1), which reflected the legislator's desire to limit the interference of regulatory authorities in the activities of controlled persons.

At this stage of the development of control and supervisory regulation, more noticeable (compared to the previous period) adjustments to the legislation on administrative responsibility were carried out. This can be explained by the fact that with the adoption of the Federal Law on Control (Supervision) in 2008, systemic changes took place in the field of control (supervision), as a result of which control and supervisory activities acquired the status of a means of assessing mandatory requirements, comparable in terms of the possibilities of intervention in economic activity (although, obviously, more lenient) with the production of cases of administrative offenses and at the same time applied simultaneously with it.

As a result, control and supervisory activities and proceedings on administrative offenses began to have a cumulative effect on controlled persons, which, contrary to expectations from the administrative reform, created grounds for increasing the administrative burden on economically active entities. This circumstance required the necessary changes to the administrative-offence regulation, which would ensure its alignment with the rules of control and supervisory activities, gradually acquiring the status of the dominant means of assessing compliance with mandatory requirements.

Thus, the adoption of Federal Law № 239-FZ dated July 27, 2010[135] is directly related to the adoption of the Federal Law of 2008, which, in connection with the reform of control and supervisory activities and the consolidation of a new understanding of control (supervision) in legislation, significant adjustments were made to administrative-offence regulation.

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[135] Federal Law of July 27, 2010 № 239-FZ «On Amending the Code of the Russian Federation on Administrative Offences» // CL RF. 02.08.2010. № 31. Art. 4208.

Firstly, the possibilities for the appointment (primarily for offenses committed by economic entities) of administrative punishment in the form of a warning, which is the main «instructive and preventive sanction»[136], were expanded: directly in the General Part of the CAO of the Russian Federation it was provided that a warning is established for the first time committed administrative offenses in the absence of harm or occurrence threats of harm to protected values, as well as in the absence of property damage (Article 3.4). In addition, such punishment appeared as a possible sanction in a number of articles of the Special Part of this Code, including those providing for fairly widespread and formal formulations (for example, in Article 19.7 «Failure to provide information (information)»). As a result, it became possible for minor violations, which were often detected within the framework of control and supervisory activities, to assign economic entities not fines in sufficiently large amounts, but a warning, i.e. less severe administrative punishment.

Secondly, the CAO of the Russian Federation was supplemented by Article 19.6[1], which provided for the responsibility of officials of control and supervisory authorities for violating the rules of inspections, which was necessary for the implementation of the provisions of the Federal Law on Control (Supervision) of 2008. This legislative provision in itself certainly had a disciplining effect, especially since the basis for bringing to justice The corresponding administrative responsibility could be, among other things, procedural violations of the legislation on control and supervisory activities – carrying out verification measures without proper legal basis[137], violation of deadlines[138], substitution of control (supervision) by proceedings in the case of an administrative offense[139].

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[136] *Kirin A.V.* Administrative-offence law: theory and legislative foundations. M.: Norma; Infra-M, 2012. P. 303.

[137] Judgement of the Arkhangelsk Regional Court of 20 February 2012 № 4a-50/2012; judgement of the Krasnodar Regional Court of 1 September 2012 № 4g-5803/2012.

[138] Judgement of the Samara Regional Court of 30 August 2013 № 4a-571/2013; judgement of the Presidium of the Altai Regional Court of 4 October 2011 on the case № 4a-563/2011.

[139] *Dmitrikova E.A.* Administrative responsibility for non-compliance with the legislation on state control (supervision), municipal control / Monitoring of law enforcement 2020–2021: Proceedings of the experts of St. Petersburg State University / ed. by S.A. Belov, N.M. Kropachev. SPb.: Izd-vo S.-Peterb. Un-ta, 2022. P. 440.

At the same time there was an increase in administrative responsibility for controlled persons in two directions: in terms of ensuring compliance with the provisions of the legislation on control and supervisory activities and in terms of increasing the size of sanctions for offenses in the field of entrepreneurial (economic) activity. On the one hand, Article 19.4[1] was included in the CAO of the Russian Federation[140], which established increased responsibility for obstructing the activities of inspectors of control and supervisory authorities, and Article 19.5 of this Code was repeatedly supplemented with new norms that provided and strengthened responsibility for non-compliance with the instructions of various control (supervision) bodies. On the other hand, the period under review was characterized by a consistent increase in the size of the administrative fine – the most universal type of administrative punishment, including in the field of economic activity – in relation to a number of administrative offenses. This trend even came to the attention of the Constitutional Court of the Russian Federation, which noted in a decision on the possibility of imposing an administrative penalty below the lowest amount provided for by the CAO of the Russian Federation, the general acceptability – provided that the constitutional requirements of equality, proportionality, fairness are met – of strengthening administrative responsibility in order to form a responsible attitude to legal regulation and its implementation, especially if violation of the relevant requirements can lead to a noticeable deterioration of the socio-economic situation[141].

The adjustments also affected the procedural part of the administrative-offence legislation governing the issues of evidence in the course of proceedings on an administrative offense. In particular, Federal Law № 242-FZ of July 18,

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[140] Federal Law of July 18, 2011 № 242-FZ «On Amending Certain Legislative Acts of the Russian Federation on the implementation of state control (supervision) and municipal control» // CL RF. 25.07.2011. № 30 (Part I). Art. 4590.

[141] Judgement of the Constitutional Court of the Russian Federation of 25 February 2014 № 4-P «On the case of verification of the constitutionality of a number of provisions of Articles 7.3, 9.1, 14.43, 15.19, 15.23[1] and 19. 7[3] of the Code of the Russian Federation on Administrative Offences in connection with the request of the Commercial court of the Nizhny Novgorod Region and complaints of limited liability companies Baryshsky Meat Processing Plant and VOLMET, open joint stock companies Zavod Rekond, «Exploitation-technical communication unit» and «Elektronkomplex», closed joint stock companies «GEOTECHNIKA P» and «RANG» and budgetary health care institution of the Udmurt Republic «Children's City Hospital № 3 «Neuron» of the Ministry of Health of the Udmurt Republic» // CL RF. 10.03.2014. № 10. Art. 1087.

2011, in Article 26.2 of the CAO of the Russian Federation, explicitly excluded recognition as admissible evidence of the results of an audit conducted in the course of state control (supervision) and municipal control obtained in violation of the law[142]. Taking into account the fact that information on the composition of an administrative offense is often obtained during control (supervisory) measures[143], the specified provision of the CAO of the Russian Federation has fixed the rules for the use of decisions taken based on their results in the framework of proceedings on the relevant administrative offense[144]. This legislation corresponds to the provisions of the Federal Law on Control (Supervision) of 2008 that the results of an audit conducted in gross violation of this Federal Law cannot be evidence of a violation of mandatory requirements (part 1 of Article 20).

Along with the above, significant changes in the legislation on administrative offenses that operated within the framework of the considered stage, they took place in 2014–2016.

Thus, Federal Law № 307-FZ of October 14, 2014[145], in addition to supplementing the Federal Law on Control (Supervision) of 2008 with the norm on planned (raid) inspection – a special control event without interaction with a controlled person, which cannot be carried out against a specific person and should not replace an inspection, made large-scale adjustments to the legislation on administrative offences:

– the CAO of the Russian Federation established an important rule that, in the presence of a reason to initiate an administrative offense case, prescribed by the paragraph 1 of part 1 of Article 28.1 of this Code (direct detection by an authorized

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[142] Federal Law of July 18, 2011 № 242-FZ «On Amendments to Certain Legislative Acts of the Russian Federation on the implementation of state control (supervision) and municipal control».

[143] *Nobel A.R.* Determination of admissibility of evidence in cases of administrative offences // Actual problems of Russian law. 2016. № 1. P. 76–84.

[144] For example, a person is not subject to administrative responsibility if the offence was discovered during an inspection conducted in violation of the requirements on the frequency of scheduled on-site inspections (Judgement of Federal commercial court of the North-Western Circuit of 17 September 2013 on the case № A56-8697/2013) or in the absence of a decision on the appointment of such an inspection (ruling of a judge of the Supreme Court of the Russian Federation of 8 June 2020 № 19-AD20-7).

[145] Federal Law of October 14, 2014 № 307-FZ «On Amendments to the Code of the Russian Federation on Administrative Offences and Certain Legislative Acts of the Russian Federation and on the Annulment of Certain Provisions of Legislative Acts of the Russian Federation in Connection with Clarification of the Powers of State Bodies and Municipal Bodies in Part of the Implementation of State Control (Supervision) and Municipal Control // CL RF. 20.10.2014. № 42. Art. 5615.

official of sufficient data indicating the existence of an event of an administrative offense), if the relevant information is discovered by an authorized official during an inspection when exercising state control (supervision) or municipal control, an administrative offense case may be initiated after the finalization of an act on conducting such an inspection. This legal provision was aimed at resolving the problem that arose in practice of bringing to the responsibility before the completion of the assessment of compliance with mandatory requirements within the framework of control (supervision)[146];

– the powers of the control and supervisory authorities were streamlined and adjusted in terms of considering cases of administrative offenses, and the update of administrative-offence regulation was aimed at bringing legislation into line with control and supervisory regulation (this follows from the explanatory note to the relevant draft law).

Another significant legislative act was Federal Law № 316-FZ of July 3, 2016[147], which fixed in the CAO of the Russian Federation the rules on replacing administrative punishment in the form of an administrative fine with a warning for a first-time administrative offense detected during the implementation of state control (supervision), municipal control under certain conditions (absence of harm or property damage). Thus, the implementation of the provisions of administrative-offence regulation was made dependent on the method of detecting an administrative offense. At the same time, criticism of this novel in the literature was directed to the uncertainty of the conditions for replacing administrative punishment in the form of a fine with a warning and an unjustified reduction in the number of subjects to whom this rule could be applied (small and medium-sized businesses and their employees), however, the positive effect of the mechanism under consideration in terms of strengthening the preventive principles of administrative-offence regulation nevertheless was agreed[148].

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[146] More details on this aspect in the paragraph 1 of the Chapter 3 of this paper.

[147] Federal Law of July 3, 2016 № 316-FZ «On Amendments to the Code of the Russian Federation on Administrative Offences» // CL RF. 04.07.2016. № 27 (Part II). Art. 4249.

[148] See, for example: *Selhova O.E.* Separate issues of replacing an administrative fine with a warning to subjects of small and medium-sized entrepreneurship // Justice of Peace. 2019. № 8. Access from SPS

As a result of the legislative transformations that took place within the framework of the considered stage, both in terms of control and supervisory regulation and in the field of administrative responsibility, a trend has emerged aimed at taking into account control and supervisory regulation when adjusting legislation on administrative offenses. During the period of operation of the Federal Law on Control (Supervision) of 2008, especially when compared with the time of operation of the Federal Law on Control (Supervision) of 2001, not only the number increased (this could be explained by the longer duration of the Federal Law on Control (Supervision) of 2008), but also the quality of administrative-offence legislation. In particular, with the beginning of the full-fledged application of the system-forming federal law regulating the conduct of control and supervisory measures, the CAO of the Russian Federation has established structures ensuring the implementation of this law – both by controlling and controlled entities.

At the same time, the Federal Law on Control (Supervision) of 2008, which was designed as a universal basic act defining the procedure for carrying out all (or at least most) control (supervisory) measures, also turned out to be not without drawbacks that manifested over time (gaps, uncertainty and blurred wording, etc.[149]). It became fundamentally important that this Federal Law, like the previous basic legislative act, did not solve one of the key problems: the lack of a comprehensive legislation that would form an integral system of legislation on control (supervision). Thus, the Federal Law on Control (Supervision) of 2008 continued the trend towards the formation of such a legislative model of control (supervision), in which, firstly, many areas are in principle removed from the framework of the basic legislative act, and, secondly, even if certain types (forms) of control (supervision) this Federal law was being extended, other statutes could determine the specifics of conducting verification activities. This, in fact,

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«ConsultantPlus»; *Soboleva Y.V.* Some aspects of the application of administrative punishment in the form of a warning to legal entities // Administrative law and process. 2018. № 9. Access from SPS «ConsultantPlus».

[149] See: *But N.D.* Actual problems and prospects of development of legislation on control and supervision activity / Actual problems of harmonisation of judicial reform with the reform of state control and supervision: a collection of scientific articles / R.Y. Batrshin, N.I. Burmakina, N.D. But et al.; responsible for the issue A.I. Stakhov. M.: RGUP, 2018. Access from SPS «ConsultantPlus».

disavowed the general idea of systematization and unification of the principles and rules of control (supervision)[150].

In addition, within the framework of this stage of reforming the legislation on control (supervision), the problem associated with evaluating outdated, invalid requirements in cases where this did not lead to real safeguarding of legally protected values became apparent. The existence of acts containing sometimes contradictory requirements, many of which have lost their relevance over time, as well as the resulting excessive burden on economic entities and regulatory authorities, indicated the need of revision, systematization, unification and regulation at the federal level of the numerous safety requirements.

The third stage. Taking into account the above circumstances, the issue of comprehensive reform of control and supervisory regulation was again updated in 2016. The result of a long process of preparatory and legislative work was the Federal Law on Control (Supervision), adopted in 2020.

The Federal Law on Control (Supervision), as noted earlier, reflected the regulatory design of control and supervisory proceedings: control (supervisory) measures and actions were presented in a systematic form; the procedure for preventing violations of mandatory requirements was fixed. At the same time, as a result of the reform, the list of control (supervisory) measures has become larger, special types of such measures have appeared that do not involve interaction with a controlled person, i.e. more serious interference with their rights. A notable achievement of this Federal Law was that it explicitly excluded the possibility of evaluating the effectiveness of the activities of control and supervisory authorities by the number of administrative fines imposed (part 7 of Article 30). At the same time, the Federal Law on Control (Supervision) has received regulatory

[150] Among the problems of administrative and legal regulation to be solved through administrative reforms, O.N. Ordina, for example, includes the necessary systematisation of legislation, including in the framework of the adoption of the federal law on control and supervision activities (in the terminology of the author – on administrative supervision). See: *Ordina O.N.* Sources of administrative law of Russia and problems of their systematisation: monograph. M.: UNITY-DANA, 2010. P. 307, 310.

On the other hand, back in the Soviet literature it was emphasised that full unification of legal regulation of control activity is impossible due to «the multiplicity of sources containing procedures of control activity, the diversity of the nature of the subjects carrying it out and the tasks facing these subjects». See: Administration Procedures / B.M. Lazarev, I.Sh. Muksinov, A.F. Nozdrachev and others; ed. by B.M. Lazarev. M.: Nauka, 1988. P. 105.

formalization of control and supervisory actions similar in content to measures to ensure proceedings in cases of administrative offenses (for example, inspection), which, as experts rightly point out, required the introduction of special rules ensuring the coordinated and strictly consistent application of appropriate regulation (first control and supervisory measures and only after them administrative-offence measures)[151].

Assessing the development of legislation in this period, it should be borne in mind that during almost its entire duration, the Russian legal and economic systems faced unprecedented difficulties due to the need to counter the spread of a new coronavirus infection and increased sanctions pressure on the domestic economy. Under these conditions, both control and supervisory, as well as administrative-offence regulation, had to respond promptly to the challenges of the time.

First of all, it is necessary to note Federal Law № 170-FZ of June 11, 2021, which was originally conceived as a satellite law for the Federal Law on Control (Supervision), necessary to amend mainly other legislative acts in order to bring them into line with the basic control and supervisory regulation[152]. However, during the legislative process, it was supplemented with new regulations, which, among other things, touched upon the issues of administrative responsibility of controlled persons.

Among the changes that led to the adoption of this Federal Law in 2021, the following novelties deserve special attention, which had an impact on the legal regulation of the procedure for bringing to administrative responsibility:

– part 4 of Article 90 of the Federal Law on Control (Supervision) allowed the possibility – in cases provided for by the regulation on the type of control (supervision) – of the control and supervisory authority to refuse to apply administrative liability measures based on the results of control (supervisory)

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[151] *Osintsev D.V.* Security measures or control (supervisory) actions? // Economy and law. 2023. № 3. Access from SPS «ConsultantPlus».

[152] Federal Law of June 11, 2021 № 170-FZ «On Amendments to Certain Legislative Acts of the Russian Federation in Connection with the Adoption of the Federal Law «On State Control (Supervision) and Municipal Control in the Russian Federation» // CL RF. 14.06.2021. № 24 (Part I). Art. 4188.

measures, if the relevant instruction on the elimination of violations was executed by the controlled person[153];

– part 2 of Article 95 of the Federal Law on Control (Supervision) provided that if, following the results of an inspection of the execution of a previously issued order, it is established that it has not been executed, the authorized person issues a new order, the failure of which, in turn, gives grounds to take measures for enforcement, up to going to court.

At the same time, it is necessary to note the adjustments directly made to the CAO of the Russian Federation, which largely continued the established vector of regulating proceedings in cases of administrative offenses and were aimed at humanizing administrative-offence legislation and consistently improving the situation of controlled persons in terms of bringing them to administrative responsibility.

Thus, Federal Law № 70-FZ of March 26, 2022[154], supported the trend towards easing the administrative-offence burden on economically active entities, fixing in Articles 3.4 (part 3) and 4.4 (part 5) of the CAO of the Russian Federation the rules on a special procedure for imposing administrative punishment (including mandatory substitution of punishment for a warning in case of under certain conditions) for offenses identified during state control (supervision), municipal control.

Along with the above innovations, the legislator subsequently[155] provided additional provisions of the CAO of the Russian Federation aimed at improving the situation of controlled persons, namely:

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[153] In the absence of examples of such provisions, the study does not analyse this rule separately. At the same time, it is impossible not to note that the enshrinement of the possibility of derogation from the order of taking measures of administrative-offence response in subordinate acts (Article 3 of the Federal Law on Control (Supervision) looks at least questionable and does not fit well with the provisions of Articles 1.1 and 1.3 of the CAO of the Russian Federation.

[154] Federal Law of March 26, 2022 № 70-FZ «On Amendments to the Code of the Russian Federation on Administrative Offences» // CL RF. 28.03.2022. № 13. Art. 1959.

[155] Federal Law of July 14, 2022 № 290-FZ «On Amending the Code of the Russian Federation on Administrative Offences and Article 1 of the Federal Law «On Amending the Code of the Russian Federation on Administrative Offences» // CL RF. 18.07.2022. № 29 (Part III). Art. 5257.

– extended the provisions on the mandatory replacement of a fine with a warning to all persons subject to control (supervision) – previously this was available only to small and medium-sized businesses (part 3 of Article 3.4);

– established that, in the presence of mitigating circumstances, a fine is imposed for an offense identified during control (supervision) in the minimum amount provided for by the sanction of the relevant article of the CAO of the Russian Federation (part $3^{4\text{-}1}$ of Article 4.1);

– excluded the consideration of an administrative offense case by the subject who carried out control (supervision) in relation to the person being brought to administrative responsibility (part 8 of Article 22.2);

– fixed that it is not allowed to initiate a case of an administrative offense, expressed in non-compliance with mandatory requirements, the assessment of which is carried out in accordance with the Federal Law on Control (Supervision) 2008 or the Federal Law on Control (Supervision) procedure, if there are reasons provided for in paragraphs 1–3 of part 1 of Article 28.1 of this Code (previously – only in paragraph 1), – before conducting a control (supervision) event in cooperation with a controlled person (part 3^{1} of Article 28.1).

Some (the most significant) of the listed novels will be considered in more detail in the following parts of the dissertation research, however, even a general assessment of the legislative changes that took place at each of the highlighted stages allows us to state that the regulation of control and supervisory activities inevitably affects other aspects of administrative and legal regulation and, in particular, directly affects legislation on administrative responsibility. At the same time the noted amendments to the CAO of the Russian Federation confirm that the mentioned changes were not inspired by the purely internal for this Code needs of adjustment administrative-offence regulation. On the contrary, as the conducted research shows, the systemic reform of the legislation on control (supervision), which indicated the need to continue the general course to reduce administrative pressure on the economic sphere, invariably pushed the legislator to make point adjustments to the CAO of the Russian Federation, and the application of the

norms of this Code was consistently limited, which ensured an improvement in the situation of controlled persons.

A historical review of the development of legislation on control (supervision) and on administrative offenses allows us to state that as the legal regulation of control and supervisory activities improved, which was aimed at consistent processalization (i.e., expanding the list of activities carried out within its framework, complicating the rules for their appointment and conduct, strengthening the guarantees of controlled persons[156]) of this activity, the relevant proceedings began to compete and to a certain extent conflict with the proceedings in cases of administrative offenses. This required a search in legislation, practice and doctrine for a solution to the problem of intra-sectoral coordination of these types of administrative activities. As evidenced by the analysis, such coordination often was achieved by an adjustment of the norms governing the bringing of controlled persons to administrative responsibility. The need for such coordination, due to the very fact of the coexistence of control and supervisory and administrative-offence proceedings, was only emphasized at the last (third) stage of reforming legislation on control and supervisory activities, within the framework of which the CAO of the Russian Federation was supplemented with the most ambitious innovations aimed at improving the situation of controlled persons.

Thus, the paradigm of administrative responsibility proposed for consolidation in federal regulation proceeds from the basic prerequisites, which are determined precisely by the legislation on control (supervision), which gives priority to the prevention and suppression of violations of mandatory requirements, rather than punishment for their commission[157]. This is evidenced by the Concept of the new CAO of the Russian Federation, which emphasizes that in the context

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[156] Increase in the number of process norms, detailing the status of participants in the process, complication of the order of implementation of procedural actions are characteristic features of the development of procedural law. See: *Lukyanova E.G.* Theory of Procedural Law. M.: NORMA, 2003. P. 17–18.

[157] If control and supervisory activity is aimed at ensuring compliance with the established requirements, then, as rightly noted by V.A. Savinykh and N.A. Arapov, prevention of offences is consistent with this goal to a greater extent than bringing to responsibility for their commission. See: *Arapov N.A., Savinykh V.A.* On guarantees of legitimate interests of private persons in the conditions of polysemy of law // Bulletin of Economic Justice of the Russian Federation. 2022. № 5. P. 174.

of reforming legislation on administrative offenses, it is necessary, among other things, to reconsider the understanding of administrative responsibility as a punitive fiscal instrument (paragraph 5.1.5).

One can hardly blame the legislator for taking measures aimed at reducing administrative pressure by adjusting the control and supervisory and administrative-offence legislation. However, a noticeable disadvantage of reflecting the relevant administrative and regulatory policy is that sporadic legislative measures were taken, as a rule, without taking into account the systemic unity of control and supervisory and administrative-offence proceedings and solved point problems in the area where the paths of these proceedings «intersected» (initiation of an administrative offense case identified during the activities on control (supervision) and the imposition of punishment for it, etc.). Meanwhile, achieving the planned goals of administrative reform, as noted above, is possible only if the administrative regulation in the economic sphere is comprehensively adjusted.

Thus, the analysis of the reform of control and supervisory activities over three consecutive stages allows us to state that the legislator has consistently faced the need to adapt administrative-offence regulation to the principles underlying the reform of control and supervisory activities (limiting interference in the status of controlled persons, reducing administrative pressure, strengthening the preventive measures. Therefore, the thesis formulated earlier about the essential relationship between control (supervision) and proceedings in cases of administrative offenses, the regulation of which must necessarily be carried out taking into account this circumstance, receives additional confirmation. The refusal to comprehensively reform the relevant industries does not allow achieving the effect of reducing administrative pressure on economic activity, the achievement of which was stated as the goals of administrative reforms.

Meanwhile, the legislator, as a rule, limited himself to making only point adjustments and rules to the CAO of the Russian Federation, designed to improve the situation of controlled persons in a limited way when bringing them to administrative responsibility. A more detailed study of them will allow us to assess

the viability of the measures taken to ensure the coordinated development of control and supervisory and administrative-offence regulation.

CHAPTER 2. THE IMPACT OF THE REFORM OF CONTROL AND SUPERVISORY ACTIVITIES ON THE LEGISLATION ON ADMINISTRATIVE OFFENSES (SUBSTANTIAL ASPECT)

Paragraph 1. Violation of mandatory requirements as a ground for bringing controlled persons to administrative responsibility

The modern Russian model of governmental influence on the economic sphere assumes that the state, pursuing publicly significant goals (ensuring security, coordinating the rights and interests of subjects of specific relations, etc.), has a variety of means to implement its regulatory policy in this area, one of which is to establish conditions for admission to economic activities and requirements for its results[158]. In the current legal regulation, such legal provisions are called mandatory requirements, which, as noted in the literature, are designed to ensure that economic activity meets the criteria of public tasks and goals facing state administration in the field of economics[159].

