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## Disciplinary responsibility for the land and ecological offenses: whether requirements of the prosecutor are lawful?

*The author investigates the problematic practical issues connected with one of the types of legal responsibility for the offenses in the field of use and protection of lands and the environment in general – with disciplinary responsibility. In this article jurisprudence on the cases of recognition illegal representations of the prosecutors containing the requirements to the employers about involvement of workers to a disciplinary responsibility for the land and ecological offenses and also on the cases of involvement of the organizations and officials to administrative responsibility for the failure to follow legal requirements of the prosecutor is analyzed. The author gives an assessment to positions of the bodies of prosecutor's office; generalizes jurisprudence, revealing tendencies in its development; investigates scientific opinions on the analyzed legal questions.*

***Keywords:*** *ecological and land offenses, disciplinary responsibility, public prosecutor's supervision.*

## Дисциплинарная ответственность за земельные и экологические правонарушения: законны ли требования прокурора?

*Автор исследует проблемные вопросы, связанные с одним из видов юридической ответственности за правонарушения в области использования и охраны земель и окружающей среды в целом – с дисциплинарной ответственностью. В статье анализируется судебная практика по делам о признании незаконными представлений прокуроров, содержащих требования работодателям о привлечении работников к дисциплинарной ответственности за земельные и экологические правонарушения, а также по делам о привлечении организаций и должностных лиц к административной ответственности за невыполнение законных требований прокурора. Автор даёт оценку позициям органов прокуратуры; обобщает судебную практику, выявляя тенденции в её развитии; исследует научные мнения по анализируемым правовым вопросам.*

***Ключевые слова:*** *экологические и земельные правонарушения, дисциплинарная ответственность, прокурорский надзор.*

It is known that economic activity of the organizations and businessmen who are carrying out environmental management makes harm to the environment. In

the course of this activity labor function of the workers by whose efforts the economic tasks facing the subjects-users of nature are implemented is carried out.

Implementation of requirements of the land and ecological legislation is provided with the organization or the citizen businessman which are obliged not to allow violations of the corresponding instructions from the workers. It is quite obvious that the legal entity can become the subject of legal responsibility (its certain types) in connection with the violations of the land and nature protection legislation allowed by its workers during performance of the labor functions by them.

In general, considerable attention in the scientific literature is paid to the institute of disciplinary responsibility and its role in ensuring rational environmental management and environmental protection, as well as the legal responsibility in this field [1; 2, p. 98; 3, p. 240; 4, p. 15; 5, p. 181].

Also the fact that activity of the bodies of prosecutor's office is directed to prevention and elimination of violations in all spheres of public relations, including in the field of use and protection of lands and the all environment doesn't raise doubts.

According to p. 2 of the article 22 of the Federal law on prosecutor's office, the prosecutor or his deputy for legal basis have the right to demand involvement of the persons who have broken the law to the responsibility established by the law[1]. At the same time, practice of public prosecutor's supervision and the bodies of judicial authority still asks which relevance covers not only the sphere of the land and ecological relations: "Whether the requirements of the prosecutor addressed to the employer about involvement of the worker to disciplinary responsibility in connection with the violations of compliance with the law found during a check in activity of the organization are lawful?".

In the modern legal literature the position consisting in the following is about it stated: in the presence of motivated answer the prosecutor with the statement of reasonable disagreement with his opinion can't assess a situation as failure to follow legal requirements of the prosecutor [6]. It is remarkable that comparing the Russian law on prosecutor's office to the law on prosecutor's office of the Republic of Kazakhstan (further – RK) and stating existence in the last of the instruction on such act of public prosecutor's reaction as the resolution on initiation of disciplinary production, E.R. Ergashev also doesn't agree with a position of prosecutors demanding involvement of workers to disciplinary responsibility (as well as with the provisions of the law RK), believing that initiation of disciplinary production by the prosecutor concerning the worker – intervention in operational activity of " objects under surveillance" [7].

The similar point of view shared and the other scientists is confirmed by the "prevailing" Russian jurisprudence. Nevertheless, the law-enforcement practice nevertheless is non-uniform since the courts approach differently assessment of legality of the requirements of prosecutors, motivation of the judgment. We

[1]About prosecutor's office of the Russian Federation: The federal law of January 17, 1992 No. 2202-1 (in an edition. Federal law of July 29, 2017 No. 246-FZ)//Russian newspaper 1992. February 18.

consider that the positions stated in the judicial acts demand the detailed analysis and assessment.

