

## HOW CAN MUNICIPAL CONTROL ENSURE THE SECURITY OF THE URBAN ENVIRONMENT? REFORM OF CONTROL-SUPERVISION ACTIVITIES AND JUDICIAL PRACTICE

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The subject. The article discusses the current model of municipal control in Russia, analyzes the relevant regulations and judicial practice.

The purpose of the article is to confirm or refute the hypothesis that municipal control can be effective from the standpoint of ensuring the security of the urban environment.

The methodological basis of the study includes general-scientific methods (analysis and synthesis, system-structural approach) as well as academic methods (formal-legal method, method of interpretation of legal acts).

Results and scope of their application. The quality parameters of the urban environment are closely related to the issues of local importance, for the solution of which the local authorities are responsible; secondly, safety is one of the criteria for assessing the quality of the urban environment, so the local authorities should have tools to influence its improvement. One of such instruments is municipal control exercised by local governments or their officials. De facto municipal control smoothly flows from the sphere of public relations into the sphere of civil law relations due to the control functions of the owner of his property. This may affect not only the concept of municipal control, but also the features of the de- limitation of municipal control from related types of state control (for example, in the field of land control, etc.). The analysis of normative acts and the existing judicial practice allows to conclude that the existing concept of municipal control is a gap and internally contradictory. It leads to a diminution of the control activities of local governments, inefficient spending of budget funds. In addition, this means that local governments do not have effective mechanisms to ensure the security of public spaces.

Conclusions. The article refutes the hypothesis of the effectiveness of municipal control in Russia from the standpoint of ensuring the safety of the urban environment. Local governments, as a full-fledged and equal variety of public authorities should have a mechanism for the implementation of municipal control, especially in terms of compliance with the requirements established in municipal regulations. This is particularly important for the security of the urban environment.

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## 1. Introduction.

In recent years, the professional language of officials and some experts quite often began to use the term "urban environment" [1, p. 58; 2]. This term has become increasingly common in the documents of the Ministry of construction of Russia, architects, urbanists. In the Decree of the President of the Russian Federation of 07.05.2018 N 204 (ed. from 19.07.2018) "On national goals and strategic objectives of the development of the Russian Federation for the period up to 2024" States that a radical increase in the comfort of the urban environment, an increase in the quality index of the urban environment by 30 percent, a reduction in accordance with this index, the number of cities with an unfavorable environment is twice the target indicators of the national project in the field of housing and the urban environment.

It is obvious that the term "urban environment" is complex and multifaceted, understood by different experts in different ways (it is appropriate to note that some experts use a different term – urban or public spaces [3, p. 21; 4, p. 24, 145]). As an example, there are several definitions contained in legal instruments.

Thus, in the order of the Ministry of construction of Russia dated 31.10.2017 No. 1494/PR it is stated that the urban environment is characterized by a set of natural, architectural, planning, environmental and other factors that form the habitat in a certain territory and determine the comfort of living in this territory. In the Order of the Government of the Russian Federation of 07.03.2018 N 237 the urban environment actually means a complex of actions for improvement of one or several interconnected territories of the General use of municipalities of various functional purpose (the areas, embankments, streets, pedestrian zones, squares, parks, other territories) directed on improvement of architectural appearance of settlements, increase of level of sanitary and epidemiological and ecological wellbeing of inhabitants. Without going into the discussion about the essence of this term, it should be noted that currently developed methods for assessing the quality of the urban environment (and the term "urban environment" is used not only in relation to cities, urban districts, urban settlements, but also to rural settlements), on the basis of which the ratings of the attractiveness of cities .

The technique of determination of the quality index

of the urban environment of municipalities of the Russian Federation is approved by the order of the Ministry of construction of Russia of 31.10.2017 N 1494/PR and contains various indicators and parameters. On the site of the "Dom.rf", these indicators are grouped in a certain way; there are separate types of spaces (housing and adjacent spaces; green space and water space; street infrastructure; social and leisure facilities and the surrounding space; public and business infrastructure and adjacent space; city-wide space) and the criteria by which they should be evaluated (safety, comfort, environmental friendliness, identity and diversity, modern environment) . Moreover, safety as a criterion is aimed not only at determining the existing level of danger of certain spaces, but also to assess such environmental parameters that can potentially contribute to harm to human life and health.

