ADMINISTRATIVE LAW IN THE SOVIET UNION: THE NEW FEDERAL PRINCIPLES OF LEGISLATION

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1. Introduction

For the first time in its entire history, the USSR Supreme Soviet has enacted all-union fundamental principles (Osnovy)1 dealing with administrative law. The Soviet legislators have not gone so far as to publish a full administrative code for the USSR, nor even fundamentals of administrative legislation (or any of the other ambitious forms of legislation that have been variously suggested over the past years) but have steered a pragmatic middle road by issuing “fundamental principles” on one of the most socially important areas of administrative law — administrative violations — to be followed in due course by union republican codes on administrative violations and other implementing legislation. (There is no time limit set for the production of these republican codes; based on the enactment of the republican codes of criminal law and of criminal procedure following the publication of the fundamental principles of criminal legislation and criminal procedure in 1958,2 the time lag here before republican codes appear could be anything between six months and three years.) The new Osnovy themselves came into force on 1 March 1981.3

The choice of administrative violations (pravonarushenie) as the first major topic to be put in order on an all-union scale, out of the vast range of administrative law, may follow from a number of factors. Firstly, it is the area which has most immediate impact on the general population, concerning the rights and duties of citizens; secondly, it is a reasonably self-contained topic which can be conveniently encompassed in Osnovy with the result that crucial provisions, such as the procedure for hearing a case before an administrative commission, can be overhauled without having to involve the whole area of administrative law and procedure which includes, e.g. procedure for receipt of citizens’ complaints; thirdly, many of the questions raised in the attempt to codify the law on administrative violations had already been considered in an important precursor in this field: the edict of the Presidium of the Supreme Soviet of the USSR of 21 June 1961 “On the Further Limitation of the Application of Fines Imposed by Administrative Procedure”.4 For example, the edict on fines specified that only natural, not legal persons should be liable for fines under administrative procedure (legal persons might still be liable under disciplinary procedure), and this distinction has been preserved in the new Osnovy so that only
natural not legal persons are subjects of administrative violations (by implication, in article 8).

In fact, the decision to draft the new Osnovy came more or less directly as a follow-up to this edict on fines. On 13 October 1967, the Presidium of the Supreme Soviet of the USSR issued a decree "On Practice in the application of the Edict of the Presidium of the Supreme Soviet of the USSR 'On the Further Limitation of the Application of Fines Imposed by Administrative Procedure'". The fourth point of this decree was

"To charge the Commissions on Legislative Proposals of the Council of the Union and Council of Nationalities to draw up a draft fundamental principles of legislation of the USSR and union republics on administrative responsibility, taking into account practice in the application of the edict of the Presidium of the Supreme Soviet of the USSR of 21 June 1961, 'On the Further Limitation of the Application of Fines by Administrative Procedure'."

As a result, the new Osnovy were drafted. At some stage there was a change in title, from "fundamental principles ... on administrative responsibility (otvetstvennost)" to "fundamental principles on administrative violations (pravonarushenie)". This commentator has not come across any explanation for the change in title, which did not seem to materially affect the proposed scope of the Osnovy.

The pattern envisaged by the new legislation of all-union fundamental principles subsequently embodied in individual republican codes is a familiar one to students of Soviet law. It echoes the situation in the other two main branches: criminal and civil law, and their respective procedure. One difference is that in the case of administrative law, the procedure is included in the same Osnovy rather than having separate fundamentals on procedure. The explanation given is that the rights and duties of citizens relating to the commission of administrative violations, and the powers of organs and officials considering and deciding cases on administrative violations are so intertwined that it would be misleading to separate the substantive and procedural law. It is argued that this is more so with administrative than with civil or criminal law.6

2. Prior History

The previous history of attempts to organize administrative law, or aspects of it, is littered with frustrated attempts and exhortations at party congresses. The first moves were at a republican level for complete administrative codes. In the RSFSR work began on a draft in 1923, but it was never adopted.7 In the Ukraine there was more success: a code was adopted on 12 October 1927. This was followed by various collections of legislation in force in the Ukraine, and by some amendment to the administrative code, until in 1948 a new draft code was produced. However "... for an array of reasons it could not be adopted ..."8. In 1939 there was an attempt to systematize the norms of administrative law at an all-union level, but the war...