The research of contents of the judicial acts adopted on the cases of recognition illegal representations of the prosecutor containing the requirement about involvement of the worker to disciplinary responsibility or about recognition illegal the law-enforcement act of involvement of the person who hasn't fulfilled the requirement of instruction to administrative responsibility according to the art. 17.7 of the Code of the Russian Federation about administrative offenses[2] (further – CAO) show that the following approaches of the courts to these cases were created.

1. The courts don't give a legal treatment to the applicant's arguments that according to the article 192 of the Labor code of the Russian Federation (further – LC RF)[3], application to the worker of measures of disciplinary responsibility is the right, but not an obligation of the employer, and, therefore, that requirements of the prosecutor about attraction to disciplinary responsibility are illegal. Usually in such situation the courts in their decisions focus attention on assessment of legality of other requirements which are contained in representation namely: whether these requirements are fulfilled whether the violations revealed during a check[4] are eliminated. Such position can't be considered true, hardly it demonstrates full and comprehensive consideration of the case, besides doesn't conform to the procedural requirements to the judgment (in this case to the requirements of the p. 2 of the p. 4 of the art. 170 of the Arbitration procedural code of the Russian Federation[5] (further – APC RF).

2. The courts, noting in the decisions that establishment of existence or lack of the bases for involvement of the worker to disciplinary responsibility really is within the competence of the employer, formulate in the decision a conclusion that the requirement of prosecutor concerning consideration of a question of involvement of guilty officials to disciplinary responsibility, doesn't contradict provisions of LC RF as doesn't limit a discretion of the employer regarding existence or lack of the bases of application of disciplinary punishment, doesn't contain the requirement about unconditional prosecution and the result of examination of the question doesn't determine[6].

There are judicial acts in which such point of view is reasoned with a position of the Constitutional Court of the Russian Federation stated in the Definition of February 24, 2005 No. 84-O and which is that representation of the

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[2]The Russian Federation Code of Administrative Offences of December 30, 2001 No. 195-FZ (in an edition Federal law of July 27, 2017 No. 278-FZ)//Russian Federation Code 2002. No. 1 (p.1). Art. 1.

[3]The Labor Code of the Russian Federation of December 30, 2001 No. 197-FZ (in an edition Federal law of July 27, 2017 No. 256-FZ)//Russian Federation Code 2002. No. 1 (p.1) Art. 3.

[4] The resolution of the Eighteenth Arbitration Court of Appeal of June 23, 2017 on the case No. A 34-13680/2016//the access Mode: http://sudrf.kodeks.ru/rospravo (date of the last visit – on October 03, 2017)

[5]The arbitration procedural code of the Russian Federation of July 24, 2002 No. 95-FZ (in an edition Federal law of July 29, 2017 No. 223-FZ)//Russian Federation Code 2002. No. 30. Art. 3012.

[6] Decision of the Leninsk district court of Vladimir of June 13, 2017 on the case No. 2a-1272/2017//access Mode: http://sudrf.kodeks.ru/rospravo (date of the last visit – on October 03, 2017).

prosecutor in itself has no absolute character and force of compulsory execution[7]. We consider that the absence at representation of force of compulsory execution in the context of the called Definition means a lack of such force which is possessed by the judgment. However it doesn't cancel its binding character established by the Law on prosecutor's office, provided with the guarding standard of the art. 17.7 of the Code of the Russian Federation on Administrative Offences. Besides in the Definition designated above the Constitutional Court emphasizes: by consideration in the court of a case of such administrative offense (according to the art. 17.7 of the Code of the Russian Federation on Administrative Offences) or cases of contest of representation of the prosecutor, the last has to prove legitimacy of the requirements. Lawfully it is possible to demand only performance of a duty or observance of the ban, but not realization of the right in any way, including, the rights of the employer established by the article 192 of LC RF.