Several preliminary conclusions can be drawn from this. Firstly, the quality parameters of the urban environment are closely related to the issues of local importance, for the solution of which the local authorities are responsible; secondly, safety is one of the criteria for assessing the quality of the urban environment, so the local authorities should have tools to influence its improvement. One such instrument is municipal control exercised by local governments or their officials.

According to the specialists of "Dom.rf" safety as a criterion for determining the index of the urban environment aims not only to define the existing level of risk of certain spaces, but also the evaluation of such parameters of the environment that can potentially contribute to the infliction of harm of life and to human health. This approach makes it possible to assume that in the context of local government, the characteristics of urban or public spaces, prevention should play an important role in ensuring the safety of the urban environment. This, by the way, is fully consistent with the goals of reforming the control and supervision activities, which should be reoriented towards preventing and preventing violations.

## 2. The concept and legal basis of municipal control.

Currently, the Ministry of economic development pays the greatest attention to municipal control, which annually prepares reports on the state of control and Supervisory activities in the Russian Federation, including the state of municipal control; a separate report on the state of municipal control was prepared

only once in 2011. According to the Ministry of economic development of Russia, municipal control accounts for about 2-3 % of all control and Supervisory activities.

The legal basis of municipal control is a significant number of regulations at different territorial level, however, the most important are the Federal law of 06.10.2003 № 131-FZ "On General principles of organization of local government in the Russian Federation" (hereinafter – Federal law № 131-FZ) and Federal law of 26.12.2008 N 294-FZ "On protection of rights of legal entities and individual entrepreneurs when exercising state control (supervision) and municipal control" (further – the Federal law No. 294-FZ).

In the Federal law No. 131-FZ it is said that local governments organize and carry out municipal control of observance of the requirements established by the municipal legal acts adopted concerning local value and in cases if the corresponding types of control are carried out by Federal laws to powers of local governments, also municipal control of observance of the requirements established by Federal laws, laws of subjects of the Russian Federation (part 1 of article 17.1).

The analysis of the above norms shows that municipal control is actually proposed to be considered as an integral function of the authority - local governments organize and carry out municipal control over compliance with the requirements established by municipal legal acts adopted on local issues. In this sense, the control functions should be on all issues of local importance.

By the way, scientists have long paid attention to the fact that municipal control is a kind of management activity [5; 6; 7; 8, p. 26]. Thus, T. M. Byalkina rightly emphasizes that control is one of the forms of management activities, along with other forms, such as planning, adoption of legal acts, etc. [9, p. 30]. According to the scientist, it is possible to speak about own control powers of local governments [9, page 18, 24]. This aspect is very important – the authority should have control functions, especially in terms of control over the execution of its own decisions.

At the same time, article 17.1 of Federal law No. 131-FZ States that municipal control is the power of local self-government bodies if the relevant types of control are assigned by Federal laws to the powers of local self-government bodies.

In part 2 of Article 17.1 it is stated that, to the relations connected with implementation of municipal control, the organization and carrying out

checks of legal entities, individual entrepreneurs, provisions of the Federal law No. 294-FZ are applied. Therefore, this law is of great importance for understanding the essence of municipal control.

In particular, in Article 2 of the Federal law No. 294-FZ there is a legal definition of municipal control, under which it is proposed to understand the activities of local governments ... on the organization and conduct on the territory of the municipality of inspections of compliance by legal entities, individual entrepreneurs with the requirements established by municipal legal acts ..., as well as on the organization and implementation of measures to prevent violations of these requirements, control measures carried out without interaction with legal entities, individual entrepreneur.

What should I pay special attention to? Municipal control is the activity of organizing and conducting inspections, as well as prevention of violations. The fact that municipal control is an activity for punishment, bringing the perpetrators to justice is out of the question.

