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## Mandatory Administrative Acts Issued as a Result of the Investigation of Industrial Accidents in Russia

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**Abstract.** The administrative act is one of the central themes in the theory of administrative law. The existence of legal force means the ability of the act to regulate managerial relations and solve management problems in the field of state activity. An act acquires the property of legal force on the basis of its compliance with the requirements of legality. Mandatory execution of acts of public administration bodies by their addressees is considered as a manifestation of legal force. At the same time, the study of the limits and the circle of addressees of acts issued as a result of the investigation is practically useful, due to the orientation of the investigation procedure for the state and society to eliminate violations of labor protection requirements. And the importance and specificity of the administrative activities of regulatory bodies involved in the investigation of industrial accidents form the relevance of such a study. The purpose of the study is to study the issues of regulation and application of mandatory on the example of acts of investigation of industrial accidents and administrative acts adopted as a result of the investigation. Conclusions: 1) obligation as an element of legal force manifests itself in the form of binding its provisions by the addressees of acts, and not by the courts; 2) the idea of judicial control of administrative acts is approved; 3) issues of determining criteria for evaluating discretionary administrative acts, the need for legal regulation and proper application deserve special attention courts of the principles of proportionality (proportionality) and protection of trust.

**Keywords:** obligation of administrative acts, legal force, acts based on the results of accident investigation, labor protection, industrial accident.

Research area: social structure, social institutions and processes; public law (state law) sciences.

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## Обязательность административных актов, изданных по результатам расследования несчастных случаев на производстве

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**Аннотация.** Административный акт является одной из центральных тем теории административного права. Наличие юридической силы означает способность акта регулировать управленческие отношения и решать управленческие задачи в сфере государственной деятельности. Акт приобретает свойство юридической силы на основании его соответствия требованиям законности. Обязательное исполнение актов органов государственного управления их адресатами рассматривается как проявление юридической силы. В то же время изучение пределов и круга адресатов актов, вынесенных по результатам расследования, имеет практическую ценность, поскольку направлено на государство и общество процедуры расследования на устранение нарушений требований охраны труда. А важность и специфика управленческой деятельности контролирующих органов, занимающихся расследованием промышленных аварий, формируют актуальность такого исследования. Цель исследования – изучить вопросы регулирования и применения обязательных мер на примере актов расследования несчастных случаев на производстве и административных актов, принятых по результатам расследования. Выводы: 1) обязательство как элемент юридической силы проявляется в форме обязательности его положений адресатами актов, а не судами; 2) одобряется идея судебного контроля за административными актами; 3) особого внимания судами заслуживают вопросы определения критериев оценки дискреционных административных актов, необходимости правового регулирования и правильного применения принципов соразмерности (соразмерности) и защиты доверия.

**Ключевые слова:** обязательность административных актов, законная сила, акты по результатам расследования несчастных случаев, охрана труда, несчастный случай на производстве.

Научная специальность: 5.4.4 – социальная структура, социальные институты и процессы; 5.1.2 – публично-правовые (государственно-правовые) науки.

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### Introduction

A. F. Evtihiev pointed out that administrative acts are subject to execution despite the fact that they do not have material legal force (Evtihiev, 1911). In the scientific literature, three demonstrations of legal force are distinguished

in relation to administrative acts: obligation, enforceability and invariability (Tomtosov, 2020). It is not given a due attention in scientific studies to the legal force of administrative acts, including the obligation of administrative acts. Nevertheless, legal force in respect of acts

of public administration serves the purpose of the legal stability ensuring of legal relations and building of trust between their subjects. The consideration of the issues of the limits and the circle of addressees of acts of obligation is particularly important for law enforcement. The study of acts issued as a result of the investigation of industrial accidents is interesting because of the specificity of the investigation procedure itself.