The definition of the regulatory framework of the mandatory requirements became one of the key components of the third stage of the reform of control and supervisory activity, which assumed, along with the adjustment of its procedural basis, the simultaneous systematization and updating of the mandatory requirements[160]. The adoption of the Federal Law on Mandatory Requirements was assessed by experts as a key guarantee of the rights of controlled persons, since «it is mandatory requirements that largely determine the nature of the relationship between control (supervisory) bodies and controlled persons, defining the boundaries of control and supervision measures and limiting the limits of the

[158] Regulatory policy of the Russian Federation: legal problems of formation and implementation: monograph. P. 20–21, 47.

[159] *Nozdrachev A.F.* Mandatory requirements as a novel institute of administrative law: ideas, content, principles and levels of legal regulation // Administrative law and process. 2022. № 3. Access from SPS «ConsultantPlus».

[160] On the systemic interrelation and conceptual unity of these areas of reform see: Theory and practice of regulatory policy in Russia: a monograph / edited by A.B. Didikin. M.: Prospect, 2020. P. 172.

activity of inspectors and the mandatory behavior of controlled persons»[161]. It is believed that this Federal Law successfully copes with the task of unifying the procedure for establishing and evaluating the application of mandatory requirements[162]. In addition, in this Federal Law regulatory prescriptions were fixed, providing for the preservation of only relevant regulation from a substantive point of view, which, in particular, laid the foundation for the implementation of the so-called «regulatory guillotine» – the consistent abolition of outdated requirements[163] to ease the regulatory burden on economically active entities[164]. A notable achievement of the Federal Law on Mandatory Requirements was also the introduction (Articles 4–10) of the legal basis of law-making relations[165] in the field of establishing conditions, restrictions, prohibitions and obligations in the field of economic activity – principles (legality, legal certainty and consistency, openness and predictability, enforceability) and conditions for establishing mandatory requirements.

For the sphere of bringing controlled persons to administrative responsibility, the Federal Law on Mandatory Requirements explicitly provided for a number of specific rules that cause differences in the grounds for administrative prosecution[166] of this category of subjects. Meanwhile, the CAO of the Russian Federation, specifying the constitutional principle of equality in relation to legislation on administrative responsibility, does not contain any prescriptions justifying differences in the administrative-offence consequences of an offense, depending on whether it was expressed in violation (non-compliance) with

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[161] *Fesko D.S.* New legislation on state control (supervision) and guarantees of the rights of controlled entities // Bulletin of Nizhny Novgorod University named after N.I. Lobachevsky. 2021. № 1. P. 168–169.

[162] *Smorchkova L.N.* Development of administrative-law institute of mandatory requirements // Administrative law and process. 2023. № 12. Access from SPS «ConsultantPlus».

[163] On the concept of «regulatory guillotine» in the assessments of experts see: *Lyubimov Y., Novak D. et al.* «Regulatory guillotine» // Law. 2019. № 2. P. 20–36.

[164] *Stepanov D.I.* Demand for law and dispositiveness of regulation: economic analysis of law // Vestnik of Economic Justice. 2016. № 6. P. 117.

[165] As noted by B.V. Dreishev, outdated, archaic or lack of necessary legal norms and systemic interrelations between them prevents the achievement of the necessary results of legal regulation, in this regard, there arise law-making relations, including in the field of public administration of the economic sphere, within the framework of which legal norms are created. See: *Dreyshev B.V.* Law-making relations in the Soviet state administration. L.: Leningrad University Publishing House, 1978. P. 28–29, 61, etc.

[166] About this category, denoting, in essence, administrative-procedural activity aimed at bringing a person to administrative responsibility, see: *Shergin A.P.* Administrative prosecution as a function of administrative-jurisdictional process // Legal policy and legal life. 2023. № 2. P. 155–162.

mandatory requirements or other imperative prescriptions of legislation. Moreover, Article 1.4 of this Code, which defines equality before the law as one of the principles of legislation on administrative offenses, stipulates the possibility of introducing special conditions for the application of administrative liability measures only in relation to non-profit organizations, small and medium-sized businesses and their employees (such regulation was recognized as permissible by the Constitutional Court of the Russian Federation[167]), without singling out as the basis for the establishment of special rules for bringing to administrative responsibility neither the method of detecting an administrative offense, nor the nature of the regulatory requirement, the deviation from which formed the objective side of the administrative offense.

However, any differentiation, as emphasized by the Constitutional Court of the Russian Federation, in any case must comply with the constitutional principle of equality, which assumes that the criteria (signs) underlying the establishment of certain special norms should be determined based on the pursued goal of differentiation in legal regulation, and excludes, inter alia in the field of administrative responsibility, the introduction of differences in the rights of persons belonging to the same category that have no objective and reasonable justification[168]. Strictly speaking, the Constitution of the Russian Federation does not prejudge the obligatory existence of special rules defining special grounds for prosecuting economic entities. It can be assumed that the rational basis for fixing such rules (as well as for establishing a special procedure for bringing to administrative responsibility) is the presence of such a category of subjects with the status of controlled persons, i.e. their subordination to the legal regime of control (supervision) and, accordingly, the double assessment of their activities by

[167] Decision of the Constitutional Court of the Russian Federation of 10 October 2017 № 2255-O «On the request of the Cherkessk City Court of the Karachay-Cherkess Republic on verification of the constitutionality of the provisions of Part 3 of Article 3.4 and Part 1 of Article 4.1^1 of the Code of the Russian Federation on Administrative Offences».

[168] Judgement of the Constitutional Court of the Russian Federation of 4 February 2019 № 8-P «On the case of verification of the constitutionality of Article 15.33^2 of the Code of the Russian Federation on Administrative Offences in connection with the complaint of citizen U.M. Erkenova» // CL RF. 18.02.2019. № 7 (part II). Art. 711.

the State – in the framework of control and supervisory activities and in the framework of proceedings on administrative offenses.

The analyzed norms of the Federal Law on Mandatory Requirements fix special rules that, stepping out from the general procedure for bringing to administrative responsibility, allow in some cases to abandon the administrative-offence prosecution of controlled persons for administrative offences related to violation (non-compliance) of mandatory requirements, committed by controlled persons.

Thus, the specified Federal Law explicitly established the provision that if conflicting mandatory requirements are established by acts of equal legal force, then if one of such requirements is met, the person is considered to be in good faith complying with mandatory requirements and is not subject to liability (part 7 of Article 3). The direct legislative consolidation of such a conflict of laws rule cannot but be supported, however, the indication of the «good faith» of compliance with mandatory requirements in the situation provided for by the analyzed norm is questionable, as of that part 7 of Article 3 of the Federal Law on Mandatory Requirements is the only case when the notion of good faith is explicitly mentioned in this Federal Law. It is also not entirely clear how the analyzed rule correlates with the general legal principles of the action of norms adopted at different times (*lex posterior derogat priori*) [169]: can we assume that compliance with a formally in-force mandatory requirement established earlier should exclude the possibility of being held accountable for simultaneous non-compliance with a contradictory mandatory requirement that was introduced later? Moreover, it is difficult to explain the significance of this characteristic when bringing to administrative responsibility, the occurrence of which is not excluded by the conscientiousness of the person who committed the offense.

An analysis of the application (so far these are only isolated cases) of the rule established by part 7 of Article 3 of the said Federal Law indicates that the courts have not yet determined the appropriate regulatory and law enforcement

[169] As D.N. Bakhrakh believes, such a temporal conflict should be resolved in favour of a new norm. See: Essays on the Theory of Russian Law / D.N. Bakhrakh. M.: Norma, 2008. P. 42.

conditions in which this rule exists, and refer to it arbitrarily[170]. It is noteworthy at the same time that, despite the literal indication in the legal provision in question of its connection with bringing to justice, the application of this conflict of laws rule is not excluded when assessing compliance with mandatory requirements during state control[171].

Another novelty of the Federal Law on Mandatory Requirements that influenced administrative-offence regulation was the restriction of grounds for bringing to administrative responsibility for non-compliance with the requirements contained in outdated regulations, which became part of the «regulatory guillotine» mechanism. According to this Federal Law, the Government of the Russian Federation must ensure the recognition as invalid, or as non-acting on the territory of the Russian Federation and the repeal of legal acts of the Government of the Russian Federation, federal executive authorities, executive and administrative bodies of state power of the RSFSR and the USSR, containing mandatory requirements, compliance with which is assessed in the exercise of state control (supervision); at the same time, regardless of these actions, from January 1, 2021, non-compliance with the requirements contained in these acts (with the exception of requirements defined by the Government of the Russian Federation[172]), if they entered into force before January 1, 2020, cannot be grounds for administrative liability (Parts 1 and 2 of the Article 15). Subsequently, corresponding changes were made to part 1 of Article 24.5 of the CAO of the Russian Federation, according to which proceedings on an administrative offense cannot be initiated, and the initiated proceedings are subject to termination in the case of an administrative offense, expressed in non-compliance with mandatory requirements

[170] For example, in a case challenging a decision by an authorised executive authority to refuse to issue a transport permit. See: Judgement of the Moscow Circuit commercial court of 23 December 2021 № F05-31347/2021 on the case № A40-39342/2021.

[171] Cassation ruling of the Fourth cassation court of general jurisdiction of 18 July 2023 № 88a-21152/2023.

[172] Resolution of the Government of the Russian Federation of 31 December 2020 № 2467 «On Approval of the List of Regulatory Legal Acts and Groups of Regulatory Legal Acts of the Government of the Russian Federation, Regulatory Legal Acts, Individual Provisions of Regulatory Legal Acts and Groups of Regulatory Legal Acts of Federal Executive Bodies, Legal Acts, Individual Provisions of Legal Acts, Groups of Legal Acts of Executive and Administrative Bodies of State Power of the RSFSR and the Union of Soviet Socialist Republics, Decisions of the State Commission for the Protection of the Russian Federation» //CL RF. 11.01.2021. № 2 (Part II). Art. 471. Hereinafter also – Resolution № 2467.

contained in normative acts, if their non-compliance by virtue of the specified provision of the Federal Law on Mandatory Requirements cannot be grounds for bringing to administrative responsibility (paragraph 5^1)[173].

An illustrative example of the positive effect of the introduction of such a rule is demonstrated by situations in which a controlled person is not held accountable if violations of an outdated act containing mandatory requirements and not included in Resolution № 2467 are committed after January 1, 2021[174].

Meanwhile, as E.A. Dmitrikova notes, the courts, in most cases justifiably recognizing it lawful to bring to justice in case of violation of the requirements included in Resolution № 2467, in some cases refuse to apply the rule excluding proceedings on an administrative offense, despite the fact that there was a violation of the requirement that fell under the regulatory guillotine (part 3 of Article 15 of the Federal Law on Mandatory Requirements; paragraph $5^1$of part 1 of Article 24.5 of the CAO of the Russian Federation); such decisions are motivated by the courts by the fact that instead of such an «outdated» requirement, after the commission of an offense, a new regulation was adopted that preserved the violated requirement or unfulfilled obligation[175]. At the same time, it is emphasized that the correctness of such a law enforcement approach needs critical reflection.

The noted approach, indeed, shows signs of inconsistency with the norm provided for by the Federal Law on Mandatory Requirements, which can be explained to a certain extent by the difficulties that courts exercising the functions of *justice* experience in the practical implementation of the managerial concept of the «regulatory guillotine», which means, in relation to legislation on administrative responsibility, the need to abandon the administrative-offence consequences of a formal violation current mandatory requirements. However, the desire of law enforcement agencies by any means to prevent a state of

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[173] Federal Law of February 24, 2021 № 29-FZ «On Amending Article 24.5 of the Code of the Russian Federation on Administrative Offences» // CL RF. 01.03.2021. № 9. Art. 1476.

[174] Judgement of the judge of the Ninth cassation court of general jurisdiction of 3 March 2022 № 16-508/2022.

[175] *Dmitrikova E.A.* Influence of the «regulatory guillotine» on the assessment of the grounds for bringing to administrative responsibility / Actual issues of control and supervision in socially significant spheres of activity of society and the state. Materials of VII All-Russian scientific-practical conference devoted to the 300th anniversary of the formation of the Prosecutor's Office of Russia. Nizhny Novgorod, 2023. P. 581–583.

administrative impunity and ensure the inevitability of administrative responsibility, thereby maintaining order and security[176], creates risks of unjustified administrative liability in the absence of legitimate grounds, which poses no less a threat to the legal system.

At the same time, as with respect to the rule studied above on the refusal to bring to responsibility if one of the conflicting mandatory requirements is met, the practice of using the «regulatory guillotine» in the context of proceedings on an administrative offense cannot be considered established. Consequently, before the provisions of Part 3 of Article 15 of the Federal Law on Mandatory Requirements and paragraph 5^1 of part 1 of Article 24.5 of the CAO of the Russian Federation acquire law enforcement outlines (currently they have not actually formed[177]), it would be premature to draw unambiguous conclusions about their defectiveness.

In addition to the analyzed specific provisions that influenced the grounds for bringing controlled persons to administrative responsibility, the positive effect of the adoption of the Federal Law on Mandatory Requirements for administrative-offence legislation was also a general improvement in the quality of legal regulation of regulatory prescriptions, violation (non-compliance) of which may constitute an administrative offense. Taking into account the fact that the design of a significant number of articles of the Special Part of the CAO of the Russian Federation presupposes the definition as a violation (non-compliance) of «legislation», «rules», «requirements», «order», etc. in a certain area (for example, Article 7.13 «Violation of the requirements of legislation on the protection of cultural heritage objects (historical and cultural monuments) of the peoples of the Russian Federation»), it becomes fundamentally important to properly establish the range of requirements, violation (non-compliance) of which forms the objective side of an administrative offense, as well as ensuring the certainty of regulatory norms protected by legislation on administrative offenses. Accordingly, the reform of control (supervision) in terms of systematization of the rules of economic

[176] *Maksimov I.V.* Administrative punishments. M.: Norma, 2009. Access from the SPS «ConsultantPlus».

[177] Although in the literature it is noted that the rules of «regulatory guillotine» will certainly entail disputes. See: *Polyakova N.A.* Streamlining of the current system of mandatory requirements in the Russian Federation // Legality. 2024. № 2. Access from the SPS ConsultantPlus.

activity had a positive effect on the clarity and consistency of the constructions of the objective side (i.e., a unique description of the signs of an illegal act) of administrative offenses, connected with a breach of mandatory requirements.

At the same time, despite the emergence of special regulation aimed at preventing unjustified administrative liability for violation of mandatory requirements, there is no normative definition of the concept of «mandatory requirements» in the current legislation. The Federal Law on Mandatory Requirements only speaks about the requirements contained in normative legal acts that are related to the entrepreneurial and other economic activities and the assessment of compliance with which is carried out within the framework of state control (supervision), municipal control, bringing to administrative responsibility, granting licenses and other permits, accreditation, conformity assessment of products, other forms of assessment and expertise, calling them mandatory requirements (part 1 of Article 1). At the same time, it follows from paragraph 1 of part 1 of Article 10 of this Federal Law that the content of mandatory requirements is formed by conditions, restrictions, prohibitions, obligations.

There is also no unambiguous comprehension of the of mandatory requirements in the legal literature. D.S. Fesko understands mandatory requirements as «a set of rules, prohibitions, restrictions and obligations imposed on the implementation by citizens and organizations of economic, social, spiritual and other types of activities, conditions, rules and characteristics imposed on manufactured products (works performed, services provided) and production facilities established by international and domestic regulations, compliance with which is assessed during state control (supervision) activities»[178]. According to A.I. Stakhov, mandatory requirements are rules of lawful behavior established by normative legal acts or contracts with normative content that create a risk (danger) of harm to legally protected values, including prohibitions, restrictions, conditions,

[178] *Fesko D.S.* Administrative-law guarantees of ensuring the rights of citizens and organisations in the implementation of state control (supervision): theory and practice: monograph.

obligations»[179]. A.F. Nozdrachev considers mandatory requirements as a specific administrative-law institution expressing the idea of public law foundations in the organization of economic activity to ensure that it meets the criteria of public tasks and goals[180]. Mandatory requirements are also defined as «the duties of subjects of economic activity established in the disposition of the administrative-law norm and the corresponding duties of public administration bodies»[181]. Even the authors, who believe that with the adoption of the Federal Law on Mandatory Requirements, the question of the nature of mandatory requirements «can be definitively recognized as closed», define them as «universal legalized imperatives»[182], i.e. use a definition that does not allow differentiating mandatory requirements from other legal norms.

It can be seen from the proposed definitions that even the scope of establishing mandatory requirements (only economic relations or also others) is not uniformly defined. At the same time, both from normative and theoretical positions, only that indisputable characteristic of mandatory requirements coincides, which qualifies them as established imperative prescriptions, compliance with which determines the legality of conducting a certain activity. To some extent, the indicated uncertainty is compensated by the fact that the named Federal Law provides for the creation of a register of mandatory requirements containing a list of mandatory requirements, information about the regulatory legal acts that established them, and their validity period (part 2 of Article 10). However, this register, as follows from the rules of its formation, maintenance and updating[183], is only informational in nature (the current regulation directly indicates that it is created in order to systematize mandatory requirements and

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[179] *Stakhov A.I.* Key elements of the structure of administrative control and supervision proceedings carried out in Russia // Russian Law Journal. 2021. № 3. Access from SPS «ConsultantPlus».

[180] *Nozdrachev A.F.* Mandatory requirements as a novel institute of administrative law: ideas, content, principles and levels of legal regulation.

[181] Regulatory policy of the Russian Federation: legal problems of formation and implementation: monograph. P. 114.

[182] *Vinnitsky A.V., Kharinov I.N.* Undisclosed potential of judicial normocontrol in the light of the law on mandatory requirements // Russian law: education, practice, science. 2022. № 6. P. 82–83.

[183] Rules for forming, maintaining and updating the register of mandatory requirements (approved by Resolution of the Government of the Russian Federation of February 6, 2021 № 128) // CL RF. 15.02.2021. № 7. Art. 1132.

inform interested parties) and does not form additional legal guarantees for controlled entities, although foreign legal regulation is known examples of giving the register of mandatory requirements legal significance. Thus, the Republic of Kazakhstan has established a rule by virtue of which if, from the moment of exclusion from the register of mandatory requirements in the field of entrepreneurship (a publicly available database of regulatory acts containing mandatory requirements for business entities), a regulatory act is not canceled in a timely manner, then non-compliance by business entities with the requirements of relevant regulatory acts is the basis for exclusion for bringing them to administrative responsibility liability (paragraph 6 of Article 83-1 of the Entrepreneurial Code of the Republic of Kazakhstan).

Thus, both before the adoption of the Federal Law on Mandatory Requirements[184] and after that, the category of mandatory requirements remains uncertain both in regulatory and doctrinal dimensions. This, in turn, retains the relevance of the problem of the correct qualification of a violation of a mandatory requirement – as an act entailing the application of response measures provided for by control and supervisory legislation (issuing an order to eliminate this violation), and (or) as a violation, which is the basis for bringing to administrative responsibility. Referring control (supervision) and proceedings on an administrative offense to the number of equal means of assessing compliance with mandatory requirements, the Federal Law on Mandatory Requirements, however, did not solve this problem and did not set guidelines for determining whether the simultaneous application of governmental measures within these administrative proceedings is permissible in case of violation of mandatory requirements by a controlled person.

The doctrine made proposals to exclude the possibility of issuing an order to eliminate violations of mandatory requirements and bringing administrative

[184] See: *Knutov A.V.* Mandatory requirements for business activities in Russia // Public administration issues. 2015. № 1. P. 106.

responsibility for the same act[185], i.e. «double» administrative prosecution. At the same time, the researchers point out that the use of control and supervisory and administrative-jurisdictional means of influencing controlled persons is unjustified and indicates disproportionate state coercion; in this regard, it is proposed to create a list of violations that entail only the issuance of an order, and violations that entail the possibility of bringing to administrative responsibility[186]. Meanwhile, taking into account the fact that control (supervision) and proceedings in an administrative offense case are normatively separate means of assessing compliance with the requirements for business and other economic activities and have an independent status in the system of administrative regulation, there is no reason to believe that the assessment of compliance with mandatory requirements as through control and supervisory activities and in the framework of proceedings on an administrative offense, is excessive or unacceptable state interference in economic rights and freedoms.

To substantiate the thesis that one act cannot constitute such a violation, which would be recognized simultaneously as the basis for making a prescription on the elimination of this violation and the basis for bringing the controlled person to administrative responsibility, attempts have been made in the literature to differentiate violations of mandatory requirements. O.N. Ermolaeva, for example, considering a violation of mandatory requirements, detected during control (supervision), as an «objectively illegal act», believes that it differs from an administrative offense in the absence of a sign of guilt in such a violation, which is an indispensable condition for bringing to administrative responsibility, as well as the presence of special consequences, expressed in extradition to a controlled person prescriptions on the elimination of the identified violation of mandatory requirements[187]. It is also proposed to construct an «administratively remedial offence» detected during the control and supervisory event, which is a specific

[185] *Landerson N.V.* On the integrative interrelation of extrajudicial and judicial resolution of administrative-offence cases // Siberian legal review. 2021. № 3. Access from SPS «ConsultantPlus».

[186] *Stakhov A.I.* About some problems of judicial consideration of administrative cases related to the implementation of state control and supervision // Administrative law and process. 2017. № 10. Access from SPS «ConsultantPlus».

[187] *Ermolova O.N.* Op. cit.

variant of an unlawful act and differs from an administrative offence by three criteria (illegality, dishonesty of the controlled person, administrative fixability), in connection with which such a violation (non-fulfillment) of mandatory requirements detected during the specified event cannot be qualified as administrative offense; at the same time, the sign of illegality consists in «non-fulfillment or improper fulfillment of [...] restrictions and permits» established by law and protected by administrative and coercive measures applied outside the framework of administrative-offence proceedings[188].

However, the disadvantage of this approach is that it is mainly based on subjective criteria, i.e. the criterion of differentiation is aspects that characterize not the violation of mandatory requirements itself, but only the attitude of the controlled person to the act committed by him (guilty or innocent, in good faith or in bad faith), which can hardly serve as a determining basis for the mutually exclusive choice of a specific administrative proceeding to establish the presence or absence of a violation (non-compliance) of mandatory requirements. The differentiation of violations of mandatory requirements from the point of view of differing consequences contradicts the rules of logic, since different consequences are derived from the essential discrepancy between different types of violations of mandatory requirements, but do not generate them, and therefore in themselves are only a consequence of the alleged differences in violations of mandatory requirements, but cannot cause them. The same considerations determine the incingruity of the idea of differentiation and distribution according to the lists of violations of mandatory requirements in terms of possible consequences – prosecution or issuance of a prescription, – since, if we assume that the issuance of a prescription is aimed at restoring law and order, and bringing to administrative responsibility has the main purpose of punishing the offender, the consistent implementation of this idea will mean that a number of violations declared to be

[188] *Stakhov A.I.* Key elements of the structure of administrative control and supervision proceedings carried out in Russia; *Stakhov A.I.* Features of qualification of violations of mandatory requirements identified during the implementation of state control and supervision // Business Security. 2016. № 3. Access from SPS «ConsultantPlus»; *Stakhov A.I.* On the classification and codification of administrative and coercive measures applied in the sphere of state control and supervision over the activities of legal entities and individual entrepreneurs // Administrative law and process. 2016. № 4. Access from SPS «ConsultantPlus».

«eliminated» exclusively using control and supervisory measures will remain, in essence, without administrative-offence protection[189]. Finally, the description of the criterion of «illegality» of violations of mandatory requirements that are not grounds for bringing to administrative responsibility completely coincides with one of the signs of an administrative offense – illegal, culpable action (inaction), for which administrative responsibility is established (part 1 of Article 2.1 of the CAO of the Russian Federation), and therefore also cannot serve as sufficient the basis for the allocation of «administratively avoidable violations», entailing only the issuance of a prescription and not forming the composition of an administrative offense.

Consequently, in the current system of administrative regulation there are no grounds for concluding that violations of mandatory requirements are differentiated into those that entail administrative liability and do not imply this from the point of view of the object and objective side of the relevant administrative offense.