In February 2018, draft Federal law No. 332053-7 "On state control (supervision) and municipal control in the Russian Federation" (hereinafter – draft law No. 332053-7) was adopted in the first reading. It also includes the definition of municipal control, under which it is proposed to understand the activities of local governments aimed at the prevention (prophylaxis), identification and suppression of violations of the citizens and organizations of mandatory requirements of the municipal legal acts ..., acceptance stipulated by the legislation of the Russian Federation of measures on suppression of the revealed violations and to restore the legal situation that existed before the violation of the mandatory requirements. In other words, already at the stage of formulating the definition, it is said that municipal control is not only the inspection and prevention of offenses, but also the suppression, restoration of the legal status.

To what extent are the provisions of these two basic laws implemented in sectoral legislation and in practice? As an illustration it is possible to give extraction from the judgment - appellate determination of the Altai regional court of 16.01.2013 in the case of N 33-300/13. In fact, the court drew attention to the conflict of norms of Federal laws № 131-FZ and № 294-FZ, which by different definitions are the limits of legal regulation of municipal control – only Federal laws; Federal laws and statutes of municipalities; Federal laws and municipal legal acts.

So, according to Court according to Art. 17.1 of the

Federal law No. 131-FZ, local governments have the right to organize and exercise municipal control on the questions provided by Federal laws. The range of issues of local importance of the city district is determined by part 1 of article 16 of the Law, contains the implementation of municipal control over the execution of the budget of the city district (item 1), the safety of local roads within the boundaries of the city district (item 5), municipal housing control (item 5). 6), municipal land control over the use of land of the urban district (p. 26), municipal control over the use and protection of specially protected natural areas of local importance (p. 30), municipal forest control (p. 38), municipal control over the conduct of municipal lotteries (39), municipal control on the territory of the special economic zone (40). In this article other types of municipal control are not provided.

The powers of local authorities to address local issues defined by part 1 of article 17 of Federal law No. 131-FZ, and include, among other powers under this Federal law, municipal charters (p. 9).

It is established that on the questions carried according to articles 14, 15 and 16 of this Federal law to questions of local value, Federal laws, charters of municipalities powers of local governments on the solution of the specified questions of local value can be established. From this article it follows that the list of powers given in it is not exhaustive and can be supplemented by regulatory legal acts of two types - Federal laws and statutes of municipalities.

However, part 1 of Art. 17.1 of the Federal law No 131-FZ in relation to the powers of local governments to exercise municipal control contains a different rule, limiting its limits and allowing such only on matters provided for by Federal laws.

In item 4 h. 1 of Art. 2 of the Federal law No. 294-FZ municipal control means activity of the local governments authorized according to Federal laws on the organization and carrying out in the territory of municipality of checks of observance by legal entities, individual entrepreneurs of the requirements established by municipal legal acts, and also the requirements established by Federal laws, laws of subjects of the Russian Federation in cases if the corresponding types of control concern questions of local value. The same item provides that the order of the organization and implementation of municipal control in the corresponding field of activity is established by municipal legal acts or the law of the subject of the Russian Federation and the municipal legal acts adopted according to it.

Accordingly, the provisions of paragraph 4 of part 1 of article 2 of Federal law No. 294-FZ and part 1 of article 17.1 of Federal law No. 131-FZ are special in relation to the provisions of parts 1, 1.1 of article 17 of Federal law No. 131-FZ.

Besides, the Court comes to a conclusion that local governments have no right to allocate themselves with control powers, granting them such powers on certain questions belongs to competence of the Federal legislator and can be made only in the Federal law.

### **3. Types of municipal control.**

Obviously, the types of municipal control should be due to its understanding. We have already mentioned three different approaches to this term. Municipal control is considered as a matter of local importance, authority or management function. In the current legislation, all these approaches are displaced.

Moreover, if we say that municipal control is an activity falling within the scope of Federal Law No. 294-ФЗ, then it should be related to public relations.