The courts are close to this position, which estimate the requirements stated in representation of the prosecutor as recommendatory, which can be considered as to the head of the legal entity to bring the proposal of the prosecutor perpetrators to disciplinary responsibility, the offer leaving the permission of the matter to the discretion of the head which isn't demanding obligatory execution of this point of representation[8]. We believe that there is a substitution of the concept "the requirement to make responsible" a concept "the requirement to consider a question of prosecution". Anyway it is necessary to interpret literally the content of representation however the problem really is available where the prosecutors demand involvement of the worker to disciplinary responsibility

As the requirement of prosecution it should be taken into account the imperative instruction to consider a question of involvement of officials to disciplinary responsibility with submission of the copies of the relevant orders. Besides it is necessary to pay attention that the p. 2 of the art. 22 of the Law on prosecutor's office has provided the power consisting in the imperative requirement about involvement of the persons who have broken the law to legal responsibility. Neither in this norm, nor in the other standards of the specified law it isn't mentioned the recommendations submitted by the prosecutor in someone's address. We believe that recommendations in the idea of violation of the law don't answer the tasks of public prosecutor's supervision and don't correspond to an appointment of the bodies of prosecutor's office. Considering contents of the law, the requirements stated in the representation are obligatory and are a subject to execution at the scheduled time (p. 1 of the art. 6 of the Law on prosecutor's office). And according to interpretation in the separate judgments the requirement in the idea of attraction to disciplinary responsibility are recommendations, and it isn't obligatory to carry out them (?).

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[7] About refusal in taking to consideration of complaint of the citizen Motoricheva Irina Ivanovna to violation of her constitutional rights provisions of the article 24 of the Federal law "About Prosecutor's Office of the Russian Federation": Definition of the Constitutional Court of the Russian Federation of February 24, 2005 No. 84-O//the access Mode: help legal system "Consultant Plus". The section "Jurisprudence" (date of the last visit – on October 03, 2017).

[8] The judge's ruling of the Soviet district court of Voronezh on the case No. 5-299/2016 of September 9, 2016//the access Mode: http://sudact.ru/ (date of the last visit – on October 03, 2017).

We consider also that the conclusion about independence of the employer in a question of whether it is necessary to consider this question responsible follows from a conclusion about a lack of duty to make if the relevant requirement is imposed by the prosecutor. The prosecutor's power "at the same time isn't enshrined in the Law on prosecutor's office to demand consideration of a question of prosecution" by the means of representation which is taken out by the results of compliance with the law check. The power which is contained in p. 2 of the article 22 of the Law on prosecutor's office is expressed in the requirement of attraction to the responsibility established by the law. If to allow a situation at which the prosecutor demands consideration of a question of involvement of the worker to disciplinary responsibility (including for violation of the land and nature protection legislation), but the decision on whether it is necessary to do it doesn't depend on him as it is the right of employer, according to LC RF, then what practical value and advantage of such requirement, whether follows in general this requirement to specify in such act of public prosecutor's response to offense as representation?

In the courts decisions of the third group given by us it is stated proved and, according to us, the position on the studied question which is most answering to the standards of current legislation, expressed that the imperative requirement of the prosecutor about involvement of the guilty officials to disciplinary responsibility doesn't correspond to the provisions of the art. 192 of LC RF also owing to this fact is illegal[9].

Such tendency is implemented, mainly, thanks to the Resolution of the Supreme Court of the Russian Federation of December 16, 2016 No. 78-AD16-38[10]. In the decision of the supreme judicial authority of Russia the position according to which the requirement of the prosecutor about involvement of the official to disciplinary responsibility and about providing the copies of orders on punishment with the response to representation contradicts the legislation is proved, being, thus, illegal. Analyzing the argument of the Supreme Court of the Russian Federation, we will allow note some of its discrepancy. Really, according to the article 192 of LC RF (p.1) the use of disciplinary responsibility is not a duty, but the right of the employer. Together with it in the decision it is specified that the designated requirement contradicts not only this norm, but also the provisions of the law on prosecutor's office (p. 3 of the art. 22, p. 1 of the art. 24, p. 4 of the art. 10, p. 2 of the art. 22). We believe that such contradiction is absent as the Law on prosecutor's office has directly established powers of the prosecutor or his deputy: 1) on the bases established by the law to excite production about administrative offense; 2) to demand involvement of the persons who have broken the law to other responsibility established by the law. In interrelation with the other specified norms and also with the part 3 of the article 6 of the same law and also with the article 17.7 of the Code of the Russian Federation on Administrative Offences

[9] The judge's ruling of the Rostov district court of the Yaroslavl region No. 5-123/2-17 of July 17, 2017; The Judge's ruling of district court Near the station of Tula No. 5-154/2017 of July 5, 2017; The Decision of the judge of the Moscow regional court of October 11, 2016 on the case No. 12 – 2121/2016//the access Mode: http://sudact.ru/ (date of the last visit – on October 03, 2017).