In accordance with the position established in the doctrine, the mandatory requirement is provided by a sanction (responsibility for non-compliance with it)[190], which is a necessary attribute of a legal obligation[191], and therefore a violation of mandatory requirements established during a control and supervisory event should, without alternative, lead to an administrative responsibility for the relevant act (of course, if all other elements of the offense are established). Otherwise, the risks of harm to protected values will significantly increase, which entails the same negative effect on the legal system as the disproportionate state coercion applied to economic entities. Thus, if there is a mandatory requirement, the violation of which does not form the objective side of the composition of an administrative offense, then this only indicates – provided that the same deviations from mandatory requirements can be qualified as violations during control

[189] This, of course, does not deny as such the right of the state to introduce, increase, reduce or eliminate administrative responsibility for certain acts based on the need to protect certain relations.

[190] *Zyryanov S.M.* State control (supervision): monograph.

[191] *Leist O.E.* Sanctions in the Soviet law. M.: Gosurizdat, 1962. P. 61.

(supervision) – about the gap in administrative-offence regulation that needs to be filled by fixing the corresponding composition of the administrative offense.

The conclusion that any violation of mandatory requirements can potentially lead to the occurrence of administrative-offence consequences also determines the question of the mutual significance of a certain qualification of an act for control and supervisory and administrative-offence proceedings in resolving situations where the same act:

– qualifies as a violation of mandatory requirements during control (supervision) and as a basis for bringing a controlled person to administrative responsibility (as well as the reverse situation – bringing to responsibility preceded the execution of the act of control and supervisory action);

– it was not recognized as a violation of mandatory requirements during control (supervision), but subsequently led to administrative responsibility (as well as the reverse situation – did not serve as a basis for issuing a ruling on an administrative offense, but was determined during control (supervision) as a violation of mandatory requirements).

From the point of view of the current legislative regulation, a resolution of the issue of the presence or absence of a violation of mandatory requirements is carried out within each of these proceedings separately, and there are no rules implying mutual consideration of the qualifications given to such a violation when exercising control (supervision) or when bringing to administrative responsibility. As M.N. Kudilinsky notes, the execution of the prescripition does not exempt from administrative responsibility, and the fact that the controlled person was not brought to such responsibility does not give grounds for concluding that there was no violation of mandatory requirements[192].

The position of the Constitutional Court of the Russian Federation, based on this approach, notes the interconnection and at the same time the self-sufficiency of control and supervisory activities and proceedings in cases of administrative

[192] *Kudilinsky M.N.* Correlation of control and jurisdictional proceedings. P. 7–8.

offenses[193]. This conclusion was formulated in relation to the issue of maintaining the legal force of the prescription to eliminate violations of mandatory requirements in the field of fire safety identified during the implementation of control (supervision) after the court ascertained the absence of an administrative offense in the actions of the controlled person, the objective side of which consists in violation of the same mandatory requirements. In its Ruling, the Constitutional Court of the Russian Federation stated that compliance with mandatory requirements and the execution of the order of the supervisory authority are not dependent on the simultaneous bringing of the controlled person to administrative responsibility, and the cancellation of the decision in the case of an administrative offense in court due to the absence of the composition of an administrative offense is not an unconditional basis for the cancellation of the order to eliminate violations of mandatory requirements, which acts as a means of restoring law and order, increasing public safety and countering threats arising from violations of current legislation.

The above approach as a whole does not differ from the general principles of administrative regulation, which allow for the combined use of control and supervisory and administrative-offence means of responding to illegal acts. In other words, an assessment of the same activity of a controlled person both through control and supervisory proceedings and within the framework of proceedings on an administrative offense is not only possible, but also necessary to fully ensure the validity of mandatory requirements. At the same time, these proceedings represent a rather serious interference in the activities of controlled persons, and therefore the ratio of the results of control and supervisory proceedings and proceedings on an administrative offense, which were carried out in relation to one set of violations of mandatory requirements, should ensure the identical qualification of the relevant act as violating or not violating any mandatory requirements. Thus, if

[193] Decision of the Constitutional Court of the Russian Federation of 8 December 2022 № 3216-O «On refusal to accept for consideration the complaint of the real estate owners' association «Kupechesky Dvor» about the violation of its constitutional rights by paragraph 1, part 1, article 17 of the Federal Law «On Protection of the Rights of Legal Entities and Individual Entrepreneurs in the Implementation of State Control (Supervision) and Municipal Control».

in the course of control (supervision) a violation of a mandatory requirement was revealed, then the relevant act of the controlled person should, as a rule, serve as a basis for his subsequent prosecution (at least in relation to the formal composition of administrative offenses), if there are no other (non-related to the objective side of the corpus delicti of an offense), circumstances precluding the proceedings in the case of an administrative offense. At the same time, this means that if a violation of mandatory requirements was not detected during control (supervision), then it cannot be subsequently revealed during the proceedings on an administrative offense.

The need to introduce appropriate rules is due to the fact that the contradictory assessment by authorized public authorities (we are talking, first of all, about executive authorities exercising control (supervision) and consideration of cases of administrative offenses) of one act raises doubts from the point of view of consistency with the principles of legal certainty, fairness, maintaining the trust of citizens and legal entities in the law and actions of the state[194]. At the same time, the achievement of the indicated coordination of the results of control and supervisory and administrative-offence proceedings in terms of uniform qualification of violations of mandatory requirements largely depends on the consolidation of the necessary norms ensuring a consistent assessment of the presence or absence of violations of mandatory requirements in the legislation on administrative responsibility, since it is within the framework of less regulated proceedings in the case of administrative offenses (which at the same time assumes the possibility of applying stricter measures of interference in the activities of controlled persons), the authorized bodies may review the results of an earlier control and supervisory event.

For the full implementation of such a model of the correlation of control and supervisory activities and proceedings in cases of administrative offenses, in addition to adapting the rules for initiating such cases (more on this later), it will also be necessary to take into account the potential for legal nullification of the

[194] *Dmitrikova E.A., Karitskaya A.A., Trofimov A.A.* Constitutional foundations of differentiation of control and supervisory proceedings and proceedings on administrative offences. P. 194–195.

results of both control and supervisory proceedings (based on the results of the appeal) and administrative prosecution (in connection with the cancellation of the judgements, rulings) and coordination of deadlines for the implementation of control (supervision) and administrative-offence proceedings.

As a mechanism existing in legislation to ensure the prevention of contradictions that are caused by different assessments of violations of mandatory requirements during control (supervision) and proceedings in an administrative offense case, one can point to the provisions of the CAO of the Russian Federation, which prohibit the use as evidence in an administrative offense case of the results of control and supervisory measures carried out with violation of the law (Article 26.2). Thus, taking into account the presence in the specified Code of Article 28.1, which ensures the consistent implementation of control and supervisory and administrative-offence proceedings, it is assumed that the circumstances in the case of an administrative offense are clarified to the maximum extent possible within the framework of control (supervision).

At the same time, with regard to the previously existing legislation on control (supervision), the point of view was expressed that control and supervisory activities do not allow to establish the circumstances of the commission of an administrative offense and the guilt of the controlled person[195]. Meanwhile, the Federal Law on Control (Supervision) has provided for a comprehensive system of control (supervisory) measures and actions that make it possible to effectively assess the activities of a controlled person in terms of the presence or absence of violations of mandatory requirements, and many of them, in fact, duplicate measures to ensure the proceedings on an administrative offense[196]. Moreover, the resolution of the issue of compliance by a controlled person with mandatory requirements presupposes that it is the audited controlled person (and no one but it), in respect of whom an act is drawn up and an order is issued to eliminate violations of mandatory requirements, who has a subjective obligation to comply with the relevant requirements. Consequently, in principle, control and supervisory

[195] *Kudilinsky M.N.* To the question of the purposes of state control. P. 33–34.
[196] *Osintsev D.V.* Op. cit.

regulation does not exclude clarifying the issues of guilt (subjective attitude to the act) of the controlled person in committing a violation of mandatory requirements during the implementation of the relevant proceedings, which can subsequently be used to resolve the issue of the subjective side of an administrative offense within the framework of administrative-offence proceedings.

Potential novelties may thus raise questions about how the circumstances clarified during control (supervision) by an authorized official bind the subject of administrative jurisdiction making the decision to bring the controlled person to administrative responsibility, and whether these circumstances are sufficient to make a decision on the imposition of administrative punishment (including contrary to the conclusion that there are no grounds for issuing a prescription to eliminate violations of mandatory requirements). These measures, in essence, represent procedural rules for the mutual assessment of the results of control (supervision) and proceedings in the case of administrative responsibility and, in this regard, go beyond the scope of the substantive issue to which this section of the study is devoted.

In addition, ensuring the proportionality and reasonableness of state intervention in the activities of controlled persons who have violated mandatory requirements, in conditions of the permissibility of cumulative (control-supervisory and administrative-offence) effects on them, is achieved both by limiting the grounds for initiating appropriate proceedings and strict legislative frameworks for the activities of the bodies exercising control (supervision) and administrative prosecution, and by the enforcement of other the measures available in the arsenal of administrative-offence legislation – the insignificance of the offense, the imposition of punishment in the form of a warning, the imposition of a fine below the lowest amount, the recognition of the execution of the order of the control (supervisory) authority as mitigating circumstances, etc.

Also, special rules may potentially appear in the legislation to ensure the waiver of administrative prosecution in certain cases, but not the waiver of the introduction of administrative liability as such for an act that violates mandatory requirements. Thus, it is not excluded that the CAO of the Russian Federation (for

example, among the circumstances excluding proceedings on an administrative offense) establishes the norms that the execution of an issued order excludes prosecution for the violation in connection with which it was issued. The permissibility of such regulation is confirmed by Article 90 (part 4) of the Federal Law on Control (Supervision), according to which the regulation on the type of control may provide for cases in which the measures provided for in paragraph 3 of part 2 of the same article are not taken (in terms of administrative offenses) if the issued prescription to eliminate violations of mandatory requirements is executed by a controlled person properly. The reflection of such rules of bringing to administrative responsibility not in administrative-offence legislation, but in the provisions of control and supervisory regulation is hardly, as noted by S.M. Zyryanov[197], consistent with the fundamental requirement of the CAO of the Russian Federation (part 1 of Article 1.1) on the composition of legislation on administrative offenses, which is formed by this Code and the laws of the subjects adopted in accordance with it. In that regard the consolidation of the considered procedure not only in the Federal Law on Control (Supervision), but also in the specified Code, may well claim to be a promising direction for improving legislation on administrative responsibility. From a procedural point of view, the introduction of this mechanism, as noted in the literature, may suggest that: when a violation is detected during control (supervision), an order is issued to the controlled person to eliminate the violation, in case of non-fulfillment of which the controlled person is involved both for the initial violation and for non-fulfillment of the issued order[198]; at the same time, the statute of limitations for the initial the

[197] *Zyryanov S.M.* State control (supervision): monograph.

[198] As emphasised by the Constitutional Court of the Russian Federation, bringing a person on the basis of the results of verification of the implementation of an issued instruction to eliminate a violation to administrative responsibility for the violation specified in the instruction and not eliminated cannot be considered as unreasonable and violating any constitutional rights of legal entities and individual entrepreneurs. See: Decision of the Constitutional Court of the Russian Federation of 19 December 2019 № 3575-O «On refusal to accept for consideration the complaint of Limited Liability Company «Neftetrans» about the violation of constitutional rights and freedoms by paragraph 2 of part 1 of Article 17 of the Federal Law «On Protection of the Rights of Legal Entities and Individual Entrepreneurs in the Implementation of State Control (Supervision) and Municipal Control».

violation is suspended for the duration of the execution of the order[199]. However, in any case, such provisions should be reflected in the CAO of the Russian Federation.

Foreign experience demonstrates a possible way to consolidate such a rule in administrative-offence legislation. Thus, the Code of the Republic of Uzbekistan on Administrative Responsibility[200] provides that proceedings on an administrative offense cannot be initiated, but what has been initiated is subject to termination if officials or employees of a business entity or citizens engaged in entrepreneurial activity have committed an offense for the first time provided for by certain articles of this Code (related to entrepreneurial, economic activities), they voluntarily eliminated the violations committed and (or) compensated for the material damage caused within thirty days from the moment of detection of the offense, except in cases of harm to the life and (or) health of citizens (paragraph 11 of Article 271). Thus, it is possible for business entities to avoid administrative liability. A peculiar mechanism aimed at accounting for the post-offence behavior of the person being held liable (including if authority control was exercised over him) is provided for in the legislation on administrative offenses of the Republic of Belarus, which establishes the rule that certain acts (related to the payment of public law payments) are not administrative offenses, provided that violations are eliminated and (or) compensation for damage caused to the State, harm to individuals or legal entities no later than ten working days from the date of delivery by the inspector (head of the inspection) or sending the inspection report to the person being checked or his representative (Article 3.5 of the Code of the Republic of Belarus on Administrative Offenses[201]).

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[199] *Kononov P.I.* On some topical problems of administrative responsibility of legal entities (on the materials of arbitration and judicial practice) // Laws of Russia: experience, analysis, practice. 2012. № 3. Access from the SPS «ConsultantPlus».

[200] Code of the Republic of Uzbekistan on administrative responsibility (approved by the Law of the Republic of Uzbekistan of 22 September 1994, № 2015-XII) // Vedomosti of the Supreme Council of the Republic of Uzbekistan. 1995. № 3. Art. 6. Mode of access: National database of legislation of the Republic of Uzbekistan. URL: https://lex.uz/docs/97661 (access date: 16.06.2024)

[201] Code of the Republic of Belarus on Administrative Offences of January 6, 2021 № 91-Z // Information retrieval system «Etalon-Online» (National Centre of Legal Information of the Republic of Belarus). URL: https://etalonline.by/document/?regnum=hk2100091 (access date: 16.06.2024).

The given isolated examples, of course, do not form a complete analogy with the mechanism proposed in this work, which would exclude, within the framework of the Russian legal system, bringing a controlled person to administrative responsibility in case they comply with the instructions of the supervisory authority. However, even those examples indirectly indicate the potential permissibility of fixing such a mechanism in administrative-offence regulation.

Thus, as a result of the consequent stage of the control (supervision) reform that took place in 2020, a special procedure for establishing and evaluating mandatory requirements has been consolidated in Russian legal regulation. The relevant rules improve the quality of mandatory requirements, their consistency and relevance, and therefore this reform has had a positive impact on the certainty of rules, prohibitions, restrictions and obligations, violation (non-compliance) of which can serve as a basis for bringing a controlled person to administrative responsibility.

However, the legal regulation of mandatory requirements adopted at this stage of the reform of the legislation on control (supervision) did not definitively resolve the problem of the possibility (admissibility) of simultaneous recognition of violations of mandatory requirements both during a control and supervisory event and within the framework of bringing a controlled person to administrative responsibility for the same act. Nevertheless, the basic principles of administrative-law regulation allow us to recognize that the possibility of violations of mandatory requirements, which, in terms of the objective side, do not form part of an administrative offense, should be excluded. Consequently, the same act of a controlled person, expressed in violation (non-compliance) with mandatory requirements, as a general rule, should entail both issuing an order to eliminate this violation and bringing him to administrative responsibility.

At the same time, for a comprehensive, consistent, fair and reasonable implementation of such a model of correlation between the results of supervisory and administrative-offence proceedings, the legislator must provide special rules that ensure the mutual use of the results of supervisory activities and proceedings

on administrative offenses to equally resolve the issue of the presence or absence of violations of mandatory requirements in the activities of a controlled person. requirements. A possible measure to improve the legislation on administrative offenses may be the consolidation of a norm excluding prosecution in connection with a violation of a mandatory requirement before the final assessment of the execution of the prescription issued in connection with this violation.

Paragraph 2. Evolution of the rules for the appointment and execution of administrative penalties in the context of the reform of legislation on control and supervisory activities

Administrative punishment, being a measure of responsibility established by the state for committing an administrative offense (part 1 of Article 3.1 of the CAO of the Russian Federation), is one of the parameters by which it is possible to assess the degree of state interference in a particular sphere of relations (including economic ones). By implementing appropriate regulation, the public authority determines the illegality of a particular behavior and imposes sanctions for the committed offence, and their size and severity, as follows from the legal positions of the Constitutional Court of the Russian Federation[202], largely provide a deterrent effect of legislation on administrative responsibility and the necessary protection of the relations protected by this legislation. Taking into account the fact that among the types of administrative coercion, it is administrative punishment that has the greatest impact on the offender[203], the threat of his appointment alone restrain the free realization of legitimate free economic activity.

At the same time, the modern doctrine of administrative law reflects the idea that compliance with mandatory requirements is motivated not only by the existence of punishment for their violation, but also by other motives (social duty,

[202] Decision of the Constitutional Court of the Russian Federation of 14 November 2023 № 3017-O «On refusal to accept for consideration the complaint of limited liability company «ATRAN» on violation of its constitutional rights by part 1 of Article 16^1 of the Code of the Russian Federation on Administrative Offences».

[203] *Maksimov I.V.* Administrative punishments in the system of measures of administrative coercion (conceptual problems): abstract dis. … doct. of legal sciences. Saratov, 2004. P. 4.

the desire to receive benefits and advantages for lawful behavior)[204], the existence of which pushes the state to reconsider approaches to ensuring lawful behavior mainly for by introducing administrative responsibility and increasing the severity of punishment. Moreover, the downside of relying on administrative penalties in the regulation of economic processes is that over time they (especially when it comes to administrative fines) acquire the character of costs that accompany economic activity conducted «not following the rules», and therefore lose their potential as a means of stimulating lawful behavior[205]. At the same time, modern administrative regulation offers a number of other means of legal influence on economic relations, which allow relying not on the regulatory potential of administrative penalties, but on such tools as control (supervision)[206].

Accordingly, taking into account the objective legal relationship between control and supervisory and administrative-offence regulation, we can talk about the permissibility and demand for measures to ensure the adjustment of administrative-punitive norms, aimed at provision of additional preferences to controlled persons, including in terms of punishments for offenses committed in connection with economic activity. The reform of legislation on control and supervisory activities and the principles that reform relies on confirmed the need to consolidate in legislation a proportionate system of state coercion, focused in terms of legislation on administrative responsibility on the priority of milder measures of intervention in the activities of controlled persons when they are brought to administrative responsibility[207]. Awareness of this relationship served as the basis for stating that the reform of control and supervisory activities should inevitably entail adjustments to the legislation on administrative offenses corresponding to its updated model, which would reflect, among other things, a change in approaches

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[204] See: *de Benedetto M.* Effective Law from a Regulatory and Administrative Law Perspective // European Journal of Risk Regulation. 2018. № 9 (3). P. 402, 405.

[205] «Exclusion of economic and organisational attractiveness of the offence», as rightly noted in the literature, stimulates lawful behaviour. See: *Dmitrikova E.A.* Assignment of an administrative fine and administrative suspension of activities for violations in the field of industrial safety // Petersburg Lawyer. 2015. № 5. P. 84.

[206] *Zyryanov S.M.* Administrative supervision of executive authorities. P. 3–4.

[207] *Pravkin S.A., Smirnova V.V.* A new stage of administrative reform in Russia, or What to expect from the «regulatory guillotine»? // Russian Justice. 2020. № 7. P. 25–27.

to sentencing, as evidenced by the Concept of the new CAO of the Russian Federation.

At the same time this idea, which is the basis for the concept of a planned systematic update of legislation on administrative responsibility, had already reflected in the norms of the current CAO of the Russian Federation, which in recent years has been supplemented by a number of provisions reflecting the legislator's desire to improve the situation of controlled persons by adjusting the rules for the imposition of administrative penalties.

Key changes in this area, as noted earlier, took place in 2022 in connection with the introduction of new rules to the CAO of the Russian Federation aimed at[208] improving the situation of economic entities (controlled persons):

– the provision on the appointment for an administrative offense, identified during the implementation of state control (supervision), municipal control, an administrative fine in the minimum amount, if the offender prevented or compensated for the damage caused by the offence committed by him (part $3^{4\text{-}1}$ of Article 4.1);

– the scope of potential application of the rule on substitution for a first-time offense detected during the implementation of state control (supervision), municipal control, an administrative fine for a warning is no longer limited to persons classified in special categories (non-profit organizations, small and medium-sized businesses and their employees), and applies to all controlled persons (part 1 of Article 4.1^{1});

– an exception has been introduced from the general rule on the appointment of an independent punishment for each committed administrative offense, suggesting that if two or more administrative offenses provided for by one administrative-offence norm are detected during one control (supervisory) event during the implementation of state control (supervision), municipal control, the

[208] The doctrine, however, states that in parallel with the improvement of the situation of subjects of economic activity the CAO of the Russian Federation is supplemented with rather strict sanctions for violations related, among other things, to economic activity. See: *Pankova O.V.* Trends in the development of legislation on administrative responsibility in Russia in the modern period // Administrative law and process. 2023. № 7. Access from SPS «ConsultantPlus».

person who committed them is given an administrative punishment as for the commission of one administrative offense (part 5 of Article 4.4);

– it is possible to pay an administrative fine for an administrative offense detected during the implementation of state control (supervision), municipal control, in half the amount (part 1^{3-3} of Article 32.2).

It is easy to see that the application of the above provisions of the CAO of the Russian Federation is formally associated with the identification of an administrative offense in the course of state control (supervision), municipal control, that is, the novelties of administrative-offence regulation in question are essentially addressed not to all persons brought to administrative responsibility, but only to those of them whose activities are evaluated within the framework of the relevant power activities. This approach to reforming the rules for the appointment and execution of administrative penalties is explained by the increased attention that in the Russian Federation has consistently (and in recent years increasingly) been paid to the administrative-law regime for the exercise of the control function of the state and the creation of conditions for the effective implementation and protection of the rights and legitimate interests of subjects whose activities become the subject of state control (supervision), municipal control. Although the mandatory existence of special rules for the appointment of administrative penalties for offenses identified in this order is not predetermined by the Constitution of the Russian Federation and remains in the field of discretionary powers of the federal legislator[209], the goal of additional protection of the rights and legitimate interests of a certain category of subjects from excessive administrative coercion embodied in the above-mentioned provisions of the CAO of the Russian Federation is not incompatible with the provisions of the Basic Law.

Nevertheless, the relevant features of administrative-offence regulation, as noted above, need to be correlated with the constitutional principle of equality. If

[209] With regard to the possibility of paying an administrative fine in half the amount provided to controlled persons, the Constitutional Court of the Russian Federation emphasized the preferential nature of this measure. See: Judgement of the Constitutional Court of the Russian Federation of 18 July 2024 № 39-P «On the case of verification of the constitutionality of the provision of Part 1^{3-3} of Article 32.2 of the Code of Administrative Offences of the Russian Federation in connection with the complaint of the limited liability company «NTSI Telecom» // Official Internet portal of legal information. URL: http://pravo.gov.ru (access date: 22.07.2024).

earlier, recognizing it permissible and not devoid of reasonable grounds to consolidate special rules for the imposition of administrative penalties for small and medium-sized businesses and certain categories of non-profit organizations, the Constitutional Court of the Russian Federation relied on the specifics of their status arising from legislative regulation, which determines the sensitivity of significant fines for these categories of persons[210], to date, such features of the position of the subjects being held accountable are not specified in the provisions of the CAO of the Russian Federation under consideration.

This circumstance does not in itself deprive the relevant norms of the CAO of the Russian Federation of a reasonable justification and does not automatically put them at risk of constitutional disqualification. On the contrary, such an approach by the legislator to determining the rules for the appointment and payment of administrative penalties allows us to raise the question that these rules, existing in the format of a «special order», may well be subsequently extended to other persons brought to administrative responsibility. The principal possibility of such an approach is evidenced, in particular, by the provisions of the Draft CAO of the Russian Federation, according to which the imposition of a minimum fine in case of prevention or elimination of harm caused by an offense (paragraph 2 of part 3 of Article 3.12), and the imposition of one administrative penalty for the commission of two or more homogeneous offenses (part 7 of Article 3.30) are not placed in the dependence on the detection of relevant offenses during control (supervision)[211].

Returning to the analysis of the current administrative-offence regulation, it should be noted that one of the fundamentally important problems of the novels under study was their direct textual embodiment in the CAO of the Russian Federation, which does not define the content of the concept of «state control

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[210] See the previously mentioned Decision of the Constitutional Court of the Russian Federation of 10 October 2017 № 2255-O.

[211] Draft Code of the Russian Federation on Administrative Offences // Federal portal of draft normative acts. URL: https://regulation.gov.ru/Regulation/Npa/PublicView?npaID=102447 (access date: 24.07.2024). Hereinafter also – Draft CAO of the Russian Federation.