Monitoring of regulatory legal acts conducted by the Ministry of Economic Development of Russia back in 2011, allowed to identify the main approaches to what is meant by municipal control [10]. This approach is still relevant today [11]. The experts proposed to allocate the following types of municipal control:

- types of control directly enshrined among local issues and in the relevant industry law (for example, financial control; land control; forest control; control over the safety of local roads; control in the use and protection of specially protected natural areas of local importance; implementation of a unified heat supply organization for construction, reconstruction and (or) modernization of heat supply facilities);
- types of control directly enshrined in sectoral laws and being an integral part of a local issue (for example, controlling the use and preservation of municipal housing stock, compliance of the dwelling premises of this fund with established sanitary and technical rules and regulations, other legal requirements ; controlling the presentation of a compulsory copy of a; the compliance of the citizens with the conditions for receiving social payments for the purchase of residential premises outside the borders of the territories previously included in acted administrative-territorial formations, in respect of which the President of the Russian Federation decided to transform or abolish);
- types of control established in sectoral legislation and non-normative bases among local issues (for example, control over the use and protection of subsoil in the

extraction of common minerals, as well as the construction of underground facilities not related to mining; control of compliance legislation in the field of retail sales of alcoholic beverages; municipal control in the field of trade; control over the organization and implementation of activities on markets);

- types of control which have no basis in sectoral laws and are part of specific issues of local importance (to control the implementation of regulatory legal acts in the field of advertising; monitor compliance with environmental requirements; control in the field of amenities; monitor compliance with the conditions of the organization of regular traffic on the territory of the municipality).

The analysis of regulatory acts shows that in most cases municipal control is considered as the authority of local governments. The following types of municipal control are established as issues of local significance in Federal Law No. 131-FZ: municipal control over the safety of local roads; municipal housing control; municipal land control; municipal control in the field of protection and use of specially protected natural territories of local importance; municipal forest control; control over the execution of the municipal budget; control in the field of heat supply. Moreover, in a number of cases, the formulation of municipal control as a matter of local importance is such that it is similar to the formulation of authority - for example, control over the execution of the municipal budget.

Along the way, it is necessary to pay attention to the fact that not all types of municipal control are subject to Federal Law No. 294-ФЗ. For example, financial control is excluded from its scope (due to conflicts of norms of current legislation, this position is interpreted by the courts differently. Some types of activities are subject to licensing control (for example, control over regular shipments), which means that there is a specificity in the implementation type of municipal control.

There is one more circumstance to which attention should be paid in the context of understanding what municipal control is. From relations arising within the framework of municipal control, it is necessary to distinguish:

- relations arising from the implementation by the owner of control over their property;
- contractual relations arising, for example, in the framework of the implementation of the municipal task.

Analysis of the content of the relevant regulations

shows that in most cases we are talking about the control of objects that are in municipal ownership (local roads, municipal housing stock, etc.). In fact, in such cases we are talking about the powers of the owner to control their property, but not about the control activities of local governments over the activities of organizations independent of them. The control exercised by the owner (control over the effectiveness of management decisions made and control over the state of municipal property) is a component element of the maintenance burden of property that imposes the right of ownership [12].

In a number of types of municipal control (for example, monitoring the condition of local roads, regular traffic, etc.), courts are very actively investigating the relevant points of the municipal contract, imposing certain obligations on the municipal institution, contracting organization to perform works financed by the local budget.

In other words, de facto municipal control from the sphere of public relations smoothly flows into the sphere of civil-legal relations, due to the control functions of the owner for his property. This may affect not only the concept of municipal control, but also the features of the delimitation of municipal control from related types of state control (for example, in the field of land control, etc.)

In the original version of the bill and number 332053-7, introduced to the State Duma in December 2017, the municipal control was proposed to refer 11 types of municipal control, including: municipal land control; municipal forest control; municipal control over the safety of local roads; municipal control of compliance with the conditions of the organization of regular transport in the territory of the municipality; municipal control in the field of protection and use of specially protected natural territories of local importance, including municipal control in the field of ensuring sanitary (mountain sanitary) protection of natural medicinal resources, health-improving areas and resorts; municipal housing control; municipal control over the presentation of a binding copy of documents; municipal control over the observance of legislation on archives in the Russian Federation; municipal control over compliance with the legislation of the Russian Federation in the field of retail sales of alcoholic beverages; municipal control in the field of landscaping; municipal control in the field of trading.