### **I. Specificity of the Procedure for Investigating Work Accidents**

Article 356 of the Labor Code of the Russian Federation<sup>1</sup> differentiates powers of the state labor inspectorate in the form of control (supervision) and verification of compliance with the procedure of investigation. Article 357 of the Labor Code of the Russian Federation confirms the right of state labor inspectors to investigate accidents. Concurrently the RF Federal Law No. 248-FZ of July 31, 2020<sup>2</sup> does not attribute participation of regulatory agencies in incidents' investigation procedure to supervision and control activity. Particulars' Investigation Regulation (par. 36, hereinafter – the Regulation)<sup>3</sup> points out on the audit of compliance with the regulation in the course of supervision and control activities. Article 229.3 of the RF Labor Code compels the state labor inspector to conduct an additional investigation, based on the objective findings concerning investigation procedure violations, with the investigation being accompanied by control (supervision) activities, following issuance of administrative acts focused on maintaining law and order within the procedure. Investigation

report is based on the labor law branch nature, but through implementation of the additional investigation, publication of acts on the results thereof, including other ways of participation of the supervisory authority, it is possible to detect the presence of the administrative law in this specific field. Accordingly, participation of regulatory agencies in the investigation of accidents may be characterized as a specific one, but yet still administrative.

### **II. Grounds for Revision and Cancellation of Investigation Reports – Assessment Criteria**

With some specific features attributing to incidents' Investigation procedure, there observed common features with respect to community of the grounds for investigation reports and administrative acts review and cancellation. Analysis of the norms established by Article 229.3 of the RF Labor Code and paragraph 36 of the Regulation shows the lack of differentiation of criteria for cancellation and revision of investigation reports. As a basis for both alterations and additions, as well as for cancellation of acts, the following is defined: violation of the investigation procedure or inconsistency of the investigation report with the case materials. Cancellation of the act is possible after additional investigation. At the same time, the grounds of the procedure themselves serve as a criterion for distinguishing the grounds for cancellation, with an emphasis on the property of objectivity of data on violation of the investigation procedure or on the presence of disagreement with the conclusions of the commission of the victim or other interested persons on the part of the victim or deceased person. Paragraph 36 of the Regulation gives several examples of such data. The lack of clear division between the criteria for revision and cancellation of investigation reports is caused by uncertainty of examples in the list of findings and the data dependency on objectivity. Revision or cancellation of investigation reports on an extrajudicial basis, as well as recognition of acts based on the results of the investigation as invalid (illegal) in pre-trial or judicial proceedings, are traditionally based on an assessment of compliance with law.

<sup>1</sup> The Labor Code of the Russian Federation No. 197-FZ of December 30, 2001 // Corpus of Legislation of the Russian Federation, 2002, No. 1 (Part 1). Article 3.

<sup>2</sup> On State Control (Supervision) and Municipal Control in the Russian Federation: Federal Law No. 248-FZ of July 31, 2020 // Corpus of Legislation of the Russian Federation, 2020. No. 31 (Part I). Article 5007.

<sup>3</sup> On approval of the Regulation about special aspects of the investigation of industrial accidents in particular sectors and organizations of industry, forms of documents and relevant classifiers necessary for the investigation of industrial accidents: Order of the Ministry of Labor and Social Protection of the Russian Federation No. 223n dated 20.04.2022 // Official Internet portal of Legal Information <http://pravo.gov.ru>, 01.06.2022.

### III. The legal force of an administrative act: a comparative legal study

A. I. Elistratov pointed out that acts become effective in connection with their congruence with the law (Elistratov, 1917). A. F. Evtihiev divided legal force into formal and material (Evtihiev, 1911). At the same time, according to the scientist, formal legal force is associated with the establishment of the term of a possible challenge of an administrative act, and material legal force is associated with prejudicialness, that is, with the obligation of such an act as a basis for subsequent decisions without checking the primary act (Vasilyeva, 2022). But the idea on dividing legal force into formal and material components has not received further development in Russian scientific community, and legislative permission in the Russian Federation (Vasilyeva, 2022). The distinction between formal and material legal force is drawn in Austria and some other foreign systems of justice (Kvosta, 2018).