At the same time replacement of an administrative fine with a warning is assumed only in case of detection of an offence in the course of state control (supervision), municipal control (Article 4.9 of the Draft CAO of the Russian Federation).

(supervision), municipal control» that is fundamentally important for an adequate perception of the provisions of part 3^{4-1} of Article 4.1, part 1 of Article 4.1^{1}, part 5 of Article 4.4 and part 1^{3-3} of Article 32.2 of this Code.

The absence of a legal definition of that concept in the CAO of the Russian Federation cannot be considered an accidental rule-making omission, because, correcting other provisions of this Code during the same period, the legislator clearly indicated what exactly should be understood by state control (supervision), municipal control (for example, in the context of Article 28.1 of the said Code on the grounds for initiating a case on an administrative offense – this is an assessment of mandatory requirements in accordance with two specific federal laws on control (supervision), and at the same time refused to make any clarifications regarding the content of this concept in the provisions concerning the appointment and execution of administrative punishment.

On the one hand, such an approach of the legislator to the formulation of the analyzed norms can be regarded as confirmation of his intention to consider state control (supervision), municipal control – in relation to the appointment and execution of administrative penalties – the widest range of activities of public authorities, especially since this is consistent with the general orientation of administrative reforms aimed at reducing administrative pressure on all subjects of economic activity. On the other hand, such an understanding of these legal provisions can be considered as an unjustified expansion of the authentic content of legislative prescriptions, which may entail the loss of the above-mentioned deterrent effect by administrative punishment, necessary to compel compliance with the requirements of legislation and assured by legislation on administrative offenses, in the absence of the grounds laid down in the law for such an interpretation.

The practice of applying the administrative-offence norms under consideration clearly indicates a lack of legislative guidelines (both directly in the CAO of the Russian Federation and in other legislative acts) necessary for uniform interpretation by law enforcement bodies of these regulations. In search of a normative basis for the interpretation of the concept of «state control (supervision),

municipal control» used in the analyzed provisions of the CAO of the Russian Federation, the courts turn to the basic act for the relevant sphere of legal regulation – the Federal Law on Control (Supervision) and apply the relevant administrative-offence norms based on its prescriptions. However, this Federal Law, as follows from the literal meaning of part 3 of its Article 1, outlines the spheres of state control (supervision), municipal control only for its own purposes, which does not prejudge the identical perception of the corresponding concept in the context of administrative-offence regulation.

Nevertheless, with reference to the recognition by this Federal Law of certain types of governmental activities by state control (supervision), the courts state that, for example, customs control measures[212] or inspection in order to monitor compliance with antimonopoly legislation[213] are the implementation of state control (supervision) in relation to the norms of the CAO of the Russian Federation mentioning this activity, and the detection of offenses in in the course of border control by security agencies[214], on the contrary, excludes the application of the relevant provisions of administrative-offence regulation.

The Supreme Court of the Russian Federation, in turn, points out that in the CAO of the Russian Federation, the implementation of state control (supervision), municipal control refers to the activities of all authorized bodies that carry out control (supervisory) functions and identify offenses in certain areas[215]; this concept should be considered in a broad sense, not limited to its understanding in the relevant control and supervisory legislation, since otherwise it would conflict with the principle of equality, and the procedure for detecting the fact of an offense

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[212] Judgement of the Commercial court of the Far East Circuit of 15 June 2023 № F03-2275/2023 on the case № A51-11993/2022.

[213] Judgement of the Commercial court of the West Siberian Circuit of 6 March 2023 № F04-662/2023 on the case № A45-17932/2022, with which the judge of the Supreme Court of the Russian Federation agreed (ruling of 14 August 2023 № 304-ES23-10147); judgement of the Commercial court of the East Siberian Circuit of 16 June 2023 № F02-2944/2023 on the case № A33-15831/2022, with which the judge of the Supreme Court of the Russian Federation agreed (ruling of 12 October 2023 № 302-ES23-18947).

[214] Judgement of the judge of the Third cassation court of general jurisdiction of 25 September 2023 № 16-4931/2023; Judgement of the Commercial court of the Far East Circuit of 19 May 2023 № F03-1608/2023 on the case № A51-13987/2022, with which the judge of the Supreme Court of the Russian Federation agreed (ruling of 11 July 2023 № 303-ES23-11421) – in relation to part 5 of Article 4.4 of the CAO of the Russian Federation.

[215] Ruling of the Judicial Board for Economic Disputes of the Supreme Court of the Russian Federation of 30 January 2024 № 305-ES23-17695 on the case № A40-134433/2022 – in relation to part 5 of article 4.4 of the Administrative Offences Code of the Russian Federation.

or the method of such detection does not relate to the circumstances that are taken into account when imposing punishment[216]. Some authors support this interpretation and, allowing for the possibility of an expanded understanding of state control (supervision) in the context of legislation on administrative offenses, include, for example, the activities of the prosecutor's office[217], although judicial practice knows diametrically opposite solutions to this issue: attribution of prosecutorial supervision to state control (supervision) for the purposes of applying articles containing this concept of the CAO of the Russian Federation is recognized by commercial courts and denied by courts of general jurisdiction[218]. In the absence of the necessary legislative specification, the Constitutional Court of the Russian Federation declared unconstitutional (at least with regard to the procedure for paying an administrative fine regulated by the above-mentioned norms) such an understanding of the provisions of the CAO of the Russian Federation, which, contrary to the principle of equality, does not provide the possibility of preferential (in half) payment of an administrative fine in case of detection of an administrative offense during an audit conducted by the prosecutorial authorities[219].

As a result, the question remains unresolved as to whether the provisions of the Federal Law on Control (Supervision) should be applied to define the concept of «state control (supervision), municipal control» or not. So, the courts, on the one hand, allow the interpretation of this concept based on this Federal Law, and on the other hand, in determining its meaning in the context of the CAO of the Russian Federation, one can see attempts to give the concept of «state control (supervision), municipal control» an autonomous meaning.

With regard to prosecutorial supervision, the problem under consideration manifests itself even more clearly, taking into account the fact that, by virtue of

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[216] Judgement of the judge of the Supreme Court of the Russian Federation of 2 August 2019 № 307-ES19-12049 on the case № A56-154322/2018 – in relation to part 1 of article 4.1[1] of the CAO of the Russian Federation; Judgement of the Commercial court of the North-Western Circuit of 31 January 2024 № F07-19926/2023 on the case № A56-32619/2023 – in relation to part 5 of article 4.4 of the CAO of the Russian Federation.

[217] *Selhova O.E.* Op. cit.

[218] See, by way of example, the application of part 5 of Article 4.4 of the CAO of the Russian Federation: Judgement of the Commercial court of Moscow Circuit of 17 January 2024 № F05-32191/2023 on the case № A40-88688/2023; Judgement of the judge of the Fifth cassation court of general jurisdiction of 30 September 2022 № 16-2283/2022, and of 20 November 2023 № 16-2741/2023.

[219] Judgement of the Constitutional Court of the Russian Federation of 18 July 2024 № 39-P.

Part 1 of Article 28.4 of the CAO of the Russian Federation, when overseeing compliance with the Constitution of the Russian Federation and the execution of laws in force on the territory of the Russian Federation, the prosecutor has the right to initiate a case on any other (along with the offences, directly named in that provision) administrative offense, responsibility for which is provided for by this Code or the law of a subject of the Russian Federation. On the one hand, the Constitutional Court of the Russian Federation, stating that this authority of the prosecutor is consistent with his public functions to maintain law and order and ensure timely restoration of violated rights and legitimate interests of citizens and their associations, critically assessed the possibility of complete substitution of bodies (officials) authorized to initiate an administrative offense case by the prosecutor[220]. On the other hand, the initiation of an administrative offense case based on the results of prosecutor's supervision, the protocol of which is also authorized to be drawn up by a special control (supervision) body, essentially deprives controlled persons of the right to claim, for example, the possibility of paying an administrative fine on a preferential basis (in half the amount based on part 1^{3-3} of Article 32.2 of the CAO of the Russian Federation Federation). As an example, article 13.21 of the CAO of the Russian Federation can be cited, the protocols for which are drawn up by officials of the body responsible for control and supervision in the field of communications, information technology and mass communications, which does not exclude the initiation of a relevant case by the prosecutor. In such circumstances, the court will refuse to apply a preferential procedure for paying an administrative fine, citing the fact that prosecutorial supervision does not relate to state control (supervision) for the purposes of part 1^{3-}

[220] Judgement of the Constitutional Court of the Russian Federation of 6 April 2023 № 15-P «On the case of verification of the constitutionality of the ninth paragraph of paragraph 2 of Article 1, paragraphs one and two of paragraph 1 and sentence one of paragraph 2 of Article 21, paragraph 2 of Article 22 and paragraph 3 of Article 27 of the Federal Law «On Prosecutor's Office of the Russian Federation», paragraph two of paragraph 6 of Article 28.3 and sentence two of paragraph 1 of Article 28.4 of the Code of the Russian Federation on Administrative Offences, as well as paragraph 1 of paragraph 3 of Article 16.5 of the Law of the City of Moscow «Code of the City of Moscow on Administrative Offences» on the complaint of the citizen P.N. Lakin // CL RF. 17.04.2023. № 16. Art. 2989.

[3] of Article 32.2 of the CAO of the Russian Federation[221]. Assessing negatively this approach to understanding the novelties of administrative-offence regulation, some authors propose, in order to ensure equality of persons brought to administrative responsibility, to explicitly indicate in the said article that the preferential procedure for paying a fine is applied, including in case of detection of an offense during prosecutorial supervision[222].

Thus, in practice, there are opposite options for determining the composition of activities that can be considered state control (supervision), municipal control for the purposes of applying the provisions of the CAO of the Russian Federation, which do not clarify the content of this concept. This indicates in favor of the conclusion that the legislator did not provide the necessary conditions for a uniform and unambiguous definition of the grounds for the appointment and execution of an administrative punishment[223]. The noted contradictions are not least generated by the lack of a systematic perception of the concept of control and supervisory activities, which was indicated earlier in the work. At the same time, even the pragmatic position, which deserves support, that there is no need to distinguish between «control» and «supervision» in the context of this activity, did not allow, as the analysis of administrative-offence regulation shows, to form a uniform understanding of the concept of «state control (supervision), municipal control» in legislation, inter alia for the purposes of bringing to administrative responsibility. In such circumstances, a necessary option for resolving the noted contradictions, in which the certainty of legislation on administrative offenses will be ensured, becomes a direct reference in the norms of the CAO of the Russian Federation, using a reference to control (supervision), directly to legislative acts

[221] Judgement of the judge of the Second cassation court of general jurisdiction of 14 June 2023 № 16-3071/2023.

Similar situation in relation to Article 5.27[1] of the CAO of the Russian Federation: judgement of the judge of the Seventh cassation court of general jurisdiction of 14 September 2023 № 16-4233/2023.

[222] *But N.D., Egupov D.A.* Protection by the prosecutor of the rights of entrepreneurs in the field of administrative jurisdiction // Bulletin of the University of the Prosecutor's Office of the Russian Federation. 2023. № 6. P. 36–45.

[223] *Karitskaya A.A.* Rules for the imposition and payment of administrative fines: current problems in the constitutional-law context. P. 23.

regulating control and supervisory activities – as is done, for example, in Article 28.1 of this Code.

Along with the uncertainty about the content of the concept of «state control (supervision), municipal control» in the provisions of the CAO of the Russian Federation, which were designed to ensure a general improvement in the situation of persons whose activities are evaluated within the framework of control and supervisory activities, one can also find some internal inconsistency of the analyzed prescriptions of this Code with its other norms.

Thus, the addition of Article 4.4 of the CAO of the Russian Federation with a provision on the possibility of imposing one punishment for several administrative offenses identified during one control and supervisory event (part 5) was due to the desire to overcome the artificial multiplicity of administrative offenses and the resulting increased «punitive burden» on controlled persons. The most significant effect of this guarantee is demonstrated by the practice of imposing administrative fines, which, based on previously existing regulation, assumed that, following the results of one control event, an independent ruling on an administrative offense case for each detected fact of an omission[224] – from the point of view of current regulation, it is allowed to issue one decision on an administrative offense case with the appointment of a single sanction for all identified violations.

At the same time, the positive effect of part 5 of Article 4.4 of the CAO of the Russian Federation leads to an obvious improvement in the situation mainly of those persons brought to administrative responsibility for whom administrative punishment is imposed in the form of a fine in a fixed amount. However, the specified Code allows for the establishment of such punishment in multiple amounts (part 1 of Article 3.5), including for a number of administrative offenses related to the implementation of economic activities, which, even if punishment is

[224] For example, in the course of one customs audit, administrative offences were identified (Article 16.15 «Failure to submit reports to the customs authority» of the CAO of the Russian Federation) and a separate ruling was issued for each of them – a total of 340 rulings on identical administrative offences with a penalty of RUB 6,000 for each of them. See as an example: Ruling of the Judicial Collegium for Economic Disputes of the Supreme Court of the Russian Federation of 15 November 2022 № 303-ES22-13406 on the case № A51-5046/2021.

imposed for all offenses identified during the control and supervisory event as a single offense, will not lead to a real reduction in the penalty loads for the controlled person.

The question of the possibility of applying part 5 of Article 4.4 of the CAO of the Russian Federation for the imposition of punishment, the amount of which is determined in multiples, i.e. in cases where the limitation of the fine to any fixed minimum or maximum amount is not provided for, has already arisen in practice (mainly in the context of the question of the application of this norm with retroactive effect to unfulfilled decisions on cases of administrative offenses), in particular, in relation to 14.43^{1} (part 3)[225], 15.15^{2} (part 2)[226], 15.25 (part 1), 16.2 (part 2)[227], etc. of the CAO of the Russian Federation. The courts, refusing to apply part 5 of Article 4.4 of this Code in relevant cases, emphasized that with such a method of calculating a fine, the imposition of an administrative penalty as for one offense would not lead to a real reduction in the amount of the imposed punishment. However, the specified legislative provision, placed by the legislator in the CAO of the Russian Federation as a general rule for the appointment of administrative fines, did not contain any reservations regarding the possibility of its application, depending on the type or method of calculating the imposed punishment.

Assessing the effect of the provisions of the CAO of the Russian Federation in this aspect (using the example of part 1 of Article 15.25, which provides for an administrative fine for legal entities as a punishment, calculated as a percentage of the amount of an illegal currency transaction), the Constitutional Court of the Russian Federation recognized that the imposition of an administrative fine for two or more offenses in accordance with part 5 of Article 4.4 of this Code does not exclude differences in determining the amount of the fine depending on the nature

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[225] Judgement of the Commercial court of the Central Circuit of 9 November 2023 № F10-5318/2023 on the case № A83-4332/2022.

[226] Judgement of the Commercial court of the North Caucasus Circuit of 27 February 2023 № F08-14835/2022 on the case № A53-45009/2021.

[227] Judgements of the Commercial court of the Volga-Vyatka Circuit of 14 June 2023 № F01-2841/2023 on the case № A43-17213/2021, of the Commercial court of the Far East Circuit of 27 September 2023 № F03-3470/2023 on the case № A51-20062/2022 and others.

of the administrative offense and the procedure for calculating the administrative fine, provided for by the sanction of a specific article of this Code, i.e., in essence, stated the admissibility of a situation in which the mechanism in question would not apply to administrative offenses with a multiple sanction. The positive effect of the application of Part 5 of Article 4.4 of the CAO of the Russian Federation when imposing a multiple fine was considered by the Constitutional Court of the Russian Federation to be that it is easier to appeal a single decision on an administrative offense against a legal entity, and in addition, in this case, the potentially possible term of administrative punishment is reduced[228].

In addition to the noted problem related to the procedure for determining the amount of administrative punishment, when applying part 5 of Article 4.4 of the CAO of the Russian Federation, the question also arises about its relationship with the prescriptions of specific articles of the Special Part of this Code, which explicitly stipulate the need to bring to responsibility for each fact of violation of legislation (rules of such kind are, for example, provided for in the notes to the Articles 14.28, 18.9[229], 18.15[230] of the CAO of the Russian Federation). Courts, considering the issue give priority to the precise execution of particular articles of the Special Part of the CAO of the Russian Federation and reasonably rely on the basic legal principle *lex specialis derogat generali* (a special law supersedes the general law). Scholars, however note that the provisions introduced into the CAO of the Russian Federation improve the situation of persons brought to administrative responsibility, so therefore, according to, i.g. G.G. Yachmenev, it is

[228] Judgement of the Constitutional Court of the Russian Federation of 2 April 2024 № 14-P «On the case of verification of the constitutionality of part 2 of article 1.7, part 5 of article 4.4, part 1 of article 15.25, paragraph 2 of article 31.7, article 31.8 of the Code of the Russian Federation on Administrative Offences and article 260 of the Commercial Procedural Code of the Russian Federation in connection with the complaints of limited liability company «Incarnation» and limited liability company «SIBTEK» // CL RF. 08.04.2024. № 15. Art. 2127.

[229] Ruling of the Judicial Board for Economic Disputes of the Supreme Court of the Russian Federation of 7 June 2023 № 306-ES22-23464 on the case № A72-11089/2021.

[230] Judgement of the judge of the First cassation court of general jurisdiction of 27 October 2023 № 16-6114/2023; judgement of the Commercial court of the North-Western Circuit of 15 February 2023 № F07-21090/2022 on the case № A56-59241/2022, with which the judge of the Supreme Court of the Russian Federation agreed (ruling of 19 May 2023 № 307-ES23-6233).

necessary to apply the novelties of the General provisions of this Code (inter alia Part 5 of its Article 4.4)[231].

Described issues and questions, arising in connection with the necessity of correct and coordinated enforcement of all norms of the CAO of the Russian Federation (of General provisions as well as Specific part), are to a certain extent caused by the fact that the legislator obviously orients the system of administrative-offence regulation to establish favorable conditions for controlled persons and seeks to comprehensively improve their situation, including when bringing them to administrative responsibility, and therefore, as can be assumed, counts on the full effect of the relevant new general provisions of legislation on administrative responsibility. At the same time the development of legislation on administrative offenses in terms of the rules for the appointment and payment of an administrative fine invariably fluctuates between two opposite trends of increase (for example, by increasing the maximum amount of administrative fines) and decrease (in particular, by making appropriate adjustments both to the specific articles of the Special Part of the CAO of the Russian Federation and to the general rules of appointment administrative fines) penalty load, this not only does not benefit the certainty and stability of regulatory regulation of administrative responsibility in such a sensitive issue, but also deprives law enforcement agencies of a solid basis for unambiguously establishing the true intentions of the legislator[232]. Such a situation entails the threat of violating the fundamental provision of the CAO of the Russian Federation that a person brought to administrative responsibility cannot be subjected to administrative punishment except on the grounds and in accordance with the procedure established by law (part 1 of Article 1.6), and also calls into question the consistency and sectoral consistency of legislative norms, This, in turn create significant risks for the rule of

[231] *Yachmenev G.G.* Some issues of application of general provisions of the Code of the Russian Federation on administrative offences in the practice of the Constitutional Court of the Russian Federation and the Supreme Court of the Russian Federation (2019–2021) // Commercial disputes. 2022. № 2. Access from the SPS «ConsultantPlus».

[232] *Knyazev S.D.* Constitutional standards of administrative responsibility in the legal system of the Russian Federation // Administrative law and process. 2014. № 2. P. 20.

law in general[233] and therefore raise the question on the compliance of the analysed provisions with the constitutional requirements of legal certainty, equality, maintaining trust in the law and the actions of the state, respect for legitimate expectations.

Thus, the novelties introduced into the CAO of the Russian Federation concerning the rules for the appointment and execution of administrative penalties were aimed at improving the situation of controlled persons when bringing them to administrative responsibility. However, the relevant provisions of part 3^{4-1} Article 4.1, part 1 Article 4.1^{1}, part 5 Article 4.4 and part 1^{3-3} Article 32.2 of this Code, containing a reference to the concept of «state control (supervision), municipal control» were not fully consistent with the basic control and supervisory regulation – the Federal Law on Control (Supervision), which defines the specified concept only for its own purposes. Difficulties also arose in the application of these legal provisions in conjunction with some specific articles of the Special Part of the CAO of the Russian Federation, defining the composition of administrative offenses and sanctions for their commission, which in some cases may disavow the possibility of implementing the innovations introduced into this Code that improve the situation of controlled persons.

At the same time, despite some problems that complicate the law enforcement implementation of these rules, the provisions themselves, which are provided for by the analyzed norms, cannot but be recognized as useful from the point of view of optimizing state intervention in economic activity. Moreover, this beneficial effect may eventually serve as a reason for the extension of some system-forming provisions on the imposition of administrative penalties (for example, on the appointment of a warning instead of an administrative fine or on the payment of a fine in half) to other (besides controlled persons) subjects brought to administrative responsibility.

The prospects for the development of the rules for the appointment of administrative penalties are associated with the possibility of controlled persons to

[233] *Zorkin V.D.* Constitutional control as a factor in improving the Russian legislation // Journal of Russian law. 2023. № 5. P. 98.

conclude an agreement, in the implementation of which they will not be punished with an administrative fine[234]. The approximate contours of such a variant of the development of legislation are proposed by the Concept of improving control (supervisory) activities until 2026 (section VII), according to which for state and municipal institutions (and based on the results of evaluating the effectiveness of this mechanism – and for other persons), it is supposed to introduce the possibility of drawing up a «roadmap» to eliminate violations, and monitoring its implementation should to be carried out by the founder, and not by the supervisory authority; At the same time, it is assumed that in such cases, proceedings on an administrative offense cannot be initiated. Prior to the formation of specific legislative outlines of this mechanism, its legal assessment would be premature, however, the idea of introducing into the legislation on administrative offenses, built by its nature on imperative principles, the idea of an agreement on the waiver of administrative prosecution says a lot about the current directions of development of administrative tools for assessing compliance with mandatory requirements.

[234] Annual Report of the Government of the Russian Federation in the State Duma, provided on 3 April 2024 in accordance with subparagraph «a» of paragraph 1 of Article 114 of the Constitution of the Russian Federation. URL: http://government.ru/news/51246/ (access date: 16.06.2024).

CHAPTER 3. THE IMPACT OF THE REFORM OF CONTROL AND SUPERVISORY ACTIVITIES ON THE LEGISLATION ON ADMINISTRATIVE OFFENSES (PROCEDURAL ASPECT)

Paragraph 1. Evolution of the rules of initiating proceedings on an administrative offence in the context of the reform of legislation on control and supervisory activities

Analysis of normative provisions defining the content of control and supervisory activities (i.e. directly control (supervisory) measures), as well as the fact that violation of mandatory requirements may entail the use of both special control and supervisory measures (issuing a prescription to eliminate the violation) and bringing the controlled person to administrative responsibility, allow us to state the presence in the Russian legal system of two procedurally similar means of assessing compliance with mandatory requirements – control and supervisory proceedings and proceedings in the case of an administrative offense. However, in the absence of appropriate regulatory conditions for coordinating control and supervisory activities and proceedings in cases of administrative offenses, the latter is recognized as an advantage in practice, since this allows administrative authorities to circumvent the requirements of legislation on state control (supervision), municipal control, which more strictly regulates the procedure for detecting violations of mandatory requirements. Such an approach may eventually lead to the fact that, contrary to the declared actual goals and objectives of administrative-law regulation, it is the oppressive means of maintaining law and order that will remain dominant, which, as noted in the literature, on the contrary, should follow the implementation by the state of a control and supervisory (in the narrow sense) function aimed at verifying compliance with mandatory requirements[235].

[235] *Mitskevich L.A., Vasilieva A.F.* Op. cit.

The existence of special procedural rules for the initiation of cases of administrative offenses, ensuring the achievement of these goals, cannot be recognized as an indispensable condition for the proper coexistence of administrative-offence and supervisory proceedings, taking into account their independent status in the system of administrative measures. At the same time, the emergence of a special regulation of the procedure for initiating cases of administrative offenses in the field of mandatory requirements, compliance with which is the subject of control and supervisory activities, is quite understandable, in the light of the course, announced by the state, to reduction the administrative burden on economic entities[236], arising from the obligation of the state (public authorities) to create the most favorable conditions for the development of economic relationships, which can be achieved both through direct regulatory action, and by stimulating self-organized economic activity, as well as a system of measures aimed at the effective implementation and protection of the rights and legitimate interests of business entities and other persons[237]. Moreover, the application of administrative responsibility measures obviously has the character of a more serious state intervention in the legal status of controlled persons compared to control (supervision), which, by virtue of the current legislative model, on the contrary, is focused on minimizing intrusion into the activities of economic entities. Therefore, the introduction of rules ensuring a gradual transition from less stringent measures to more stringent ones is consistent with the idea of proportionality of state coercion[238], which follows, inter alia, from the provisions of Articles 55 (Part 3) and 75^1 of the Constitution of the Russian Federation.