Annex 2 of this draft law lists types of regional state control, some of which are clearly significantly intersected with the corresponding types of municipal control. Some examples of such regional control

include: regional state supervision in the field of waste management; regional state housing supervision; regional state control in the field of passenger and baggage transportation of passenger taxis; regional state control (supervision) in the field of land improvement. To avoid duplication or gaps, it is very important to distinguish between the subject and the object of verification, which is not so easy to do.

Subsequently, all applications containing types of federal, regional and municipal control were excluded from the text of the draft law, therefore it is difficult to say which types of control will be considered by the authors of the draft law as types of municipal control.

All of the above can be illustrated by the example of *municipal control over the observance of the conditions for organizing regular transport on the territory of a municipal formation and control in the field of improvement* - these types of control are closely related to the safety of the urban environment.

Both types of control can be considered as having no bases in the sectoral laws, and are part of specific local issues: control of transportation associated with a local issue as the creation of conditions for the provision of transport services to the population and the organization of transport service of the population (Articles 14; 15; 16 of Federal Law No. 131-FZ); control in the field of improvement is closely related to such a matter of local importance as the approval of rules for the improvement of the territory of a settlement, the exercise of control over their observance (Section 19, Part 1, Article 14; Section 25, Part 1, Article 16). Many experts agree that the exercise of appropriate powers is impossible without municipal control.

The analysis of legal norms, law enforcement practice allows us to draw several conclusions.

1. Improvement of the territory is a rather complex and multidimensional activity, which in practice is not always easy to distinguish from adjacent. As experts rightly point out, no one knows where the accomplishment ends and begins town planning, architecture, nature management and ecology, sanitary and epidemiological well-being, road activities and traffic, the placement of advertising structures, transportation services, etc. [13].

An analysis of judicial practice confirms this conclusion. Thus, in some decisions, the landscaping courts understand the parking of vehicles on lawns, in others they do not; some courts include the provision

of serviceable access roads to buildings and structures as requirements for improvement, others see this as an activity to maintain local roads; There are examples of the fact that the courts consider the rules for handling waste a variety of improvement rules; there are many contentious 's situation first, linked x coercion owner of buildings and structures for the implementation of work on their repair and maintenance work. These and other examples are discussed in some detail in the Special Report on the state of municipal control in the Russian Federation [11, p. 122-129].

Depending on the qualifications of the relevant offense, there are various consequences associated with the use of preventive measures, the ability of local authorities to draw up protocols about administrative offenses and apply penalties.

In the methodological recommendations for the preparation of rules for improvement of the territories of settlements, urban districts, intracity districts, approved by the Ministry of Construction of Russia, it is said that the objects of improvement include territories of various functional purposes where improvement activities are carried out, including: playgrounds, sports and other recreation and leisure areas; playgrounds for walking and dog training; parking areas; streets (including pedestrian) and roads; parks, squares, other green areas; squares, embankments and other areas; technical zones of transport, engineering communications, water protection zones; container sites and sites for the storage of certain groups of municipal waste. It is obvious that all the public spaces mentioned are of great importance in the context of security.

The current RF Code of Administrative Offenses does not provide for liability for administrative violations in the field of improvement. Moreover, in the norms there is always a reference to the laws of the subjects of the Russian Federation.