### IV. Legal Validity of Acts Based on Investigation of Work Injuries

In Russian scientific literature, there is trend towards positioning of the administrative act legal force in the context of its manifestation as the mandatory execution of the act by all its addressees (Starilov, 2016). At the same time, the existence of principles of lawfulness presumption, correctness and validity of management acts is confirmed (Starilov, 2016). The connectedness (binding) of administrative acts is also applied to decisions (acts) of the state labor inspectorate within the framework of examination of disagreements to the procedure of investigation (Article 231 of the RF Labor Code). Article 231 of the RF Labor Code directly provides such connectedness with respect to the employer and its representatives, even in cases of challenging inspection decisions in a court. Thus, the effect of administrative acts is not suspended even by appealing to the court, otherwise it requires the adoption of interim measures by the court (Tomtosov, 2020).

For the cases of appealing judgments in the case of an administrative offense, as per paragraph 1 of Article 30.3. of the RF Administrative Code, a period of ten days from the date

of delivery or receipt of a copy of the resolution is provided; for challenging administrative acts adopted by the State Labor Inspectorate on the results or during the investigation, there is a three-month period (Article 219 of the CAS of the Russian Federation). The same period also applies for invalidation of the investigation report in a judicial procedure within individual labor dispute (Article 392 of the RF Labor Code). It is possible to review the results of the investigation in relation to “accidents investigated no earlier than five years before the date of occurrence of circumstances” established as the basis for carrying out additional investigation (Article 229.3 of the RF Labor Code). Whereby, it is possible to adjust the results of the investigation taking into account the “innovations” that have arisen after its adoption (entry into force) or the expiration of the terms (exhaustion) of challenging the acts themselves. At the same time, it does not stand out – new or newly discovered are the circumstances that have occurred or the facts underlying them. In respect thereof, it cannot but be mentioned the invariability of the act (decision) of the public administration in the context of its obligation on the addressees and the impossibility of its arbitrary modification or cancellation (Tomtosov, 2020). Ensuring compliance with binding nature and invariability of the decision, the legitimacy requirements towards act adoption shall be required. A similar emphasis on the assessment of legality has also been observed during judicial challenge of acts issued by State labor inspectorate.

In judicial practice, when monitoring legality of decisions (acts) issued by state labor inspectorate in the course of an additional investigation or based on its results, an examination of conclusions as mentioned in the text of the primary investigation act. Thus, by Cassation Ruling No. 88a-7799/2021 dated March 30, 2021<sup>4</sup>, based on the study of actual circumstances, the courts determined the circumstances and objective causes of the acci-

<sup>4</sup> Cassational ruling of the First Cassation Court of General Jurisdiction dated March 30, 2021 No. 88a-7799/2021 – URL: <http://www.consultant.ru> (accessed on June 14, 2023). – Access mode: ConsultantPlus: [reference data- legal system], free access to the local Network of NGUEU.

dent, assessed the legality of the order of the State labor inspector for conducting additional investigation. Organizational and technical inconsistencies concerning hazardous facility operation seemed to be the accident causes, therefore, the case was qualified as production-oriented.

In another case, the employer challenged for legality of the conclusion and instructions of the State labor inspector drawn up after an additional investigation<sup>5</sup>. Violation of labor protection requirements by the employer, determined in response to the additional investigation were not taken into account when considering the case of traffic rules violation by the injured person. In view to the violations committed, which were not recorded in the initial investigation act, according to the court opinion, the victim's guilt should not have been determined. The court analyzed not only legality of the conclusion and the order, including reasonability of an order for conducting additional investigation, as well as objectivity of the investigation so conducted, but also made conclusions on the legality of the acts. Study of the investigation act legality, as well as validity of the order, served as a foundation act for subsequent carrying out of an additional investigation, conclusion and rescript drawing up, constitutes a standard practice with respect to disputes on challenging decisions of state labor inspectors issued according to the results of the investigation. In addition, detection of violations and labelling process correctness in such cases are of vital importance, and in some cases<sup>6</sup> this practice is inconsistent with identification of the case objective causes. At the same time, judicial practice demonstrates verification of reasons and circumstances of the accident,