The demand for provisions in the legislation on administrative responsibility that limit the possibility of initiating cases of an administrative offense against controlled persons is also evidenced by foreign legal regulation, although the

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[236] *Nozdrachev A.F.* Control: legal novelties and unsolved problems // Journal of Russian law. 2012. № 6. P. 18.

[237] Judgement of the Constitutional Court of the Russian Federation of 18 July 2008 № 10-P.

[238] As I.T. Tarasov noted, the limit of coercion is defined, in particular, by the fact that «the force of coercion should be proportional to resistance, and therefore the application of coercive measures should go sequentially from the lowest to the highest measures until resistance is broken». See: *Tarasov I.T.* An essay on the science of police law / Russian police (administrative law): late XIX – early XX century: textbook. P. 178.

presence of such special norms is rather an exception. Thus, among the member-states of the Eurasian Economic Union, in addition to the Russian Federation, only in the Republic of Kazakhstan there is a provision according to which, in case of direct detection by an authorized official of the fact of committing an administrative offense, the grounds for initiating an administrative offense case against a subject of control and supervision (i.e. controlled persons) are the result of an inspection conducted in accordance with the procedure established by the Entrepreneurial Code of the Republic of Kazakhstan, as well as the result of preventive control and supervision with a visit to the subject (object) of control and supervision (part three of Article 802 of the Code of the Republic of Kazakhstan on Administrative Offenses[239]). Meanwhile, this legal provision has a more limited scope of application compared to the provisions of Russian legislation on administrative offenses.

In Russia, the legislator has repeatedly addressed the designated problem of the sequence of control and supervisory and administrative-offence proceedings, making changes to that part of the legislation on administrative responsibility that is related to the reasons and grounds for initiating cases of administrative offenses (Article 28.1 of the CAO of the Russian Federation). The most relevant from the point of view of the current state of the institution of initiation of cases of administrative offenses are the changes made to the specified Code in 2022 as part of the third stage of reforming the legislation on control (supervision). However, for a full analysis of the provisions of Article 28.1 of the CAO of the Russian Federation, it is necessary to assess the evolutionary development of its provisions.

One of the first steps towards the harmonization of control and supervisory activities and administrative-offence proceedings was the addition[240] in 2014 of Article 28.1 of the CAO of the Russian Federation with a note, by virtue of which, if there is sufficient data provided for in paragraph 1 of Part 1 of this article (direct detection by an authorized official of sufficient data indicating the presence of an

[239] Code of the Republic of Kazakhstan on Administrative Offences of July 5, 2014 № 235-V // Kazakhstanskaya Pravda of 12.07.2014. № 135 (27756). URL: https://online.zakon.kz/Document/?doc_id=31577399&pos=11690;0#pos=11690;0 (access: 16.06.2024).

[240] Federal Law of October 14, 2014 № 307-FZ.

administrative offense event), display a reason to initiate a case on an administrative offense, if the relevant information is discovered by an authorized official during an inspection in the exercise of state control (supervision) or municipal control, an administrative offense case may be initiated after the execution of an act on such an inspection (except in a situation where it becomes necessary to apply a measure to ensure the proceedings in the case of an administrative offense in the form of a temporary ban on activities). The Federal Law on Control (Supervision) of 2008 provides that it was the inspection that was recognized as a generalizing category in relation to a set of control measures to assess compliance with established requirements, and based on the results of its conduct, a decision could be made to hold the controlled person accountable (Articles 2 and 17), and according to the analyzed note (before the entry into force of Federal Law of July 14, 2022 № 290-FZ) to Article 28.1 of the CAO of the Russian Federation, the initiation of an administrative offense case without proper finalization of the inspection results was excluded.

The initiation of an administrative offense case before the finalization of the inspection report (even if these events occurred on the same day) without the application of a measure to ensure proceedings in the form of a temporary ban on activities was recognized as a significant violation of the procedure for bringing to administrative responsibility[241]. In the practice of courts of general jurisdiction, it is also possible to find statements that the act of conducting an inspection is a necessary condition for drawing up a protocol on an administrative offense, which is disqualified if it was drawn up before the results of the relevant control (supervisory) event are processed[242]. In addition, the amendments made to the CAO of the Russian Federation in 2014 served as the basis for the adoption of an explanatory letter from the Ministry of Emergency Situations of Russia, which

[241] Judgement of the Third Appellate Commercial Court of 28 January 2019 on the case № A69-2761/2018.

[242] Judgement of the judge of the Seventh cassation court of general jurisdiction of 7 July 2021 № 16-3908/2021.

indicated that the initiation of cases of administrative offenses outside the scope of verification (control and supervisory) measures should be excluded[243].

Prior to the introduction of the analyzed requirement into the CAO of the Russian Federation, the authorized bodies had a formal opportunity to initiate an administrative offense case and bring the controlled person to administrative responsibility until the results of a special legal procedure designed to ensure – without the use of administrative repressive mechanisms – compliance with mandatory requirements[244]. However, even after the addition of Article 28.1 of this Code with the note in question, focusing on the fact that the initiation of an administrative offense case should follow the conduct of verification measures, without anticipating them[245], the courts were very restrained in their application. In particular, it was considered permissible to initiate an administrative offense case without taking into account the restrictions established by the note to Article 28.1 of the said Code in cases that were qualified by law enforcement agencies as:

– direct detection of an offense by an authorized person outside the framework of any control measures[246];

- identification of signs of an administrative offense through a raid inspection[247];

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[243] Letter of the Ministry of Emergency Situations of Russia of 19 January 2015 № 19-3-1-123 «On the conduct of unscheduled inspections» // Access from the SPS «ConsultantPlus».

[244] This is evidenced, in particular, by the position of Rospotrebnadzor, which noted in an explanatory letter that the initiation of proceedings on an administrative offence is allowed in all cases when the received materials, reports, statements contain data indicating the existence of an event of an administrative offence, even if they cannot serve as a basis for an unscheduled inspection. See: Letter of Rospotrebnadzor of 30 March 2010 № 01/4556-0-32 « On the application of CAO norms in the conduct of administrative investigations in connection with the entry into force of the Federal Law № 380-FZ» // Access from the SPS «ConsultantPlus».

[245] According to experts, the addition of Article 28.1 of the CAO of the Russian Federation with the note under consideration was just to solve the applied question about the possibility of continuation of inspection measures in case of detection of signs of an administrative offence, which remained unanswered since the adoption of Federal Law № 294-FZ. See: *Elfimova E.V., Osintsev D.V.* Again about control, supervision and administrative jurisdiction // Russian law journal. 2015. № 4. Access from SPS «ConsultantPlus».

[246] For example, direct detection by an authorised person of sufficient data indicating the existence of an event of an administrative offence, based on the analysis of publicly available information. See, for example: Judgement of the Commercial court of the East Siberian Circuit of 11 May 2017 № F02-1632/2017 on the case № A10-4882/2016.

[247] At the same time, under the earlier legislation in force, the discovery of violations of the established requirements during scheduled (raid) inspections was the basis for a decision to order an unscheduled inspection (Article 13^2 of the Federal Law on Control (Supervision) of 2008), which, however, as the courts noted, did not preclude the initiation of a case on an administrative offence and bringing to administrative responsibility without conducting an inspection. See: ruling of the judge of the Supreme Court of the Russian Federation of 1 December 2017 № 80-AD17-5, judgement of the Commercial court of the Moscow Circuit of 13 September 2022 № F05-20282/2022 on the case № A40-252420/2021.

– conducting a prosecutor's control[248], etc.

Thus, the addition of the CAO of the Russian Federation with a special condition limiting the initiation of cases of administrative offenses only partially contributed to the restoration of the logic of administrative regulation, in which, as experts note, «administrative coercion logically completes the consistent regulatory impact of the right on the behavior of participants in public relations (regulation – permission – control – coercion)» [249]. Meanwhile, the corresponding adjustment of administrative-offence legislation, neither at the normative level nor as a result of its application, led to fundamental changes in the initiation of cases of administrative offenses detected directly by control (supervisory) bodies, not to mention that it did not affect a significant part of state control and supervisory activities at all (for example, prosecutor's inspections). Moreover, the analyzed note to Article 28.1 of the CAO of the Russian Federation did not regulate in any way the issues of initiating an administrative offense case in connection with other reasons – in particular, in cases of contacting an administrative body or receiving materials from other state bodies.

Nevertheless, the legal provision in question nevertheless served to a certain extent the purpose of reducing the administrative-punitive burden on business activities and, in fact, acted as the first step towards subordination of administrative-offence proceedings related to violation of mandatory requirements in relation to control and supervisory activities. At the same time, neither the previously existing regulatory model of such subordination nor the practice of applying appropriate regulation allowed us to talk about fully ensuring the consistency of these proceedings, especially since administrative authorities retained the possibility of conducting an administrative investigation in order to establish the circumstances necessary to bring to justice, which made it possible to

[248] The inspections conducted by the prosecutor's office, both under current and previously existing legislation, are outside the scope of the concept of «State control (supervision) or municipal control», in connection with which it was possible to initiate proceedings for an administrative offence even before the inspection was completed. See: judgement of the judge of the Sixth cassation court of general jurisdiction of 11 June 2021, № 16-3243/2021.

[249] *Zyryanov S.M.* Problems of constructing the compositions of administrative offences in the articles of the Special Part of the CAO RF // Journal of Russian law. 2020. № 8. P. 106.

circumvent any restrictions provided for by legislation on control and supervisory activities[250]. The Supreme Court of the Russian Federation also did not exclude the issuance by the supervisory authorities of prescriptions to eliminate violations of mandatory requirements that were revealed during the administrative investigation, that is, in principle, outside the supervisory proceedings[251].

From a procedural point of view, both the current and previous procedure for control and supervisory proceedings has similarities with the administrative investigation conducted within the framework of administrative-offence proceedings, which is a complex of time-consuming procedural actions aimed at clarifying all the circumstances of an administrative offense, their fixation, legal qualification and procedural design; conducting an administrative investigation should consist of real actions aimed at obtaining the necessary information, including by conducting an examination, identifying victims, witnesses, and interrogating persons living in another area[252]. Moreover, it was noted in the literature that the appearance of the procedure for conducting an administrative investigation in Russian administrative-offence legislation was due to the consolidation of «market» offenses in the CAO of the Russian Federation, which required more complex qualifications and assessments from subjects of administrative jurisdiction[253] – for essentially similar purposes, a special procedure for conducting control (supervision) in relation to controlled persons is implemented. However, conducting an administrative investigation to clarify the circumstances of the violation of mandatory requirements by a controlled person in conditions when similar procedural actions are performed against him within the

[250] The solution to the analysed problem some authors saw that it is necessary to exclude from the CAO of the Russian Federation the institute of administrative investigation. See: *Zyryanov S.M*. Procedural form of implementation of administrative supervision. P. 80.

[251] Paragraph 46 of the Review of judicial practice of the Supreme Court of the Russian Federation № 3 (2019), approved by the Presidium of the Supreme Court of the Russian Federation on 27 November 2019.

[252] Resolution of the Plenum of the Supreme Court of the Russian Federation of 24 March 2005 № 5 «On some issues arising at courts in the application of the Code of the Russian Federation on Administrative Offences» (passage three of subparagraph «a» of paragraph 3).

[253] *Kirin A.V.* Administrative-offence law: theory and legislative foundations. P. 407.

However, neither in the original wording of Article 28.7 of the CAO of the Russian Federation, nor in the current version, the range of administrative offences for which an administrative investigation is conducted was not limited to violations in the field of economic activity: it includes administrative offences both in the purely economic sphere (for example, in the field of legislation on joint stock companies) and in the field of legislation on elections and referendums or on countering extremist activity.

framework of control (supervision), in essence, is a duplication of administrative procedural actions.

This problem has not been ignored by the developers of the Concept of the new CAO of the Russian Federation, according to which materials (information, messages) received by authorized bodies indicating the presence of an administrative offense event, as well as the direct detection of such information, must be confirmed in the process of control and supervisory proceedings, only after which a decision can be made to initiate cases of an administrative offense. An exception can be made in this case for cases of direct detection of a gross violation of a mandatory requirement or when fixing an administrative offense that encroaches on the constitutional rights of citizens. This approach is reflected in the draft procedural Code of the Russian Federation, which more clearly outlined the priority of control and supervisory measures, which, as a general rule, should precede the initiation of an administrative offense case[254]. Thus, there is a proposition to fix in the legislation a more radical priority of control and supervisory measures over bringing to an administrative responsibility, which, as a general rule, should follow the assessment of compliance with mandatory requirements in the control (supervision) procedure.

Meanwhile, the comprehensive reform of legislation on administrative offenses currently remains at the stage of departmental discussion, while the updated procedural regulation of control and supervisory activities has been in effect for quite a long time, and, in fact, under special conditions dictated by the need to counter the spread of the new coronavirus infection (COVID-19) and sanctions pressure on the Russian economy. In such circumstances, the legislator is limited to solving tactical tasks by pinpoint adjustments to the CAO of the Russian Federation in order to coordinate the legal regulation of administrative responsibility with the actively developing regulation of control and supervisory activities.

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[254] See: Draft Procedural Code of the Russian Federation on Administrative Offences (Article 5.1 «Causes to initiate proceedings on an administrative offence») // Federal portal of draft normative acts. URL: https://regulation.gov.ru/Regulation/Npa/PublicView?npaID=102945 (access date: 16.06.2024).

At the same time, regulation of this sphere of legal relations was carried out not only at the legislative level, but also by giving the Government of the Russian Federation the authority to introduce the specifics of control and supervisory activities regulated by the Federal Law on Control (Supervision) of 2008 and the Federal Law on Control (Supervision)[255], which it used, for example, as part of measures to support the economy in 2020[256]. However, in 2022, by-law rulemaking for the first time went beyond the scope of control and supervisory activities and, along with the introduction of restrictions on scheduled and unscheduled control (supervisory) measures, directly affected the issue of administrative responsibility, which does not look flawless from the point of view of the system of legislation on administrative offenses (part 1 of Article 1.1 of the CAO of the Russian Federation).

In particular, the Government of the Russian Federation has established that an authorized official has the right to initiate an administrative offense case if the relevant composition includes a violation of mandatory requirements, the assessment of compliance with which is the subject of state control (supervision), municipal control (except for state control (supervision) over the activities of state authorities and local governments), only in the case of, provided for in paragraph 3 of part 2 of Article 90 of the Federal Law on State Control (Supervision) (except in cases where it is necessary to apply a measure to ensure the proceedings in the case of an administrative offense in the form of a temporary ban on activities)[257]. At the same time, the Ministry of Economic Development of the Russian Federation emphasizes that such regulation was adopted by the Government of the Russian

[255] Federal Law of April 1, 2020 № 98-FZ «On Amending Certain Legislative Acts of the Russian Federation on the Prevention and Elimination of Emergency Situations» (Article 17) // CL RF. 06.04.2020. № 14 (Part I). Art. 2028.

[256] Resolution of the Government of the Russian Federation of April 3, 2020 № 438 «On the peculiarities of the implementation in 2020 of state control (supervision), municipal control and on amending paragraph 7 of the Rules for the preparation by state control (supervision) bodies and municipal control bodies of annual plans for planned inspections of legal entities and individual entrepreneurs» // CL RF. 13.04.2020. № 15 (Part IV). Art. 2292..

[257] Resolution of the Government of the Russian Federation of 10 March, 2022 № 336 «On the peculiarities of the organisation and implementation of state control (supervision), municipal control» // CL RF. 14.03.2022. № 11. Art. 1715. Hereinafter – Resolution № 336.

Federation in order to exclude the possibility of circumventing the ban on inspections by bringing to administrative responsibility[258].

Paragraph 9 of Resolution № 336, acting in conjunction with the explanations of the Federal Ministry, was regarded by the supervisory authorities as a basis excluding, as a general rule, the initiation of an administrative offense related to violation of mandatory requirements, except when signs of such an offense are detected during a control (supervisory) event, which in the conditions imposed by the Government of the Russian Federation significant restrictions regarding the appointment of unscheduled control (supervisory) measures, were considered as an obstacle to bringing to administrative responsibility even in cases where there were material grounds for this (i.e. circumstances identified outside the scope of control and supervisory activities indicating the presence of an administrative offense). For example, seeing in the information provided in the complaint of an individual the presence of an administrative offense, the official, with reference to Resolution № 336, refuses to initiate an administrative offense case on the basis of subparagraph 2 of paragraph 1 of Article 24.5 of the CAO of the Russian Federation, however, the courts, in turn, cancel the relevant ruling, noting that the administrative body allows impunity the commission of offenses for the entire period of Resolution № 336, from which such an approach does not follow[259]. At the same time, courts in cases challenging rulings on refusal to initiate an administrative offense case often followed an approach suggesting that the mere existence of Resolution № 336 and the failure to carry out control (supervisory) measures are not grounds excluding the possibility of initiating an

[258] Letter of the Ministry of Economic Development of Russia of 25 March 2022 № 10429-АХ/Д24i «On the peculiarities of the organization and implementation of state control (supervision), municipal control in 2022» // Access from the SPS «ConsultantPlus».

[259] Judgements of the Commercial court of the Volga Circuit of 17 February 2023 № F06-28081/2022 on case № A65-16083/2022, the Twelfth Appellate Commercial Court of 14 April 2023 № 12АР-1446/2023 on the case № A12-30493/2022 and others.

administrative offense case[260], for example, in the case of violations of mandatory requirements, not based on the results of control (supervisory) measures[261].

This interpretation was largely predetermined by the position of the Supreme Court of the Russian Federation, formulated in the administrative case challenging paragraph 9 of Resolution № 336, which, as the administrative plaintiffs believed, allowed citizens to evade the initiation of cases of administrative offenses and prevented controlled persons from being brought to administrative responsibility for violating mandatory requirements[262]. Refusing to satisfy the applicants' claims, the Judicial Board for Administrative Cases of the Supreme Court of the Russian Federation recognized the government regulation as not contradicting normative legal acts having great legal force. At the same time, it was noted that paragraph 9 of Resolution № 336, as follows from its literal interpretation, is related to the sphere of implementation of the control and supervisory powers of executive authorities and applies (including in terms of the procedure for considering citizens' appeals and other information) only to carrying out control (supervisory) measures in accordance with the Federal Law on control (Supervision) 2008 and the Federal Law on Control (Supervision); this provision does not change the procedure for considering appeals provided for by the CAO of the Russian Federation, which involves the adoption by an authorized official of a procedural decision to initiate or refuse to initiate an administrative offense case, including using the mechanisms provided for by this Code to obtain evidence in the case and proceedings on it, including the possibility of conducting an administrative investigation.

Meanwhile, paragraph 9 of Resolution № 336, on the contrary, had no alternative (although the decision of the Supreme Court of the Russian Federation justifies otherwise) conditioned the possibility of bringing to administrative responsibility for violation of mandatory requirements by conducting control

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[260] Judgement of the Commercial court of the Volga Circuit of 5 April 2023, № F06-1474/2023 in the case № A12-15187/2022.

[261] Judgement of the Commercial court of Moscow Circuit of 6 February 2023, № F05-28219/2022 in the case № A40-98507/2022.

[262] Judgement of the Judicial Board for Administrative Cases of the Supreme Court of the Russian Federation of 30 August 2022 № ACPI22-494.

(supervisory) measures (if there is no need to apply an interim measure in the form of a temporary ban on activities), excluding the initiation of a corresponding case in other cases. This restriction, according to the position of the Ministry of Economic Development of the Russian Federation, also applies to cases of direct detection of signs of an administrative offense, obtaining information about such an offense from citizens and organizations, public authorities, local governments, and the media[263]. In practice, at the same time, there is a dual perception by the courts of the above position of the Ministry of Economic Development of the Russian Federation, which can both serve as one of the grounds for stating the illegality of initiating cases of administrative offenses without conducting control (supervisory) measures[264], and be rejected by the courts[265].

The rule, introduced by the Government of the Russian Federation, therefore, was designed to significantly complicate bringing to administrative responsibility for violation of mandatory requirements, without canceling other mechanisms for assessing their compliance – unscheduled control (supervision) measures regulated by the Federal Law on Control (Supervision) (taking into account the conditions established by paragraph 3 of Resolution № 336), and also, other control (supervision) procedures[266], inter alia without interaction with a controlled person, prosecutor's supervision[267], and other types of public authority control.

However, the approach formulated in the decision of the Supreme Court of the Russian Federation was perceived as a statement that the restriction imposed by the Government of the Russian Federation on the initiation of cases of

[263] Letter of the Ministry of Economic Development of Russia of 24 March 2022 № Д24и-8436 «On clarification of the features of the organization and implementation of state control (supervision), municipal control in 2022» // Access from the SPS «ConsultantPlus».

[264] Judgement of Commercial court of East Siberian Circuit of 8 June 2023 № F02-2875/2023 on the case № A78-10977/2022.

[265] Judgement of the Eleventh Appellate Commercial Court of 10 May 2023, № 11AP-5919/2023 on the case № A65-31980/2022.

[266] Resolution № 336 does not exclude control and supervisory measures within the framework of so-called special regimes – for example, a permanent raid (Article 97^1 of Federal Law on State Control (Supervision), the conduct of which, if signs of an administrative offence are detected, allows the initiation of a corresponding case by virtue of part 3^1 of Article 28.1 of the CAO of the Russian Federation. See: gudgement of the Commercial court of the Urals Circuit of 26 January 2023 № F09-9138/22 on the case № A71-7370/2022.

[267] Judgement of the Commercial court of the North-Western Circuit of 13 February 2023 № F07-933/2023 on the case № A56-63817/2022.

administrative offenses related to violations of mandatory requirements applies only to the detection of such violations within the framework of control (supervisory) measures; that Resolution № 336 in any case does not prevent the initiation of an administrative offense case if the information that is the reason for the initiation of an administrative offense case was received by the authorized body in the form of an information (notification of an offense) from other public authorities or as a direct discovery by the authorized body outside the framework of control and supervisory measures. In turn, the Appellate Board of the Supreme Court of the Russian Federation, leaving the decision of the Judicial Board for Administrative Cases of the Supreme Court of the Russian Federation formally unchanged, no longer makes a categorical statement that the current control and supervisory regulation does not cancel the procedure provided for by the CAO of the Russian Federation in cases of administrative offenses and formulates a more restrained conclusion, according to which, if information is received about possible signs of violation of mandatory requirements, the control (supervisory) body evaluates their sufficiency to resolve the issue of initiating an administrative offense case only based on the results of a control (supervisory) event[268]. This marked discrepancy in the presentation of the position has led to the fact that courts can refer both to the Judgement of the Judicial Board for Administrative Cases of the Supreme Court of the Russian Federation and to the Appellate ruling of the Appellate Board of the Supreme Court of the Russian Federation to substantiate different conclusions.

When considering the case of challenging paragraph 9 of Resolution № 336 the Supreme Court of the Russian Federation, among other things, had taken into account adjustments to the legislation on administrative responsibility that took place after adoption of that Resolution in terms of grounds for initiating cases of administrative offenses, which, as follows from the explanatory note to the relevant draft law, were conditioned by the purpose of «liberalizing administrative responsibility for administrative offenses in the field of entrepreneurial activity».

[268] Appellate ruling of the Appellate Board of the Supreme Court of the Russian Federation of 24 November 2022 № APL22-503.

In the current version of parts 3 and 3^1 of Article 28.1 of the CAO of the Russian Federation, they provide for an exception from the general procedure for initiating an administrative offense case and fix that the case of an administrative offense is expressed in non-compliance with mandatory requirements, the assessment of compliance with which is the subject of state control (supervision), municipal control, in the presence of one of the reasons provided for in paragraphs 1–3 of part 1 of this article, a case may be initiated only after conducting a control (supervisory) event in cooperation with a controlled person, checking, performing a control (supervisory) action within the framework of permanent state control (supervision), a permanent raid and registration of their results, except in cases where provided for in parts 3^2–3^5 of the same Article and Article 28.6 of the CAO of the Russian Federation. A note to Article 28.1 of this Code limits the scope of the above legal provisions to cases of initiation of cases of administrative offenses, expressed in non-compliance with mandatory requirements, the assessment of compliance with which is the subject of state control (supervision), municipal control, the organization and implementation of which is regulated by the Federal Law on Control (Supervision) 2008 or the Federal Law on Control (Supervision).