Selective express analysis revealed that the articles that provide administrative responsibility for violations in the field of improvement are located in chapters with completely different names (water security, land use, urban planning, public order, management, housing and communal services, maintenance of the territory, environment, etc.). Scientists quite rightly state that social relations, united in chapters, act as a generic object; the direct object of an administrative offense is public relations that are violated during the commission of a specific administrative offense [14, p. 332; 15; 16]. For illustration, the following examples of the diversity of approaches to the formulation of a generic object can be given:

- administrative offenses infringing on the health of citizens and the sanitary and epidemiological well-being of the population (Republic of Adygea);
- administrative offenses in industry, construction and landscaping (Republic of Bashkiria);
- administrative offenses in the field of environmental protection, land use and improvement (Republic of Buryatia);
- administrative offenses infringing on the rights of citizens, on a healthy lifestyle, safety and rest, public order (Republic of Karelia);
- administrative offenses in the field of improvement and maintenance of territories of settlements of the Kabardino-Balkarian Republic (Kabardino-Balkarian Republic);
- administrative offenses infringing on the institutions of state power and local self-government and the established order of management (Republic of Crimea);
- administrative offenses in the field of environmental protection, improvement, protection of public order and protection of life on water bodies (Republic of Tatarstan);
- administrative offenses in the field of improvement, maintenance of cleanliness and order (Republic of Tyva);
- administrative offenses in the field of housing and utilities and landscaping (the Republic of Khakassia);
- administrative offenses in the housing sector, improvement, maintenance of territories of settlements, in the field of pricing, sale of goods and provision of services (Republic of Chechnya);
- administrative offenses infringing on the rights of citizens, their health, sanitary and epidemiological well-being of the population and public morality (Republic of Chuvashia).

These examples show that the state authorities of the constituent entities of the Russian Federation do not have a clear and unambiguous understanding of the content of the term “accomplishment” in the context of bringing to responsibility. Such ambiguity creates significant problems for both law enforcement authorities and local governments in the implementation of the relevant type of municipal control. And all this is reflected in how the security of public spaces is ensured.

2. It is obvious that the effectiveness and efficiency of control is closely related to the way in which the requirements for relevant activities are formulated - the requirement should be reasonable and aimed at solving a real social problem, reducing socially significant risk, reducing the negative consequences

that need to be prevented. If the requirements are unsystematic and not aimed at a real change in the situation, then monitoring their compliance will not give the desired effect.

As an illustration, you can bring the requirements necessary to obtain a license for passenger transport. According to clause 6 of the Decree of the Government of the Russian Federation of April 2, 2012, N 280 (as amended on March 21, 2017, as amended of December 22, 2017) “On the approval of the Regulation on licensing the carriage of passengers by road, equipped to transport more than 8 people (except if the said activity is carried out on orders or for the own needs of a legal entity or an individual entrepreneur) “in fact, it is enough to obtain a license: appropriate vehicles; premises for repair; a diploma of medical education specialist, carrying out pre-trip inspection; driver's documents. Are these requirements aimed at the real provision of transport security?

At the Sochi Investment Forum on February 14, 2019, in the framework of the section on the reform of control and supervisory activities, one of the speakers talked about how requirements are formulated and drew attention to the fact that existing requirements are not aimed at improving the safety of bus transportation. In his opinion, to ensure real security, it is necessary to check the physical condition of the driver, the quality of roads, including the presence of dividing lines, etc. In other words, the requirements themselves must be formulated differently.

In this regard, it is appropriate to say that the Ministry of Justice of Russia has developed a Standard for the quality of the regulatory framework of mandatory requirements. The Standard, in particular, speaks of such a principle of legal regulation as the principle of risk-orientation; in other words, the regulatory framework should be based on a risk assessment, which is an assessment of the likelihood of adverse effects and the nature of the possible harm in case of non-compliance with mandatory requirements.

3. Analysis of judicial practice in the implementation of municipal control in the area of passenger traffic shows that a significant number of court decisions due to study compliance with the terms of contracts for the provision of transport services to the public. In judicial practice, there are decisions related to the consideration of the actual circumstances and the application of response measures to the violations found. However, violations are most often detected in the framework of government activities; relations of municipal control actually arise in the framework of

contractual relations (local governments act as customers for the performance of relevant works and services, which are paid for from the budget); In total, local governments apply to the court to terminate the illegal transportation activity or which is carried out with violations, including the termination of the contract of carriage. In addition, the courts have to separate municipal control from licensing (for the implementation of transport services for the population must obtain a license). There are examples of that That municipal control is initiated by individual entrepreneurs in E or organizations engaged in the carriage - for them it is a question of competition and the elimination of illegal carriers; non-implementation of municipal control falls into the field of view of anti-monopoly authorities (for more information about judicial practice on this type of control, see [11, p. 129-134]).