showed up in the primary act of investigation, during examination of the legality of decisions (acts) of the state labor inspectorate issued in the course of control and supervisory activities for the procedure of investigation and additional investigation. In this regard, it is important that there is no elimination from full-fledged verification of acts under "visible legality" pretense (Sherstoboev, 2022)

### Conclusion

Powers of public administration authorities are exercised by the aid of management (management activities). Issuance of an administrative act is one of the forms of management activities. Act introduction is only possible after it has become effective. After such act has become effective, it shall be binding for the act addressees. The legal force of acts is aimed at ensuring legal stability and trust between the subjects of legal relations and should be a general rule, not an exception. Binding as an element of legal force exists in the legislation of the Russian Federation as the binding of the addressees of acts by their provisions, the need to comply with these decisions. By acts' summing-up judicially and extra-judicially, the principle of legality shall be focused on. This reference point is provided by the Resolution of the Supreme Court of the Russian Federation No. 21 of June 28, 2022<sup>7</sup> (the scope of which does not include challenging decisions appealed under the Administrative Code of the Russian Federation), setting a trend not only for application of the principle of legality by the courts, but also the principles of proportionality (ratability) and trust protection when checking administrative acts. The Resolution of the Constitutional Court of the Russian Federation dated November 09, 2022 No. 48-P defines the constitutional principle of maintaining trust through clarity and consistency of legislative regulation, transparency of its mechanism and the absence of legal uncer-

<sup>5</sup> Appellate ruling of the Penza Regional Court dated November 17, 2022 No. 33a-3723/2022 – URL: <http://www.consultant.ru> (accessed on June 14, 2023). – Access mode: ConsultantPlus: [reference data- legal system], free access to the local network of Novosibirsk State University of Economics and Management (NGUEU).

<sup>6</sup> Appellate ruling of the Penza Regional Court dated November 17, 2022 No. 33a-3723/2022 – URL: <http://www.consultant.ru> (accessed on June 14, 2023). – Access mode: ConsultantPlus: [reference data- legal system], free access to the local network of Novosibirsk State University of Economics and Management (NGUEU).

<sup>7</sup> Resolution of the Plenum of the Supreme Court of the Russian Federation No. 21 dated June 28, 2022 "On several issues related to application by courts of the Provisions of Chapter 22 of the Administrative Court Procedure Code of the Russian Federation and Chapter 24 of the Arbitration Procedure Code of the Russian Federation" // Rossiyskaya Gazeta, 2022. No. 149.

tainty to the subjects of legal relations<sup>8</sup>. The principles of proportionality and protection of trust have not received proper legislative regulation in the Russian Federation. The principles of legal certainty (stability) and protection of trust are not actively used in the practice of

courts to verify acts of investigation and administrative acts. At the same time, their use is necessary. The principles of proportionality (proportionality) and maintaining trust can serve, among other things, as a means of keeping administrative discretion within legal limits, which is reflected in the Resolution. And proper regulation of the principles of law as criteria for evaluating discretionary administrative acts, in particular, through the adoption of the law on administrative procedures, can become a springboard for the stability of administrative acts and the inviolability of their legal force.

<sup>8</sup> Resolution of the Constitutional Court of the Russian Federation dated November 09, 2022 No. 48-P "In the matter of the constitutionality check of the first paragraph of Part 1 of Article 48 of the Federal Law "On General Principles of the Organization of Local Self-Government in the Russian Federation" on the grounds of the complaint of citizens Yu. A. Plakhteeva, A. Y. Savushkina and A. Y. Yakovleva" // Corpus of Legislation. – No. 47.– 2022. – Article 8304.

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