The amendments made to the CAO of the Russian Federation reflected a general approach to the regulation of control (supervision) and are consistent with the tendency to limit state interference in economic activity[269]. Comparing the relevant legal provisions with the previously analyzed version of Article 28.1 of this Code and the notes to it, it is possible to note a number of fundamental innovations characterizing the current administrative-offence legislation:

– firstly, restrictions on the initiation of an administrative offense case without conducting control (supervisory) measures apply not only to cases of direct detection of signs of such an offense by the authorized body, but also to the reasons for initiating an administrative offense case, fixed in paragraphs 2 (receipt

[269] In such regulation the legislator implemented the idea of the need to make the initiation of proceedings on an administrative offence conditional on the presence of the act of inspection, confirming the data from appeals, reports in the media and received from public authorities, which indicate the existence of the event of an administrative offence. See: Regulatory policy of the Russian Federation: legal problems of formation and implementation: monograph. P. 229.

of materials from public authorities, public associations) and 3 (communications and statements of individuals and legal entities, as well as media reports) of part 1 of Article 28.1 of the CAO of the Russian Federation[270];

– secondly, the consolidation of a list of control (supervisory) measures, the conduct and registration of the results of which are necessary to initiate a case of an administrative offense, expressed in non-compliance with mandatory requirements, with an emphasis on procedures involving interaction with a controlled person;

– thirdly, a clearer and unambiguous definition of the scope of the analyzed exceptions is administrative prosecution for violation of only those mandatory requirements, compliance with which is assessed in accordance with the procedure established by the Federal Law on Control (Supervision) of 2008 or the Federal Law on Control (Supervision)[271].

The above legislative provisions, together with paragraph 9 of Resolution № 336 and the position of the executive authorities, allow us to speak about the consolidation at the regulatory level of the model of subordination of administrative responsibility for violation of mandatory requirements, which concedes to control and supervisory activities its role as the dominant means of maintaining law and order in the field of entrepreneurial and other economic activities.

In judicial practice, examples of the implementation of this model are found on the basis of the current control and supervisory regulation and legislation on administrative responsibility. Thus, in one of the cases it was noted that the verification of the data, contained in the appeal of an individual, is related to the need to assess violations of mandatory requirements, carried out in a particular

[270] However, to the costs of such an approach in the literature include the fact that even in conditions of obviousness of an offence, authorised officials are deprived of the opportunity to respond to it with the use of administrative-offence means. See: *Antonov S.N., Bakanov K.S.* Development of the doctrine of I.I. Veremeenko on the correlation of control and supervisory and administrative-jurisdictional activity in the field of road traffic // Administrative law and process. 2023. № 3. Access from the SPS «ConsultantPlus».

[271] This significantly limits the scope of application of the restriction in terms of reasons for initiation of proceedings on an administrative offence, taking into account the number of relations in the sphere of control and supervisory activity to which these federal laws do not apply. However, the assessment of expediency and reasonableness of such a decision of the legislator does not belong to the subject of this study.

case precisely through control and supervisory measures, the conduct of which is limited by Resolution № 336, by virtue of which the refusal of the authorized body to initiate an administrative offense case was recognized as lawful[272]. Commercial courts also in some cases adhere to the position that, by virtue of paragraph 9 of Resolution № 336 and part 3^1 of Article 28.1 of the CAO of the Russian Federation, the initiation of an administrative offense case is possible only after control and supervisory events, involving interaction with a controlled person[273], which are necessary both to verify the data contained in the received by the authorized body complaint[274], and, for example, upon receipt of materials from public authorities[275] or the direct detection of signs of an offense outside the framework of control (supervisory) activities[276]; the use of an administrative investigation for these purposes instead of appointing an unscheduled control (supervisory) event is not allowed[277]. At the same time, the courts, with reference to the scope of the noted restriction, quite reasonably reject arguments about the need to apply paragraph 9 of Resolution № 336 and part 3^1 of Article 28.1 of the CAO of the Russian Federation in cases that are not related to the assessment of compliance with mandatory requirements in accordance with the procedure provided for by the Federal Law on Control (Supervision) of 2008 or the Federal Law on Control (supervision) and relate, for example, to the implementation of antimonopoly control[278], state control (supervision) in the field of road safety[279],

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[272] Judgement of the judge of the First cassation court of general jurisdiction of 14 December 2022 № 16-8491/2022.

[273] Judgements of the Commercial court of the East Siberian Circuit of 13 April 2023 № F02-1201/2023 on the case № A78-6192/2022, of the Commercial court of the North Caucasus Circuit of 29 December 2022 № F08-13223/2022 on the case № A53-19373/2022.

[274] Judgement of the Commercial court of the Central Circuit of 27 April 2023 № F10-1280/2023 on the case № A64-6046/2022.

[275] Even if the materials for consideration of the issue of bringing the guilty persons to administrative responsibility came from the Prosecutor's Office. See: Judgement of the Commercial court of the North-Western Circuit of 15 November 2022 № F07-16259/2022 on the case № A56-121101/2021.

[276] The court in this case qualified the inspection of the publicly accessible territory and the facade of the house as a control measure actually carried out in violation of the law. See: Judgement of the Commercial court of the East Siberian Circuit of 14 July 2023, № F02-3617/2023 on the case № A33-30994/2022.

[277] Judgement of the Fourth Appellate Commercial Court of 10 March 2023 № 04AP-6807/2022 on the case № A78-10977/2022.

[278] Judgement of the Commercial court of the North-Western Circuit of 23 March 2023 № F07-1901/2023 on the case № A42-4484/2022.

[279] Judgement of the judge of the Seventh cassation court of general jurisdiction of 24 March 2023 № 16-1153/2023.

federal state control (supervision) over compliance with the legislation of the Russian Federation in the field of private security activities[280].

At the same time, in the practice of courts of general jurisdiction and commercial courts, there is also a different approach to the application of the analyzed control and supervisory and administrative-offence regulation (paragraph 9 of Resolution № 336 and part 3^1 of Article 28.1 of the CAO of the Russian Federation), which can be recognized as dominant in terms of the number of decisions made by courts, but hardly consistent with the letter and spirit of the specified regulations. In particular, it is noted that these regulations do not imply evasion from clarifying the circumstances necessary to bring to responsibility when directly detecting signs of an administrative offense or obtaining relevant information from complaints[281] through the implementation of the powers provided for by the CAO of the Russian Federation, which are not replaced by control and supervisory activities[282]. At the same time, if the available data is sufficient, then the administrative body should initiate an administrative offense case, which cannot be refused solely on the grounds that the appointment of control (supervisory) measures is required to verify the information, the conduct of which is limited[283] – the circumstances necessary for bringing to administrative responsibility can be clarified within the framework of an administrative investigation[284], taking into account the prohibition on its conduct that is absent in the legislation, including in the case of the prosecutor's office's refusal to

[280] Judgement of the Seventeenth Appellate Commercial Court of 27 December 2022 № 17AP-14466/2022-AKu on the case № A71-10785/2022.

[281] Judgements of the Commercial court of Moscow Circuit of 6 February 2023 № F05-28219/2022 on the case № A40-98507/2022 and of 10 March 2023 № F05-32681/2022 on the case № A40-98517/2022.

[282] Judgements of the Commercial court of the North-Western Circuit of 16 February 2023 № F07-793/2023 on the case № A56-46928/2022 and of the Commercial court of the Volga-Vyatka Circuit of 20 March 2024 № F01-908/2024 on the case № A79-5230/2023.

[283] Judgements of the Commercial court of the Urals Circuit of 29 March 2023 № F09-313/23 on the case № A60-44455/2022, of the Commercial court of the North-Western Circuit of 20 March 2024 № F07-22642/2023 on the case № A56-53522/2023; judgement of a judge of the Seventh cassation court of general jurisdiction of 17 February 2023 № 16-258/2023, P16-258/2023.

[284] Judgements of the Commercial court of the Volga Circuit of 6 April 2023 № F06-485/2023 on the case № A65-23336/2022, of the Fourth commercial appeal court of 19 April 2023 № 04AP-665/2023 on the case № A78-12265/2022, of the Seventeenth commercial appeal court of 10 April 2023 № 17AP-2625/2023-AK on the case № A71-18080/2022.

coordinate an unscheduled inspection[285]. Moreover, the courts do not exclude the possibility of initiating a case on the basis of information obtained as part of operational investigative activities[286], or by examining the exterior of the building in a publicly accessible way from the street[287].

Thus, the normative model embedded in the current regulation, which assumes subordination of legislation on administrative responsibility in relation to the regulation of control and supervisory activities, has not been fully accepted by judicial practice. The contradictions found in the interpretation and application of modern regulation of control (supervision) and related provisions of the legislation on administrative offenses, which to a certain extent are reinforced by the ambiguous position of the Supreme Court of the Russian Federation regarding the possibility of initiating cases of administrative offenses on the basis of relevant regulatory prescriptions, cannot be ignored critically. Contradictory law enforcement practice, which generates legal uncertainty, not only weakens the guarantees of state protection of the rights, freedoms and legitimate interests of citizens (their associations) from arbitrary administrative coercion, but also calls into question compliance with the principle of maintaining trust in the law and state actions, from which, in particular, it follows that decisions are made by state-authorized bodies based on based on strict compliance with legal regulations[288].

The courts, however, when faced directly with violations of mandatory requirements by controlled persons, do not consistently apply the model laid down in normative regulation that restricts the use of administrative-punitive measures, reasonably believing that this leads to a deviation from the principle of inevitability of punishment, which underlies the system of legal responsibility and, in essence,

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[285] Judgement of the Commercial court of the Central Circuit of 2 February 2023 № F10-5978/2022 on the case № A23-6042/2021.

[286] Judgement of the Seventeenth Appellate Commercial Court of 26 April 2023 № 17AP-3988/2023-AC on the case № A50-33205/2022.

[287] Moreover, this is not regarded as the conduct of any control and supervisory measures, nor as an inspection of premises, territories and documents in accordance with Article 27.8 of the CAO of the Russian Federation. See: judgements of the Commercial court of the North-Western Circuit of 18 January 2023 № F07-20722/2022 on the case № A56-37714/2022 and of 1 March 2023 № F07-382/2023 on the case № A56-63877/2022.

[288] Judgement of the Constitutional Court of the Russian Federation of 13 December 2022 № 54-P «On the case of verification of the constitutionality of part 2 of article 2.6^1 of the Code of the Russian Federation on Administrative Offences in connection with the request of the Oktyabrsky district court of the city of Yekaterinburg» // CL RF. 26.12.2022. № 52. Art. 9756.

is of constitutional nature. The creation of an atmosphere of impunity, as noted by the Constitutional Court of the Russian Federation (Judgement № 4-P of 25 February 2014), is incompatible with the principle of the inevitability of responsibility for violation of the law arising from the Constitution of the Russian Federation. The importance of this principle in the sphere of regulating economic activity cannot be underestimated, especially given that it is the inevitability (and not the severity) of punishment that determines its *preventive-instructive* significance[289].

Meanwhile, if we proceed from the fact that the purpose of modern administrative regulation in the field of economic activity is not so much to punish the offender as to maintain law and order, prevent harm to legally protected values, stimulate conscientious behavior, then it seems preferable to use more actively the means provided for by law to achieve this goal with less interference in the freedom of economic activity. In particular, in conditions of restrictions on carrying out control (supervisory) measures and bringing to administrative responsibility, such a measure as a warning may be in demand (Article 49 of the Federal Law on Control (Supervision), which is classified as preventive measures, allows influencing the behavior of a controlled person and is used in practice[290]. According to experts, this administrative tool has demonstrated its effectiveness and confirmed its viability as an alternative to bringing to administrative responsibility[291]. Thus, for example, in conditions of obvious violation of mandatory requirements, if it is impossible for one or another formal reason to take measures to carry out control (supervision) or to carry out administrative prosecution, issuing a warning can compensate for the lack of other administrative procedural measures.

Finally, the inconsistent application of the rules establishing the procedure for the application of administrative-coercive measures not only creates a basis for

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[289] *Vitruk N.V.* Op. cit. P. 206.

[290] Judgement of the Commercial court of the Central Circuit of 10 October 2022 № F10-3952/2022 on the case № A23-3579/2022.

[291] *Evdokimov A.S., Sergun P.P.* System of preventive measures applied in the implementation of state control (supervision): assessment of regulatory impact // Administrative law and process. 2023. № 7. Access from the SPS «ConsultantPlus».

circumventing the restrictions associated with bringing to administrative responsibility for violation of mandatory requirements, but also actually disavows the mechanisms that ensure control over compliance with the order of control and supervisory activities by the prosecutor's office in terms of coordinating appropriate measures, which is an important additional guarantee of the rights of controlled persons[292]. Moreover, the substitution of control and supervisory means for detecting violations by an administrative-offence procedure (administrative investigation) not only contradicts the provisions of Article 28.1 of the CAO of the Russian Federation, but also, as a result, prevents the application of the norms of this Code on special rules for the appointment and execution of administrative penalties imposed in case of detection of an offense during control (supervision)[293] which were analyzed earlier in the work.

Thus, the conducted research allows us to state that at the level of regulatory legal regulation, a model is gradually being implemented that assumes not just the interconnection and interdependence of control and supervisory and administrative-offence proceedings, but their subordination and subordination, by virtue of which compliance with mandatory requirements should be ensured primarily by preventive and preventive measures, not punishment[294]. At the same time, the analysis of the evolutionary development of the grounds for initiating cases of administrative offenses related to non-compliance with mandatory requirements indicates a gradual complication of the requirements for initiating such cases (part 3^1 of Article 28.1 of the CAO of the Russian Federation), which is designed to exclude disproportionate, unnecessary administrative prosecution.

The general vector of this development is likely to be maintained, even though the courts perceive the relevant normative provisions restrictively and in some cases, in essence, refuse to apply the norms of legislation on administrative offenses, which make it difficult to bring to administrative responsibility.

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[292] *Karitskaya A.A.* The institute of initiating cases of an administrative offense in the light of control (supervision) reform. P. 152; *Oleinik O.M.* Formation of legal certainty and stability in the sphere of state control (supervision) over business // Law. 2016. № 11. Access from the SPS «ConsultantPlus». P. 133–142.

[293] Judgement of the Commercial court of the Volga-Vyatka Circuit of 22 December 2023 № F01-8125/2023 on the case № A29-15102/2022.

[294] *Karitskaya A.A.* Ibid.

Therefore, there is reason to assert that after the Russian legal system has fully mastered the current rules for initiating cases of administrative offenses, further adjustments to administrative-offence legislation will take the form of a comprehensive reform of the relevant codified act or point changes to the current CAO of the Russian Federation – they will be associated, in particular, with clarifying the scope of the rule limiting the initiation of cases of administrative offenses in the field of mandatory requirements and eliminating the practice of circumventing the provisions of legislation on control (supervision) through proceedings on an administrative offense.

The relevance of solving this problem is also emphasized by the fact that the experience gained so far of temporary limitation of verification measures in the future is planned to be transferred to the category of a general rule, as a result of which a transition from temporary restrictions on the implementation of control and supervisory activities to the application of a risk assessment and management system during control (supervisory) activities should be carried out and provided for replacement of control (supervisory) measures carried out in relation to controlled persons, the activities of which do not belong to a high or extremely high risk category of harm, mainly for preventive measures[295].

Paragraph 2. Evolution of the mechanism of prevention of administrative offences in the context of the reform of legislation on control and supervisory activities

The reform of the legislation on control (supervision) has always been accompanied by measures aimed at entrenching the idea of the need to prevent violations of the requirements imposed on controlled persons. The relevant legislative decisions taken at both the second and third stages of the reform of

[295] Subparagraph «k» of item 9 of the List of instructions for the implementation of the President's Address to the Federal Assembly (approved by the President of the Russian Federation on 30 March 2024) // Official website of the President of the Russian Federation. URL: http://www.kremlin.ru/acts/assignments/orders/73759 (access date: 16.06.2024).

control and supervisory regulation[296] indicate that the concept of preventing violations of mandatory requirements has become one of the fundamental principles on which the entire system of current legislation on control (supervision) is based. At the same time, attention to the prevention of delinquent behavior is demonstrated by the legislation on administrative responsibility[297].

The presence of provisions in it that ensure the prevention of administrative offenses cannot be considered contrary to the nature of administrative-offence regulation, the existence of which is predetermined by the obligation of public authorities to create mechanisms to protect individuals, society and the state from administrative offenses, while preventing unjustified, unfair and excessive state coercion[298]. This regulation, focused primarily on determining the grounds and conditions for bringing to administrative responsibility, is not at all alien to preventive measures, which is dictated, in particular, by the attribution of the prevention of administrative offenses to the tasks of the relevant legislation (Article 1.2 of the CAO of the Russian Federation). According to A.V. Kirin's fair remark, when bringing to administrative responsibility, its «executive-law enforcement» and «preventive-educational» components are of great importance, and not only the coercive-punitive function[299]. The goals of general and private prevention are determined by the central institution of administrative responsibility – administrative punishment (part 1 of Article 3.1 of the said Code), which stimulates participants in legal relations to lawful behavior, deterring them not only from committing administrative offenses[300], but also from other forms of illegal acts[301].

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[296] See directly on this issue: *Peresedov A.M.* Op. cit. P. 51–54.

[297] As noted by Yu.N. Starilov, «the norms of the General part of the CAO RF reflect «the necessary stimulating and preventive potential» of this Code». See: *Starilov Yu.N.* Administrative procedures, administrative proceedings, administrative-offence law: three main directions of modernisation of Russian legislation / Yearbook of public law 2015: Administrative process / B.K. Amanalieva, D. Bayer, Z.H. Baimoldina et al. M.: Infotropic Media, 2015. Accessed from ConsultantPlus.

[298] Judgement of the Constitutional Court of the Russian Federation of 27 March 2023 № 11-P «On the case of verification of the constitutionality of Part 2 of Article 2.1 and Article 12.32 of the Code of the Russian Federation on Administrative Offences in connection with the complaint of the state budgetary institution of the city of Moscow «Automobile Roads of Zelenograd Administrative district» // NW RF. 10.04.2023. № 15. Art. 2745.

[299] *Kirin A.V.* Theoretical foundations of administrative-offence law // State and law. 2010. № 10. P. 31–32.

[300] Judgement of the Constitutional Court of the Russian Federation of 22 April 2014 № 13-P «On the case of verification of the constitutionality of parts 5 and 7 of Article 12.16, part 1^2 of Article 12.17, parts 5 and 6 of

In addition to the general focus on the prevention of administrative offenses by establishing responsibility and imposing administrative punishment, the CAO of the Russian Federation establishes a special mechanism for eliminating the causes of administrative offenses and the conditions that contributed to their commission. In accordance with Article 29.13 of this Code, a judge, an authority, an official considering an administrative offense case, when establishing the causes of an administrative offense and the conditions that contributed to its commission, make a submission on taking measures to eliminate these causes and conditions (hereinafter also referred to as the submission) to the relevant organizations and relevant officials who must consider this submission is made within a month from the date of receipt and inform the judge, the body, the official who submitted the submission about the measures taken.

Making a submission is inextricably linked with the implementation of proceedings in the case of an administrative offense, since it follows from the need to clarify the causes and conditions of the commission of an administrative offense, which is one of the tasks of this proceeding (Article 24.1 and paragraph 7 of Article 26.1 of the CAO of the Russian Federation). The resolution of the relevant issue is formally attributed to the stage of consideration of the case of an administrative offense, which ends with the issuance of a decision on the imposition of an administrative penalty or on the termination of proceedings in the case of an administrative offense (part 1 of Article 29.9 of the specified Code). Within the meaning of this article, it is in the decision that the circumstances clarified in the case of an administrative offense are reflected, confirming its event and the presence of an appropriate composition, i.e. the information that allows us to state that an administrative offense has taken place[302], and formulate the

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Article 12.19 and part 2 of Article 12.28 of the Code of the Russian Federation on Administrative Offences in connection with the request of a group of deputies of the State Duma» // NW RF. 05.05.2014. № 18 (Part IV). Art. 2288.

[301] *Serkov P.P.* Op. cit. P. 34.

[302] In particular, it is expressly noted that «a decision imposing an administrative penalty and a submission are based on the same fact of committing an administrative offence, are inextricably linked». See: judgement of the Eighth commercial appeal court of 3 November 2021 № 08AP-10847/2021 on the case № A70-8137/2021.

requirements necessary to eliminate its causes, as well as the conditions that contributed to its commission.

Judicial practice has reflected the strict conditionality of the submission by the presence of the corpus delicti of an administrative offense, the absence of which indicates the impossibility of issuing a submission: the courts, stating that there is no corpus delicti of an administrative offense, terminate the proceedings in the relevant case and cancel the submission[303]. If, however, an indication of a violation of any requirements committed by the person being prosecuted is excluded from the decision on an administrative offense, then references to the need to eliminate the causes and conditions that led to this violation are also excluded from the submission[304]. Such a close relationship and dependence of the submission on the decision in the case of an administrative offense to a certain extent provides «protection» of the submission if the legality and validity of bringing to administrative responsibility has not been refuted by the courts.

This allows us to assert that the issuance of a submission should follow the issuance of a ruling on an administrative offense in one of the forms defined by part 1 of Article 29.9 of the CAO of the Russian Federation. The logic of the location of the articles in Chapter 29 of this Code, as well as judicial practice, which indicates that before a decision on an administrative offense is issued, a submission cannot be issued under threat of its cancellation, also pushes for such a sequence (first making a decision on the case, and then issuing a submission)[305]. At the same time, issuing a submission is not conditional on the mandatory adoption of a decision on the imposition of an administrative penalty: the termination of proceedings on an administrative offense also does not exclude, in certain cases,

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[303] Judgement of a judge of the Supreme Court of the Russian Federation of 7 November 2017 № 31-AD17-12; judgements of a judge of the Third cassation court of general jurisdiction of 28 October 2021 № 16-3999/2021, of a judge of the Fifth cassation court of general jurisdiction of 22 April 2022 № 16-621/2022, of a judge of the Sixth cassation court of general jurisdiction of 12 October 2023 № 16-5669/2023.

Commercial courts, in turn, have taken a similar approach. See, for example: judgement of the Commercial court of the Far East Circuit of 12 December 2019 № F03-4414/2019 on the case № A51-24852/2018.

[304] Judgement of the judge of the Fifth cassation court of general jurisdiction of 23 September 2022 № 16-1439/2022.

[305] Judgements of the Federal Commercial court of the Urals Circuit of 11 February 2014 № F09-14811/13 on the case № A60-24281/2013, of the Commercial court of the North-Western Circuit of 4 February 2021 № F07-15897/2020 on the case № A56-31027/2020.

the adoption of appropriate preventive measures by subjects of administrative jurisdiction. In particular, the existence of circumstances in the case of an administrative offense reflected in the protocol and in the decision on termination of proceedings in connection with the expiration of the limitation period for bringing to administrative responsibility is considered sufficient for issuing a submission in the practice of commercial courts[306], since this does not exempt from the need to reflect the circumstances of the case in such a ruling[307]. However, this approach, although it is confirmed by the position of the Judicial Board for Economic Disputes of the Supreme Court of the Russian Federation, cannot be considered unambiguously established, since in the practice of commercial courts of different circuits there are decisions: on the admissibility of making a submission in the conditions of cancellation of a decision on an administrative offense case on procedural grounds (for example, if the opportunity to participate in consideration of the case was not provided)[308], and the decision to cancel the submission in the event of termination of the proceedings in connection with the expiration of the statute of limitations[309].

Being aimed at solving the tasks of the proceedings in cases of administrative offenses, the submission strengthens, as N.V. Vitruk noted, the effect of the preventive-instructive function of administrative responsibility[310]. Ensuring the prevention of the commission of administrative offenses in the future, representation is thus an administrative-law measure of a preventive nature, which

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[306] See the leading ruling of the Judicial Board for Economic Disputes of the Supreme Court of the Russian Federation of 30 September 2020 № 307-ES20-5995 on the case № A56-21344/2019.

It is noteworthy that in recognising the submission issued to the legal entity as lawful on the basis of the results of the new consideration, the commercial court confirmed the validity of the requirements contained therein, which were essentially limited to the need to comply with the rules of the legislation on labelling of containers. It was the failure to comply with the relevant requirements was CAO of Administrative Offences of the Russian Federation.