Violations can be established by local authorities during field transport checks, raids and recorded in the acts of inspections, claims, prescriptions; based on the results of inspections, activities may be identified in the absence of a certificate, another document confirming the right to carry out transportation. In this case, local authorities apply to the court to prohibit the carriage of passengers and baggage by road along the appropriate regular transport route. Moreover, the courts conclude that the illegal activity creates the danger of causing harm in the future, which, by virtue of paragraph 1 of Article 1065 of the Civil Code of the Russian Federation, is the basis for satisfying the claim on the prohibition of activities creating such danger.

Far from all local governments choose the aforementioned method of bringing the violator to justice. For example, in Kaluga Region, Article 3.4 of Law No. 122-OZ provides for administrative liability for violation of the regulatory legal acts of local governments that regulate the organization of transport services for the population within the boundaries of a municipality. This allows the decision of the administrative commission to bring the offender to administrative responsibility. However, in some subjects of the Russian Federation, attempts to establish the composition of an administrative offense by their own law are the subject of an independent judicial study, which does not always end positively for the authorities that have passed the challenged law. Most often, the courts state that the dispositions of the contested article do not contain an exhaustive list of legal prohibitions for which administrative liability can be applied, allow the

possibility of administrative liability for violation of the rules in the field of transportation regulated by federal law, thereby allowing twice to bring to administrative responsibility for same offense.

Another problem that arises when the offender is brought to responsibility and is investigated by the courts is the need to properly characterize the violation, due to the fact that this type of activity is licensed. Carrying out business activities in violation of licensing conditions and requirements entails the occurrence of administrative liability under article 14.1 of the Administrative Offenses Code of the Russian Federation.

#### **4. The possibility of applying coercive measures based on the results of verification measures**

The application of such measures for local authorities is quite important, but a painful issue.

As a General rule, local self-government bodies do not have their own enforcement apparatus, i.e. they cannot draw up protocols on administrative offences and bring violators to justice. The bodies of local self-government and municipal control may exercise these powers if they are transferred by the relevant decision of the state authority. As a result, there are often situations when the results of the violations identified by the municipal control bodies do not apply liability measures (the lapse of the Statute of limitations due to the lack of interdepartmental interaction between the control and Supervisory bodies, the lack of authority to draw up protocols, etc.).

Currently, the right of local governments to draw up protocols on administrative offenses, the consideration of cases depends on the discretion of the subjects of the Russian Federation. Subjects of the Russian Federation enjoy this right in different ways.

Special attention should be paid to the presence of negative consequences up to the measures of responsibility for violation of the norms established by local authorities. Currently, in respect of the majority of activities subject to municipal control, the establishment of administrative offences also depends on the discretion of the public authorities of the Russian Federation.

The analysis of the existing law enforcement practice allows to reveal the following options of actions of local governments in case of violations:

- in those cases, where possible, bodies of municipal control to draw up protocols on administrative offences; it means the possibility of realization of the norms of the Code of administrative offences in part of the proceedings on an administrative offence, of



administrative responsibility;

- bodies of municipal control make the act in which the revealed violations are fixed; on the basis of the made act there is an appeal directly to court; in case of adoption of the relevant decision by court, measures of property responsibility are applied to the violator (this scheme has certain difficulties for local governments: courts not always accept acts as the proper proof of existence of violation; from-for lack of own lawyers of the settlement have no opportunity for the appeal to courts);

- local governments make the act in which the revealed violations are fixed and transfer it to the relevant bodies of the state control as interaction (the problem of this scheme is that the accurate mechanism of consideration of the transferred materials isn't established; bodies of the state control start rechecking everything as the subject of the state and municipal control is different);

- local governments make the act in which the revealed violations are fixed and direct representation on their violation; the current legislation provides administrative responsibility for non-execution of the instruction of body of municipal control (articles 19.4, 19.5 of administrative Code of the Russian Federation).