[10] Resolution of the Supreme Court of the Russian Federation of December 16, 2016 No. 78-AD16-38//access Mode: help legal system "Consultant Plus". The section "Jurisprudence" (date of the last visit – on October 04, 2017).

follows from the standard of part 2 of the article 22 that such position of prosecutors is caused by provisions of the Federal law "About Prosecutor's Office in the Russian Federation" and corresponds to them. At the same time the contents of p. 2 of the art. 22 of the Law on prosecutor's office need a change. It is represented that, despite the positive jurisprudence developing recently (however as it has become clear, it is non-uniform), the problem nevertheless demands intervention of the legislator. That the problem really exists, the considerable number of lawsuits of the considered categories in which "stumbling block" the requirement of the prosecutor about punishment of the worker in a disciplinary order, and the persistent position of prosecutor's office in such cases caused including the acts as "departmental" installations demonstrates. The last can be illustrated with an example. In the announced year of ecology in Russia (2017) special attention is paid to evaluation of the work of prosecutor's office in the field of supervision of observance of the land and ecological legislation. In the prosecutor's offices of territorial subjects of the Russian Federation and also in the Prosecutor General's Office of the Russian Federation forums, meetings and similar actions are held where the results of work on the law enforcement in the nature protection field are discussed. Indispensable attribute of reports of the officials of prosecutor's office is the message about that how many persons for the corresponding period are involved according to the requirements of prosecutors to administrative and disciplinary responsibility[11].

Due to the stated it is considered necessary modification of p. 2 of the art. 22 of the Law on prosecutor's office, it, according to us, has to be stated as follows: "The prosecutor or his deputy for the bases established by the law: a) excites production about the administrative offense; b) demands involvement of the persons who have broken the law to legal responsibility of other types if such prosecution by the law is obligatory; c) warns about inadmissibility of violation of the law". Such edition, in our opinion, will exclude a possibility of the conflicts similar to the analyzed in the present article. It will have positive value not only for the ecological and land public relations, but also for the law enforcement in all spheres.

The prosecutor's power formulated thus regarding the requirement of involvement of the guilty person to responsibility will allow delimit accurately situations where attraction to disciplinary responsibility for the offenses encroaching on the land and ecological relations – the right of employer determined by p. 1 of the art. 192 of LC RF from the situations where there are offenses for which disciplinary responsibility arises by the law, on the bases established to them. In the latter case the prosecutor on legal grounds will be able to demand it from the employer as it not the right, but an obligation of the employer. Actually, and at the current version of p. 2 of the article 22 of the Law

[11]In prosecutor's office of the Khabarovsk territory the Second open forum devoted to questions of observance of the nature protection legislation (on June 05, 2017) took place. Access mode: https://genproc.gov.ru/smi/news/genproc/news-1199538/; The Prosecutor General's Office of the Russian Federation generalized practice of public prosecutor's supervision of performance of the legislation in the sphere of handling of industrial and consumption waste (on January 19, 2017). Access mode: https://genproc.gov.ru/smi/news/genproc/news-1155698/.

on prosecutor's office if the law has provided a duty of involvement of the worker to disciplinary responsibility, requirements of the prosecutor are absolutely lawful.

Imperative need of use of disciplinary responsibility is caused by p. 1 of the art. 75 of the Land code of the Russian Federation[12] (further – LC RF), and is connected with application to the organization of administrative responsibility for a number of land offenses of ecological character.

Existence of such special norms as the norm stated in p.1 of the article 75 of LC RF determining an exception of the general rule about the right of employer for application to the worker of disciplinary punishments, according to us, is justified. Moreover, we consider useful to apply the specified approach to all ecological relations in general and to provide the rule by which the employer without fail punishes workers in the Law on environmental protection[13] if on their fault the organization has violated the ecological law and if the legal entity at the same time is brought to administrative responsibility. It would be worth fixing at the same time within the separate article of the Law on environmental protection the exhaustive list of structures of the most dangerous administrative ecological offenses from the chapter 8 of CAO RF which commission by the organization attracts obligatory disciplinary responsibility of its worker. Such provisions of the law, first, will allow the employer represent absolutely clearly in what cases he is obliged and in what – has the right to realize disciplinary responsibility for ecological offenses (as well as for the land, according to p. 1 of the art. 75 of LC RF). Secondly, in total with the offered edition of p. 2 of the article 22 of the Law on prosecutor's office – will exclude illegal intervention of prosecutor's office in the right which is independently carried out by the employer to punish the worker in a disciplinary order for similar violations, will strengthen thereby the legality regime in the field of use and environmental protection.

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