[307] Resolution of the Plenum of the Supreme Court of the Russian Federation of 24 March 2005 № 5 «On certain issues arising at the courts in the application of the Code of the Russian Federation on Administrative Offences» (paragraph 13^1).

[308] Judgement of the Commercial court of the Central Circuit of 16 October 2018 № F10-6139/2017 on the case № A14-329/2017.

[309] Judgements of the Commercial court of the Central Circuit of 22 July 2020 № F10-2723/2020 on the case № A14-10350/2019 (confirmed by the ruling of the judge of the Supreme Court of the Russian Federation of 12 January 2021 № 310-ES20-17750), and of the Commercial court of the Urals Circuit of 28 April 2022 № F09-2354/22 on the case № A71-7730/2021.

[310] *Vitruk N.V.* Op. cit. P. 46.

is confirmed by the current legislative regulation, which includes the idea of eliminating the causes and conditions conducive to the commission of an offense among the forms of crime prevention[311].

The existence of a special administrative-offence mechanism for eliminating the causes and conditions of committing administrative offenses was justified in the conditions of the Soviet administrative model, which assumed active organizing and control activities of public authorities[312], but in the modern constitutional legal order, which limits the possibility of exercising relevant powers, this mechanism (although it follows directly from the norms of the CAO of the Russian Federation) must be proved its consistency, suitability and acceptability[313]. However, as the analysis of current regulatory regulation, law enforcement practice and administrative-legal doctrine shows, at present, the presentation model as a means of preventing administrative offenses is difficult to recognize as effective, despite the obvious rootedness of this tool in the domestic legal order.

The CAO of the Russian Federation provides that a submission is issued to eliminate the causes of an administrative offense and the conditions that contributed to its commission, but does not specify the content of these concepts. In the comments to this Code, the causes of an administrative offense are called «actions (inaction), circumstances and conditions or a combination of them that led to an administrative offense (for example, a state of intoxication)», and the conditions for committing an administrative offense are «circumstances on which the commission of an administrative offense depends, or factors facilitating its

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[311] Federal Law of June 23, 2016 № 182-FZ «On the foundations of the system of prevention of offences in the Russian Federation» (paragraph 5 of part 1 of Article 17) // CL RF. 27.06.2016. № 26 (Part I). Art. 3851.

[312] Earlier in an identical, in essence, it existed in the form of mandatory for consideration «proposal to eliminate the causes and conditions that contributed to the commission of administrative offences» (Article 265 of the CAO RSFSR), which implied, on the one hand, the indication of specific circumstances that influenced the commission of an administrative offence, and, on the other hand, did not allow interference in the operational activities of the addressee of such a proposal. See about it: Code of the RSFSR on administrative offences: commentary / G.V. Vasilyeva, I.I. Veremeenko, B.M. Lazarev and others; ed. by M.A. Shapkin. M.: Yuridicheskaya Literatura, 1989. P. 388 (the author of the commentary is A.P. Shergin).

[313] In the literature, a position was expressed on the necessity of complete cancellation of the possibility to make submissions in the order provided for by Article 29.13 of the CAO of the Russian Federation. See: *Agapov A.B.* Jurisdictional powers of public bodies and organisations // Administrative law and process. 2017. № 9. Access from SPS «ConsultantPlus».

commission (for example, road conditions accompanying a traffic accident)»[314]; as specific reasons and conditions that contributed to the commission of offenses, «shortcomings in the activities of relevant organizations in accounting for material assets, monitoring employees' compliance with established work rules, etc.» are highlighted[315].

The «causes» and «conditions» understood in this way are practically indistinguishable and, in essence, are reduced precisely to the causes of the administrative offense itself: V.N. Kudryavtsev also emphasized that the conditions considered in conjunction with the causes constitute the so-called «complete cause» of a phenomenon[316]. The offense is thus the result of a combination of causes and conditions, which makes it meaningless to search for formal differences between them[317]. In the doctrine, as one of the measures to improve legislation on administrative responsibility, it is proposed to consolidate the unified concept of «causes and conditions of an administrative offense», meaning «a set of necessary, legally significant phenomena that naturally and inevitably lead to the commission of an administrative offense»[318].

Nevertheless, being bound by the letter of Article 29.13 of the CAO of the Russian Federation, which formally separates the «causes of an administrative offense» and «conditions that contributed to its commission»[319], the courts are trying to distinguish these concepts and determine their meaning. Thus, the «causes» are the factors that give rise to an offense (for example, neglect of the performance of public law duties), and the «conditions» are the factors that facilitate its commission (in particular, insufficient organization of work to comply

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[314] Code of the Russian Federation on Administrative Offences. Chapters 24–32. Article-by-article scientific and practical commentary / ed. by B.V. Rossinsky. Editorial office of «Rossiyskaya Gazeta». 2015. P. 338–339.

[315] Commentary to the Code of the Russian Federation on Administrative Offences (article-by-article) / edited by N.G. Salishcheva. M.: Prospect, 2011. Commentary to article 29.13. Access from SPS «ConsultantPlus».

[316] *Kudryavtsev V.N.* Causes of offences: a monograph. Repr. ed. M.: Norma: INFRA-M, 2019. P. 17.

[317] *Malein N.S.* Offence: concept, reasons, responsibility. M.: Yurid. lit. 1985. P. 82.

[318] *Deryuga A.N.* Problems of the legal mechanism of revealing and eliminating the causes and conditions of committing an administrative offence // Law and State: theory and practice. 2006. № 7 (19). P. 37; *Simakina I.A.* Improvement of the legal mechanism of revealing and eliminating the causes and conditions contributing to the commission of administrative offences: abstract dis. ... cand. of legal sciences. Khabarovsk, 2009. P. 8, 20.

[319] Although other prescriptions of the CAO of the Russian Federation (Articles 19.6, 24.1, 26.1) speak exactly about «causes and conditions of committing an administrative offence» in general.

with regulatory requirements)[320]. The absence in the presentation of the actual causes and conditions that contributed to the commission of the offense indicates its illegality due to «lack of specificity» and, as a result, excludes bringing to administrative responsibility for its non-fulfillment[321].

However, such a dogmatic interpretation, in fact, identifies the cause of an administrative offense with the form of guilt (Article 2.2 of the CAO of the Russian Federation), and the conditions for its commission with the method of fulfilling the objective side, that is, which does not separate the causes of an administrative offense and the conditions for its commission from the elements of its corpus delicti. At the same time, the submission itself is mistakenly qualified as a way of responding to the unlawful actions (inaction) of the person being brought to administrative responsibility[322], although from the point of view of the letter of the said Code it should be addressed to facts and circumstances that do not directly constitute an offense. Accordingly, judicial practice also does not sufficiently clarify the content of the categories enshrined in Article 29.13 of the CAO of the Russian Federation and considers the causes and conditions of committing an administrative offense in unity as certain shortcomings in the activities of an organization or official that led to the commission of an administrative offense.

As a result, due to the lack of necessary normative or law enforcement guidelines regarding exactly what requirements a submission should contain, authorized entities, responding to an administrative offense, are essentially forced to include only general requirements in submissions. For example, in practice there are submissions about the need to:

– organize work properly[323];

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[320] Judgements of the First Appellate Commercial Court of 8 July 2022 № 01AP-3287/2022 on the case № A43-6664/2022, of the Commercial court of the Urals Circuit of 19 December 2023 № F09-1884/23 on the case № A60-50558/2022.

[321] Judgement of the judge of the Ninth cassation court of general jurisdiction of 22 October 2021 № 16-3132/2021.

[322] Judgements of the judge of the Third General cassation court of general jurisdiction of 15 June 2022 № 16-1739/2022, and of the judge of the Fourth General cassation court of general jurisdiction of 4 September 2020 № 16-3238/2020.

[323] Judgement of the Commercial court of the Far East Circuit of 28 January 2021 № F03-6064/2020 on the case № A51-6310/2020.

– draw the attention of employees to the need to perform official duties[324] or conduct their training[325];

– study the legislation[326];

– to ensure or strengthen production control[327], etc.

At the same time it is stated that the absence of a formulation of specific actions to be performed in the submission allows the relevant person to independently choose the mechanism for executing the submission[328]. The submission, therefore, is considered as an act that does not impose any specific obligations and involves only considering the information contained in it about the need to prevent future offenses[329].

Meanwhile, with this approach, the «added value» of the submission, as a special administrative act designed to identify specific means and methods to eliminate the detected causes and conditions of committing offenses, becomes unobvious. Moreover, the issuance of such submissions, containing general requirements on the need to «improve» in one way or another the activities of the person being brought to administrative responsibility, multiplied by the lack of a certain procedure and criteria for evaluating the issuance of the submission and an undifferentiated one-month period allotted for reporting on the measures taken, obviously creates the risk of unjustified administrative prosecution for failure to take measures to eliminate the reasons and conditions that contributed to the commission of an administrative offense (Article 19.6 of the CAO of the Russian Federation).

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[324] Judgement of the Judge of the Eighth cassation court of general jurisdiction of 5 April 2021 № 16-1828/2021.

[325] Judgement of the Commercial court of the North-Western Circuit of 10 July 2020 № F07-6334/2020 on the case № A05-12677/2019.

[326] Ruling of the judge of the Supreme Court of the Russian Federation of 22 June 2015 № 304-AD15-5738 on the case № A27-7617/2014.

[327] Judgement of the Commercial court of the Volga-Vyatka Circuit of 28 July 2020 № F01-11831/2020 on the case № A43-11323/2018, with which the judge of the Supreme Court of the Russian Federation agreed (ruling of 1 December 2020 № 301-ES20-18608).

[328] Judgement of the Commercial court of the North-Western Circuit of 24 October 2022 № F07-14772/2022 on the case № A56-8592/2022.

[329] Judgement of the judge of the Sixth cassation court of general jurisdiction of 24 September 2020 № 16-5868/2020; Judgement of the Commercial court of the West Siberian Circuit of 2 August 2016 № F04-3406/2016 on the case № A45-25018/2015, with which the judge of the Supreme Court of the Russian Federation agreed (ruling of 14 October 2016 № 304-KG16-13307).

The noted risk becomes all the more noticeable given that the CAO of the Russian Federation does not exclude the possibility of making a submission, along with the person brought to administrative responsibility, also to other entities that can take measures to prevent further commission of offenses[330]. This Code is limited to the lapidary and somewhat vague indication in article 29.13 that a submission is made «to the relevant organizations and relevant officials» and thus, as practice shows, opens the way to practically unlimited variability in the choice of law enforcement agencies of subjects to whom a submission can be made.

Thus, it hardly requires additional justification that a submission can be made directly to a person brought to administrative responsibility, excluding, of course, an individual to whom, by virtue of the literal meaning of Article 29.13 of the CAO of the Russian Federation, a submission is not made. In accordance with this understanding, the courts classify the submission as a way of responding to unlawful actions (inaction) of a person brought to administrative responsibility[331], and state that the submission is made in relation to a person who has committed a violation of the requirements of legislation, for which administrative responsibility is provided[332].

At the same time a more common approach is that it is a mistake to consider a submission as subject to be made only in relation to a person who has committed an administrative offense[333] – it is addressed to such a subject, in whose competence and power to take measures to prevent the further commission of such an offense, and he does not necessarily have to be guilty of committing an administrative offense, which served as the basis for bringing to justice[334]. Such an

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[330] Some authors, seeing defects in the current wording of Article 29.13 of the CAO of the Russian Federation, suggest by clarifying the wording of this norm to limit the range of subjects to whom it is possible to make representations, exclusively to persons found guilty of committing offences. See: *Gusarov A.V.* Problems of making representations on cases of administrative offences in the field of ecology // Administrative law and process. 2023. № 12. Access from the SPS «ConsultantPlus».

[331] Judgement of the judge of the Third cassation court of general jurisdiction of 15 June 2022 № 16-1739/2022.

[332] Judgement of the judge of the Fourth cassation court of general jurisdiction of 4 September 2020 № 16-3238/2020.

[333] Cassation ruling of the Second cassation court of general jurisdiction of 1 February 2023 on the case № 88a-33070/2022.

[334] Judgement of the Commercial court of the Far East Circuit of 13 October 2022, № F03-4849/2022 on the case № A51-17478/2021.

interpretation of the provisions of the CAO of the Russian Federation opens the way for law enforcement agencies to practically unlimited variability in the choice of subjects to whom representation can be made. These include, for example:

– a structural unit of the local administration for administering in the field of education, which did not organize the work, did not finance and did not control the institution (school) brought to responsibility[335];

– the health committee, which did not organize sufficient funding for an institution (hospital) brought to administrative responsibility[336];

– the director of an educational institution brought to responsibility for violating procurement legislation[337], etc.

Moreover, it is allowed to issue a submission to a person who is not directly held accountable, but is explicitly called «guilty of committing an administrative offense»[338], although such a «division of responsibility» is excluded by the CAO of the Russian Federation. This Code expressly provides that a person is subject to administrative responsibility only for those administrative offenses in respect of which his guilt has been established; irremediable doubts about the guilt of a person brought to administrative responsibility are interpreted in favor of this person (parts 1 and 4 of Article 1.5), and therefore the statement of guilt of the person to whom the submission is made in an administrative offense has no alternative to holding another person accountable for committing the same offense. However, the possibility of submitting a submission to any persons whose activities were related to the commission of an administrative offense by another entity allows for the application (albeit indirectly – in the form of liability for non-

[335] Judgement of the Commercial court of the North-Western Circuit of 15 February 2023 № F07-137/2023 on the case № A42-5039/2022, with which the judge of the Supreme Court of the Russian Federation agreed (ruling of 26 May 2023 № 307-ES23-7544).

[336] Judgement of the Commercial court of the Volga Circuit dated 21 November 2019 № F06-53399/2019 on the case № A12-9440/2019.

[337] Judgement of the Commercial court of the Urals Circuit dated 14 July 2022 № F09-3861/22 on the case № A07-23804/2021, with which the judge of the Supreme Court of the Russian Federation agreed (ruling of 10 November 2022 № 309-ES22-21063).

[338] As the materials of the relevant case show, the organisation, contrary to the rules for aircraft flights, incorrectly compiled flight requests, and the submission was issued to the air traffic controller with an indication that the organisation's violation of the procedure for the use of airspace had been committed, among other things, «*through the fault of the air traffic controller*». See: Judgement of the Commercial court of the Far East Circuit of 31 May 2023 № F03-2080/2023 on the case № A51-17480/2021, with which a judge of the Supreme Court of the Russian Federation agreed (ruling of 21 September 2023 № 303-ES23-17394).

fulfillment of the submission[339]) of administrative-jurisdictional measures against an innocent person who was not directly related to the fulfillment of the objective side of the offense. In such cases, making a submission to a person who has not been brought to administrative responsibility essentially compensates (actually replaces) the institution of complicity in the commission of an administrative offense, which is absent in the CAO of the Russian Federation, which, as S.D. Knyazev points out, administrative-jurisdictional practice is in dire need[340].

At the same time a submission may also be issued to subjects with public authority. In particular, as follows from the clarifications of the Supreme Court of the Russian Federation, it is allowed to make representations to officials responsible for the installation of technical equipment (cameras) operating in automatic mode[341] or the implementation of administrative supervision[342]. A submission in one of the cases was submitted to the prosecutor in order to take, within his authority, measures of prosecutorial response to eliminate violations of labor legislation that led to the commission of an offense by a person[343]. At the same time, the courts exclude making submissions to subjects of administrative jurisdiction (inter alia directly to judges[344]) in connection with violations committed by them in the framework of proceedings on an administrative offense, and cancel such acts[345], which is consistent with the legal nature of the submission

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[339] The fact that this is not theoretical and speculative, but quite a real option of interpretation is evidenced, in particular, by the position of Rospotrebnadzor, according to which the issuance of a submission on the elimination of the causes and conditions of an administrative offence ensures the possibility of applying administrative sanctions to all persons involved in the identified offence (for example, in the detection of the circulation of substandard products, a submission can be made, along with the seller, to its manufacturer and supplier, who contributed to the commission of the offence). See: Letter of Rospotrebnadzor of 21 April 2009 № 01/5288-9-32 «On sending the Reference on the practice of application of CAO norms by officials of Rospotrebnadzor» // Access from SPS «ConsultantPlus».

[340] *Knyazev S.D.* Op. cit.

[341] Resolution of the Plenum of the Supreme Court of the Russian Federation of 25 June 2019 № 20 «On some issues arising in judicial practice when considering cases of administrative offences under Chapter 12 of the Code of the Russian Federation on Administrative Offences».

[342] Resolution of the Plenum of the Supreme Court of the Russian Federation of 22 December 2022 № 40 «On some issues arising in judicial practice when considering cases of administrative offences related to non-compliance with administrative restrictions established under administrative supervision».

[343] Judgement of the judge of the Seventh cassation court of general jurisdiction of 26 May 2022 № 16-2551/2022, 16-2565/2022.

[344] Judgement of a judge of the Fourth cassation court of general jurisdiction of 25 February 2020, № 16-948/2020.

[345] Judgement of the judge of the Supreme Court of the Russian Federation of 29 January 2018 № 77-AD18-1; judgement of the judge of the Seventh cassation court of general jurisdiction of 26 October 2023 № 16-5106/2023.

as a means of responding to an administrative offense, and not to any violations of the laws found during bringing to administrative responsibility[346].

Thus, in terms of the addressees of the submission, neither the CAO of the Russian Federation nor the practice of its application form, with the necessary degree of certainty, appropriate rules for making such an administrative act during the consideration of an administrative offense case.

The imperfection of the mechanism for the prevention of administrative offenses is also evidenced by the fact that the presentation often only reproduces information about violations for which the person was brought to justice, indicating the need to eliminate them.

For example, a view may include requirements:

– on the bank's modification of the discriminatory terms of the loan agreement, the presence of which served as the basis for bringing to administrative responsibility[347];

– on bringing to the attention of citizens information that is legally subject to posting on the organization's website on the Internet, the absence of which formed the objective side of the administrative offense[348];

– on the development of necessary documentation, for the absence of which the company it was brought to administrative responsibility[349], etc.

The submission may also contain requirements for the elimination of the consequences of the committed offense (to develop a plan to eliminate pollution of the land plot, to ensure that the soil is brought into a condition consistent with sanitary norms and rules[350], etc.), and it is the focus on stopping and eliminating

[346] Judgement of a judge of the Supreme Court of the Russian Federation of 2 January 2022 № 78-AD21-22-K3.

[347] Judgement of the Federal Commercial court of the Volga-Vyatka Circuit of 19 March 2012 on the case № A31-5732/2011.

[348] Judgement of the Commercial court of the Far East Circuit of 22 September 2021, № F03-4427/2021 on the case № A73-16600/2020.

[349] Judgement of the Commercial court of the Volga Circuit of 22 September 2022, № F06-23526/2022 on the case № A06-12280/2021.

[350] Judgments of the Seventh cassation court of general jurisdiction of 28 May 2020 № 16-1073/2020 and of 20 February 2021 № 16-1209/2021.

the identified violations that is recognized as a condition for the legality of such representations[351].

Thus, the submission was perceived by practice as an additional means of public-power influence, aimed – contrary to the model declared by the CAO of the Russian Federation – not at eliminating the causes and conditions that contributed to the commission of an administrative offense, but at fulfilling normative requirements, violation of which entailed bringing to administrative responsibility, or overcoming the consequences of this offense. Such an interpretation, although it differs from the letter of Article 29.13 of the said Code, is not without a rational basis: law enforcement practice, inter alia due to the uncertainty of the rules for making a submission, has determined for it the most demanded and understandable role – the role of a tool mediating the implementation of the general requirement of the CAO of the Russian Federation that the imposition of administrative punishment does not release a person from fulfilling the obligation for non-fulfillment of which an administrative penalty was imposed (part 4 of Article 4.1).

However, such an application of the submission mechanism means that it actually replaces another administrative-law act – a prescription to eliminate violations of legislation that is known to the control and supervisory regulation. The inclusion of identical requirements in the submission and in the prescription (for example, in one of the cases, both acts contained a requirement to install signs banning smoking[352]) makes the difference between them practically elusive, inter alia for law enforcement officers[353], who often confuse these legal means, which is facilitated, among other things, by the possibility of their simultaneous application by one body (by an official). The absence of clear normative borders between these acts may also give rise to erroneous administrative responsibility provided for in

[351] Judgement of the Commercial court of the Far East Circuit of 3 February 2023 № F03-6397/2022 on the case № A51-7915/2021.

[352] Judgement of the Commercial court of the Far East Circuit of 17 November 2020 № F03-3921/2020 on the case № A51-15332/2019, with which a judge of the Supreme Court of the Russian Federation agreed (ruling of 22 March 2021 № 303-ES21-1461).

[353] See as examples, inter alia: ruling of the judge of the Supreme Court of the Russian Federation of 25 February 2016 № 309-AD15-16620 on the case № A47-10466/2014, judgement of the judge of the Fourth cassation court of general jurisdiction of 28 September 2022 № P16-2425/2022, judgement of the Commercial court of the Moscow Circuit of 14 March 2022 № F05-2696/2022 on the case № A41-3497/2021 and others.

Article 19.5 of the CAO of the Russian Federation for failure to comply with a submission made on the basis of Article 29.13 of this Code, although such inaction forms an independent part of an administrative offense (Article 19.6 of this Code)[354].

Due to the current regulation, the submission and the prescription are applied in independent procedures and should not replace each other. According to experts, the prescription is aimed at eliminating the violation of mandatory requirements itself, and the submission involves eliminating the conditions for committing offenses[355]. Law enforcement agencies are also making attempts to differentiate these administrative acts, referring to their independent legal nature[356] and differing goals[357]. The Supreme Commercial Court of the Russian Federation also pointed out the need to distinguish between submissions and prescriptions in the context of their appeal in court[358]. Nevertheless, contrary to the noted statements about the different nature of the presentation and the prescription, judicial practice extends the criteria of legality and validity of the prescription to the submission[359], bringing these acts even closer. In particular, it is emphasized that the submission should specify specific legitimate, justified, real and feasible measures to eliminate the causes and conditions of an administrative offense[360], and the submission itself should be clear[361].

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[354] The correct qualification of the act, which entailed, as a consequence, the termination of proceedings in the case for lack of corpus delicti of the offence, was carried out only at the highest level of the judicial system. See: Judgement of a judge of the Supreme Court of the Russian Federation of 12 February 2016 № 48-AD16-2.

[355] Article-by-article commentary to the Code of the Russian Federation on Administrative Offences. Part two / edited by L.V. Chistyakova. M.: GrossMedia. ROSBUH, 2019. Accessed from SPS «ConsultantPlus».

[356] The judgement of the Commercial court of Nizhny Novgorod region of 3 July 2023 on the case № A43-11611/2023 (URL: http://kad.arbitr.ru), left unchanged by the judgement of the Commercial court of Volga-Vyatka Circuit of 4 October 2023 № F01-6387/2023.

[357] Letter of Rospotrebnadzor «On Sending a Reference on the Practice of Application of CAO Norms by Officials of Rospotrebnadzor Bodies» (item 5.2).

[358] Judgement of the Plenum of the Supreme Commercial court of the Russian Federation of 2 June 2004 № 10 «On some issues arising in judicial practice when considering cases of administrative offences» (p. 20^1).

[359] As noted by experts, a prescription is issued to a person who has committed a detected violation and has the opportunity to take measures to eliminate it, and should indicate the specific circumstances to be eliminated, rather than a general obligation to comply with the law. See: *Morozova N.A.* Recognition of the instruction of the body of state control (supervision) invalid due to its unenforceability // Administrative law and process. 2015. № 5. Access from SPS «ConsultantPlus».

[360] Judgement of the Commercial court of Moscow Circuit of 24 June 2022 № F05-12249/2022 on the case № A40-173006/2021.

[361] Judgement of the Commercial court of the North Caucasus Circuit of 30 September 2022 № F08-9610/2022 on the case № A32-4372/2022.

Thus, the submission can actually be used as a prescription, which allows, without observing the conditions for issuing such acts provided for by the control and supervisory regulation, to take measures to eliminate violations of the law in accordance with the procedure established by the CAO of the Russian Federation. As a result, the implementation of the mechanism for the prevention of administrative offenses provided for by the legislation on administrative responsibility acquires signs of arbitrary use of administrative means, which obviously contradicts the constitutional principles and standards of public law regulation. Moreover, a submission that does not reliably establish the nature of the duties to be performed in accordance with it ceases to be an effective preventive measure, becoming an additional (and in certain conditions even redundant) means of ensuring compliance with regulatory requirements. The search for an optimal management solution to avoid committing offenses in the future is also inconsistent with the position of subjects of administrative jurisdiction (especially if we are talking about a judge), who, by virtue of their position within the framework of administrative-offence proceedings, perform other functions that do not involve the selection of an acceptable model of behavior for a person brought to administrative responsibility.