It is obvious that the mechanism of reaction to the revealed violations requires some improvement, otherwise it turns out that the bodies of municipal control become similar to the bodies of public control.

Depending on the type of control, the authorities can initiate the application of liability measures. Thus, local governments can:

- raise the question of the application of administrative responsibility measures for violations identified by the results of verification activities within the framework of the relevant type of municipal control – the compositions of the relevant offenses are provided in the administrative Code or in the laws of the subjects of the Russian Federation (for example, municipal control in the field of improvement, etc.);

- raise the issue of administrative liability for violation of the license legislation – Article 14.1 of the Administrative Code (for example, control of trade in alcoholic beverages);

- raise the question of the application of civil liability measures – Article 1065 of the Civil Code (for example, in the municipal control in the field of regular traffic).

The application of the provisions of article 1065 of the

civil code, according to which the risk of harm in the future may be the basis for a lawsuit to ban activities that create such a danger, in the context of municipal control is not very often used by the courts. However, there are such examples.

Exploring the possibilities of local governments to use coercive measures, you understand that it is necessary to return to the concept of municipal control. There may be different models of municipal control: municipal control can be limited only to prevention or provide more and the ability to apply measures of state coercion, up to responsibility.

Verification activities are closely related to a number of other problems that are not regulated by the current legislation. For example, for municipal housing control it is necessary to inspect the dwelling. This can be done only with the consent of the residents. The mandate of the municipal inspector does not allow him to enter the apartment in the absence of consent, even if it is a municipal property.

Another example. For drawing up the act or Protocol on administrative violation data on the violator are required. There is no clear mechanism of action of the municipal control bodies in case of the violator's refusal to provide information about himself. The mandate of the municipal inspector again does not allow the use of coercive measures to establish the identity of the offender. For example, to establish the identity of the owner of a vehicle parked on the lawn, local governments in cooperation with public authorities send a request to the traffic police with information about the number of the car with a request to provide information about the owner.

It turns out that the application of measures of influence to the offender is due to the discretion of public authorities.

Back in 2012, the Russian Congress of municipalities conducted a survey of municipal councils and some municipalities in order to determine the attitude of local governments to expand their control powers. The analysis of answers testifies to the ambiguous attitude of local governments to the mechanism of municipal control. It was noted that "although municipal control is an important power to ensure the implementation of decisions taken by local governments, it can be effectively implemented only by municipalities with significant materials, organizational and human resources, which are usually large, industrialized cities. The capacity of rural and small urban settlements to exercise control powers is severely limited and largely formally implemented. Even more, municipal control becomes a formality in the absence of the local

authorities the ability to prosecute identified with its help offenders. To compensate for the lack of municipalities' own "punitive" powers can be a well-structured interaction with public authorities exercising supervision in the relevant field, which, however, cannot be done in all cases".

A survey of local government representatives conducted by the Ranepa Center of local government in 2018 showed that nothing has changed on this issue [11, p. 135-158]. According to local authorities of municipal areas and city districts they should have the right of drawing up protocols on administrative offenses; representatives of settlements preferred other mechanism: local governments make the act on results of check and direct it to public authorities for to make decisions on application of measures of influence, and the mechanism of interaction of local

governments and public authorities is registered in the law.

### 5. Conclusions.

The analysis shows that the existing concept of municipal control is a gap and internally contradictory. This in itself leads to a diminution of the control activities of local governments, inefficient spending of budget funds. In addition, this means that local governments do not have effective mechanisms to ensure the safety of public spaces. Since local governments, as a full-fledged and equal variety of public authorities should have a mechanism for the implementation of municipal control, especially in terms of compliance with the requirements established in municipal regulations. This is particularly important for the safety of the urban environment.

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