The noted systemic contradictions in the representation model confirm that currently the CAO of the Russian Federation and the practice of its application[362] do not exclude the arbitrary exercise by subjects of administrative jurisdiction of their powers to eliminate the causes and conditions of administrative offenses and thereby weaken the necessary guarantees of protection from unjustified administrative measures and call into question compliance with the principle of maintaining trust in the law and state actions. This determines the question of the admissibility of preserving the mechanism in question unchanged.

The resolution of this issue becomes especially relevant in relation to bringing to administrative responsibility for violation of mandatory requirements,

[362] In addition to the aspects discussed in this article, the issues worthy of scientific reflection also arise in terms of the range of subjects authorised to make submissions, the number of rulings made within the framework of a single proceeding, their appeal and others.

compliance with which is simultaneously subject to assessment within the framework of control and supervisory activities.

One of the most notable results of the comprehensive control (supervision) modernisation that took place in 2020 was the normative embodiment of the administrative regulation model, which assumes the existence of a comprehensive system of measures to prevent violations of mandatory requirements and eliminate circumstances that may lead to such violations. This is evidenced by the updated legislation in this area, which focuses control (supervisory) bodies on the prevention, detection and suppression of violations of mandatory requirements, including through their prevention[363]. Accordingly, controlled persons are subject to the regime of prevention of violations of mandatory requirements provided for by the control and supervisory regulation (in addition to the prescription, these are also special measures provided for in chapter 10 of the Federal Law on Control (Supervision), including informing, declaring warnings[364], etc.), and appropriate measures naturally allow preventing any types of illegal behavior of controlled persons, i.e. and administrative offenses[365]. Moreover, the provisions of Article 90 (part 1 and paragraph 5 of part 2) of the said Federal Law provide for the authority of the inspector to issue recommendations on compliance with mandatory requirements (both in case of detection of violations of mandatory requirements by a controlled person, and in the absence of such violations).

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[363] The preventive orientation of the current control and supervisory regulation and its potential positive impact on the rule of law are also noted in the literature. See: *Subanova N.V.* Problems of ensuring legality in the sphere of functioning of the permit system // Journal of Russian law. 2022. Vol. 26. № 6. P. 74–75.

At the same time, not all authors consider the validity of the model of prevention of violations of mandatory requirements laid down by the Federal law on control (supervision). See about it: *Peresedov A.M.* Op. cit.

[364] However, the courts quite clearly differentiate a warning and distinguish it from acts stating an existing (rather than potential) violation of mandatory requirements by a supervised person or imposing specific obligations on them (i.e. prescriptions), thus emphasising the preventive nature of a warning. See: ruling of the Judicial Board for Economic Disputes of the Supreme Court of the Russian Federation of 1 April 2024 № 309-ES23-23873 on the case № A76-30323/2022; Judgement of the Commercial court of the North-Western Circuit of 2 October 2023 № F07-14252/2023 on the case № A26-1068/2023.

[365] See about it: *Smirnova E.N.* Administrative-legal regulation of prevention of violations of mandatory requirements in the implementation of state control (supervision): dis. ... cand. of legal sciences. Nizhny Novgorod, 2022. P. 48.

Under such conditions, the simultaneous application of administrative-offence preventive measures to controlled persons by making a submission can be considered as a manifestation of excessive administrative and legal influence.

In turn, the achievement of a constitutionally justified goal of optimizing the system of administrative regulation measures can be ensured, in particular, by introducing a special rule into the CAO of the Russian Federation that does not allow making representations to persons whose activities are evaluated within the framework of control (supervision) and, therefore, are subject to the relevant rules for the prevention of violations of mandatory requirements. The previously reasoned fundamental unity of the categories «violation of mandatory requirements» and «administrative offense expressed in non-compliance with mandatory requirements» allows us to recognize such a measure of harmonization of the mechanism for the prevention of administrative offenses, enshrined in the CAO of the Russian Federation, with preventive measures provided for by legislation on control (supervision)[366].

The exclusion of controlled persons, in respect of whom preventive measures established by the legislation on control (supervision) are implemented, from among the addressees of the submission will emphasize the priority of this regulation over administrative and jurisdictional means of maintaining law and order, the need for which was mentioned earlier in the context of the idea of subordination of proceedings in cases of administrative offenses in relation to control (supervision). In addition, the appropriate adjustment of the CAO of the Russian Federation will reduce the administrative burden on economic entities, since at present, along with issuing an order to a controlled person, it is not excluded that he should simultaneously submit a submission within the framework

[366] If we proceed from the opposite idea that a violation of mandatory requirements can serve as a basis for issuing a controlled person a prescription, but at the same time from the point of view of the objective side does not form the corpus delicti of an administrative offence, then, accordingly, there would be no grounds for extending the control and supervisory means of prevention of violations of mandatory requirements to administrative-offence relations.

of an administrative offense case initiated following the results of the control event[367].

Moreover, the preventive potential of prescriptions issued by supervisory authorities can be strengthened by introducing the possibility to indicate in a decision taken based on the results of control (supervisory) measures directly to the circumstances discovered by the inspector that have led or may lead in the future to violations of mandatory requirements, for which the controlled person may be brought to administrative responsibility.

A similar mechanism, involving an indication in one act to eliminate both the violation itself and the factors that caused it, is known, for example, to budget regulation, which provides that the submission of the internal state (municipal) financial control body sent to the object of control includes a requirement to eliminate the violation and to take measures to eliminate its causes and conditions (paragraph 2 of Article 270^2 of the Budget Code of the Russian Federation[368]).

The reflection of a similar mechanism in the legislation on control (supervision), firstly, is consistent with the presence of a control and supervisory authority, not a general one (as, for example, police or prosecutor's offices authorized to initiate cases on a fairly significant number of administrative offenses, including in relation to controlled persons), but a special sectoral management competence, which allows them to more effectively (objectively, accurately) determine the causes and conditions that may cause offenses in the economic activities of controlled persons. Secondly, individuals, recognized as controlled persons in accordance with this Federal Law, are not excluded from the circle of addressees of the prescription provided for by the Federal Law on Control (Supervision) (unlike the submission made on the basis of Article 29.13 of the CAO of the Russian Federation), i.e. preventive measures ensuring the prevention of offenses may to acquire a wider scope of application.

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[367] Judgement of the Commercial court of Moscow Circuit 18 May 2017 № F05-4714/2017 on the case № A40-225239/16; cassation ruling of the Third cassation court of general jurisdiction of 1 March 2023 № 88a-3761/2023 on the case № 2a-2003/2022 and others.

[368] Budget Code of the Russian Federation of July 31, 1998 № 145-FZ // CL RF. 03.08.1998. № 31. Art. 3823.

Thus, the mechanism for the prevention of administrative offenses by making a submission is characterized by systemic defects, which consist, among other things, in the fact that the current regulation allows for the issuance of a submission to almost any person (even those not brought to administrative responsibility) during the proceedings on an administrative offense and does not establish requirements for the content, procedure and procedural conditions for making a submission[369].

As part of the planned reform of legislation on administrative responsibility, the possibility of introducing a representation on the elimination of the causes and conditions that contributed to the commission of an administrative offense is also expected to be preserved, which follows from article 6.13 of the Draft Procedural Code of the Russian Federation on Administrative Offenses, which textually practically repeats with Article 29.13 of the current CAO of the Russian Federation. Meanwhile, as evidenced by the conducted research, the above-mentioned shortcomings of the current administrative-jurisdictional model of the mechanism for the prevention of administrative offenses make it difficult for authorized persons to properly exercise their powers, negatively affect the certainty of the legal status of the subjects to whom such a representation is made, and confirm, that the mechanism for making a submission needs to be improved and coordinated (including during the planned comprehensive review of legislation on administrative offenses) with other preventive administrative-law measures ensuring prevention in the field of violations of mandatory requirements.

In the context of the formation of mechanisms for the prevention of violations of mandatory requirements within the framework of the activities of control (supervision) bodies that have the necessary tools for this, the refusal to make a submission in relation to controlled persons (at least in relation to those whose activities are evaluated in accordance with the Federal Law on Control (Supervision) may be an important step for optimization of state coercive influence on economic activity.

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[369] *Karitskaya A.A.* Defects in the mechanism of prevention of administrative offenses in the context of the reform of control and supervisory activities. P. 154.

CONCLUSION

The conducted research allows us to conclude that the reform of control and supervisory activities has had a significant impact on the legislation on administrative offenses. This influence, dictated by the comparable position of the relevant types of proceedings in the system of administrative regulation measures, manifested itself in the consolidation of provisions in the CAO of the Russian Federation that relate to the grounds for bringing controlled persons to administrative responsibility, the procedure for initiating cases of administrative offenses against this category of subjects, and the rules for assigning administrative penalties to them. In addition, under the influence of the reform of control and supervisory activities, the system of prevention of administrative offenses by controlled persons, which is provided for by the specified Code, can potentially be adjusted.

Summarizing what is stated in this paper, the following main conclusions can be formulated.

1. The state, performing its general control function, evaluates the rules imposed on subjects of economic activity through special control and supervisory activities of executive authorities, which inherently have the power to carry out such activities. Control (supervision), being a protective administrative proceeding that is part of the administrative process, has common features with proceedings on administrative offenses, acting, like control and supervisory activities, as a means of authoritatively resolving an administrative dispute regarding the presence or absence of violation of mandatory requirements by a controlled person. In this regard, the reform of legislation on control and supervisory activities in order to achieve the goal of optimizing state intervention in economic activity should be carried out simultaneously with the adjustment of legislation on administrative offenses, which is a prerequisite for appropriate reforms, which is conditioned by the constitutional requirements of fairness, proportionality, reasonableness and consistency of legal norms.

2. The process of reforming control and supervisory activities can be viewed from the point of view of the stages allocated on the basis of the period of validity of the basic (fundamental) laws on control (supervision). A consistent analysis of the relevant statutes allows us to recognize that, while implementing regulatory transformations, the legislator has always faced the need to adapt administrative-offence regulation to the principles underlying the reform of control and supervisory activities (limiting interference in the situation of controlled persons, reducing administrative pressure, increasing the importance of preventive measures etc.). However, despite the noted need for systemic reform of control and supervisory and administrative-offence regulation, the legislator, as a rule, limited himself to making only point adjustments and rules to the CAO of the Russian Federation, designed to improve the situation of controlled persons in a limited way when bringing them to administrative responsibility. At the same time, improving the quality of control and supervisory legislation made it possible, when determining the rules on administrative responsibility (primarily in terms of sanctions), to provide certain preferences to controlled persons, thereby reducing the coercive influence of public authorities on their activities, and at the same time take into account their subordination to a special administrative-law regime of control (supervision), within the framework of which assesses their compliance with mandatory requirements.

3. As a result of the last stage control (supervision) reform, which took place in 2020, a special procedure for establishing and evaluating mandatory requirements has been established in Russian legal regulation. The relevant norms improve the quality of mandatory requirements, their consistency and relevance, in connection with which this reform has had a positive impact on the certainty of rules, prohibitions, restrictions and obligations, violation (non-compliance, non-fulfillment) of which can serve as a basis for issuing a prescription of a supervisory authority to a controlled person and bringing the controlled person to administrative responsibility. However, neither the Federal Law on Mandatory Requirements, nor the rules of control (supervision), nor the CAO of the Russian Federation have definitively resolved the theoretical and practical problem of the

possibility of simultaneous recognition of violations of mandatory requirements both during a control and supervisory event and within the framework of bringing a controlled person to administrative responsibility for the same act. Nevertheless, the basic principles of administrative-law regulation allow us to recognize that the existence of violations of mandatory requirements, which, in terms of the objective side, can be considered as a violation within the framework of assessment, control (supervision) and at the same time do not form an administrative offense should be excluded. Therefore, the same act of a controlled person, expressed in violation of mandatory requirements and which served as the basis for issuing a prescription to him from a supervisory authority, should, as a general rule, entail both issuing a prescription to eliminate this violation and bringing him to administrative responsibility.

At the same time, in order to optimize state coercion in the economic sphere, to ensure the principles of equality and fairness, the legislator is obliged to provide special rules ensuring the mutual use of the results of control and supervisory activities and proceedings on administrative offenses for the same qualification on the presence or absence of violations of mandatory requirements in the activities of the controlled person and in the proceedings on cases of administrative offences. A possible measure to improve the legislation on administrative offenses may also be the consolidation of a norm that excludes bringing to administrative responsibility in connection with a violation of a mandatory requirement before the final assessment of the execution of the prescription issued in connection with this violation.

4. In line with the general direction of administrative regulation, which implies a consistent improvement in the situation of controlled persons, norms have been introduced into the CAO of the Russian Federation that allow such a category of subjects to apply for less stringent administrative-offence sanctions. At the same time, the rules provided for in this Code for the appointment and execution of administrative penalties (the provisions of part 3^{4-1} of Article 4.1, part 1 of Article 4.1^{1}, part 5 of Article 4.4 and part 1^{3-3} of Article 32.2), containing a reference to the concept of «state control (supervision), municipal control» were

not fully coordinated with the control and supervisory regulation which does not contain a universal definition of this concept, which has created difficulties in practice with determining the scope of application of these provisions of the CAO of the Russian Federation.

At the same time, despite some problems that make it difficult to enforce the rules for imposing administrative penalties on controlled persons and for execution of such sanctions, these rules served the purpose of optimizing state intervention in economic activity. Moreover, this beneficial effect may eventually serve as a reason to extend some provisions on the imposition of administrative penalties (for example, on the appointment of a warning instead of an administrative fine or on the payment of a fine in half) to other subjects brought to administrative responsibility, in addition to controlled persons.

5. In the normative legal regulation of the procedure for initiating an administrative offense case, a model is consistently implemented that assumes not just the interconnection and interdependence of control and supervisory and administrative-offence proceedings, but their sequence (subordination), by virtue of which compliance with mandatory requirements must be ensured primarily through control (supervisory) measures and preventive measures, and not involving administrative responsibility. At the same time the analysis of the evolutionary development of the grounds for initiating cases of administrative offenses related to non-compliance with mandatory requirements indicates a gradual complication of the requirements for initiating such cases (part 3^1 of Article 28.1 of the CAO of the Russian Federation), which is designed to exclude disproportionate administrative prosecution. Despite this, in judicial practice, the relevant normative prescriptions were perceived restrictively, which in some cases, in fact, led to the refusal of courts to apply the provisions of legislation on administrative offenses, which limit the range of reasons for initiating cases of administrative offenses.

6. The inconsistency of the mechanism for the prevention of administrative offenses provided for by the CAO of the Russian Federation (uncertainty of the content of the submission, arbitrary choice of its addressees, etc.) indicates the

need for its correction. Since, in terms of assessing compliance with mandatory requirements, this mechanism essentially competes with preventive measures enshrined in the control and supervisory regulation, it is proposed in order to optimize administrative interference in the activities of controlled persons, to exclude the possibility of introducing a submission to eliminate the causes of an administrative offense and the conditions for its commission to these persons.

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46. Judgement of July 18, 2008, № 10-P «On the case of verification the constitutionality of the provisions of paragraph fourteen of Article 3 and paragraph 3 of Article 10 of the Federal Law «On Protection of the Rights of Legal Entities and Individual Entrepreneurs in the course of state control (supervision)» in connection with the complaint of citizen V.V. Mikhailov» / Constitutional Court of the Russian Federation. – CL RF. 04.08.2008. № 31. Art. 3763.

47. Judgement of February 25, 2014 № 4-P «On the case of verification the constitutionality of a number of provisions of Articles 7.3, 9.1, 14.43, 15.19, 15.23^{1} and 19.7^{3} of the Code of the Russian Federation on Administrative Offenses in connection with the request of the Commercial Court of the Nizhny Novgorod Region and complaints of limited liability companies «Baryshsky Meat Processing Plant» and «VOLMET», open joint stock companies «Zavod «Rekond», «Exploitation-technical communications center» and «Elektronkomplex», closed joint stock companies «GEOTECHNIKA P» and «RANG» and budgetary health care institution of the Udmurt Republic «Children's City Hospital № 3 «Neuron» of the Ministry of Health of the Udmurt Republic» / Constitutional Court of the Russian Federation. – CL RF. 10.03.2014. № 10. Art. 1087.

48. Judgement of April 22, 2014 № 13-P «On the case of verification the constitutionality of parts 5 and 7 of Article 12.16, part 1^{2} of Article 12.17, parts 5 and 6 of Article 12.19 and part 2 of Article 12.28 of the Code of the Russian Federation on Administrative Offenses in connection with the request of a group of deputies of the State Duma» / Constitutional Court of the Russian Federation. – CL RF. 05.05.2014. №. 18 (Part IV). Art. 2288.

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51. Judgement of December 13, 2022 № 54-P «On the case of verification the constitutionality of part 2 of Article 2.6^1 of the Code of the Russian Federation on Administrative Offenses in connection with the request of the Oktyabrsky circuit court of the city of Yekaterinburg» / Constitutional Court of the Russian Federation. – CL RF. 26.12.2022. № 52. Art. 9756.

52. Judgement of March 27, 2023 № 11-P «On the case of verification the constitutionality of Part 2 of Article 2.1 and Article 12.32 of the Code of the Russian Federation on Administrative Offenses in connection with the complaint of the state budgetary institution of the city of Moscow «Automobile Roads of the Zelenograd Administrative District» / Constitutional Court of the Russian Federation. CL RF. 10.04.2023. № 15. Art. 2745.

53. Judgement of April 6, 2023 № 15-P «On the case of verification of the constitutionality of the ninth paragraph of paragraph 2 of Article 1, paragraphs one and two of paragraph 1 and sentence one of paragraph 2 of Article 21, paragraph 2 of Article 22 and paragraph 3 of Article 27 of the Federal Law «On Prosecutor's Office of the Russian Federation», paragraph two of paragraph 6 of Article 28.3 and sentence two of paragraph 1 of Article 28.4 of the Code of the Russian Federation on Administrative Offences, as well as paragraph 1 of paragraph 3 of Article 16.5 of the Law of the City of Moscow «The Code of the City of Moscow on Administrative Offences» in connection with the complaint of the citizen P.N.Lakin. – CL RF. 17.04.2023. № 16. Art. 2989.

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57. Decision of October 10, 2017 № 2255-O «At the request of the Cherkessk City Court of the Karachay-Cherkess Republic on the verification of the constitutionality of the provisions of Part 3 of Article 3.4 and Part 1 of Article 4.11 of the Code of the Russian Federation on Administrative Offenses» / Constitutional Court of the Russian Federation. – Mode of access: SPS «ConsultantPlus».

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60. Decision of April 7, 2022 № 821-O «On refusal to accept for consideration the complaint of the limited Liability Company Trading House Platina Kostroma for violation of its constitutional rights by paragraph 2 of Article 93^1 of the Tax Code of the Russian Federation» / Constitutional Court of the Russian Federation. – Mode of access: SPS «ConsultantPlus».

61. Decision of December 8, 2022 № 3216-O «On refusal to accept for consideration the complaint of the real estate owners' association «Merchant's Yard» on the violation of its constitutional rights by paragraph 1 of part 1 of Article 17 of the Federal Law «On Protection of the Rights of Legal Entities and Individual Entrepreneurs in the implementation of state control (supervision) and municipal control» / Constitutional Court of the Russian Federation. – Mode of access: SPS «ConsultantPlus».

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64. Resolution of March 24, 2005 № 5 «On some issues arising at the courts in the application of the Code of the Russian Federation on Administrative Offenses / Plenum of the Supreme Court of the Russian Federation. – Mode of access: SPS «ConsultantPlus».

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70. Ruling of August 30, 2022 № ACPI22-494 / Judicial Board of Administrative Cases of the Supreme Court of the Russian Federation. – Mode of access: SPS «ConsultantPlus».

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77. Judgement of February 25, 2016 № 309-AD15-16620 on the case № A47-10466/2014 / judge of the Supreme Court of the Russian Federation. – Mode of access: SPS «ConsultantPlus».

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79. Judgement of December 1, 2017 № 80-AD17-5 / judge of the Supreme Court of the Russian Federation. – Mode of access: SPS «ConsultantPlus».

80. Judgement of January 29, 2018 № 77-AD18-1 / judge of the Supreme Court of the Russian Federation. – Mode of access: SPS «ConsultantPlus».

81. Judgement of June 8, 2020 № 19-AD20-7 / judge of the Supreme Court of the Russian Federation. – Mode of access: SPS «ConsultantPlus».

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90. Ruling of May 19, 2023 № 307-ES23-6233 / judge of the Supreme Court of the Russian Federation. – Mode of access: SPS «ConsultantPlus».

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97. Cassation ruling of 1 March 2023 №. 88a-3761/2023 on the case № 2a-2003/2022 / Third cassation court of general jurisdiction. – Mode of access: SPS «ConsultantPlus».

98. Cassation ruling of 18 July 2023 № 88a-21152/2023 / Fourth cassation court of general jurisdiction. – Mode of access: SPS «ConsultantPlus».

99. Judgement of 25 February 2020 № 16-948/2020 / judge of the Fourth cassation court of general jurisdiction. – Mode of access: SPS «ConsultantPlus».

100. Judgement of 28 May 2020 № 16-1073/2020 / judge of the Seventh cassation court of general jurisdiction. – Mode of access: SPS «ConsultantPlus».

101. Judgement of 4 September 2020 № 16-3238/2020 / judge of the Fourth Cassation Court of general jurisdiction. – Mode of access: SPS «ConsultantPlus».

102. Judgement of 24 September 2020 № 16-5868/2020 / judge of the Sixth cassation court of general jurisdiction. – Mode of access: SPS «ConsultantPlus».

103. Judgement of 20 February 2021 № 16-1209/2021 / judge of the Seventh cassation court of general jurisdiction. – Mode of access: SPS «ConsultantPlus».

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111. Judgement of 26 May 2022 № 16-2551/2022, 16-2565/2022 / judge of the Seventh cassation court of general jurisdiction. – Mode of access: SPS «ConsultantPlus».

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115. Judgement of 30 September 2022 № 16-2283/2022 / judge of the Fifth cassation court of general jurisdiction. – Mode of access: SPS «ConsultantPlus».

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125. Judgement of 20 November 2023 № 16-2741/2023 / judge of the Fifth cassation court of general jurisdiction – Mode of access: SPS «ConsultantPlus».

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127. Judgement of 30 August 2013 № 4a-571/2013 / Samara Regional Court. – Mode of access: SPS «ConsultantPlus».

128. Judgement of 1 September 2012 № 4g-5803/2012 / Krasnodar Regional Court. – Mode of access: SPS «ConsultantPlus».

129. Judgement of 4 October 2011 in case № 4a-563/2011 / Presidium of the Altai Territorial Court. – Mode of access: SPS «ConsultantPlus».

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130. Judgement of 19 March 2012 on the case № A31-5732/2011 / Federal Commercial court of Volga-Vyatka Circuit. – Mode of access: SPS «ConsultantPlus».

131. Judgement of 17 September 2013 on the case № A56-8697/2013 / Federal Commercial court of the North-Western Circuit. – Mode of access: SPS «ConsultantPlus».

132. Judgement of 11 February 2014 № F09-14811/13 on the case № A60-24281/2013 / Federal Commercial court of the Urals Circuit. – Mode of access: SPS «ConsultantPlus».

133. Judgement of 2 August 2016 № F04-3406/2016 on the case № A45-25018/2015 / Commercial court of the West Siberian Circuit. – Mode of access: SPS «ConsultantPlus».

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135. Judgement of 18 May 2017 № F05-4714/2017 on the case № A40-225239/16 / Commercial court of the Moscow Circuit. – Mode of access: SPS «ConsultantPlus».

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140. Judgement of 22 July 2020 № F10-2723/2020 on the case № A14-10350/2019 / Commercial court of the Central Circuit. – Mode of access: SPS «ConsultantPlus».

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164. Judgement of 6 February 2023 № F05-28219/2022 on the case № A40-98507/2022 / Commercial court of the Moscow Circuit. – Mode of access: SPS «ConsultantPlus».

165. Judgement of 13 February 2023 № F07-933/2023 on the case № A56-63817/2022 / Commercial court of the North-Western Circuit. – Mode of access: SPS «ConsultantPlus».

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