Секция «Юриспруденция»

Problems prejudice in the modern right (on an example of investigation of tax crimes)

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To December (2009) changes in the text of item 90 UPK it has been provided that the circumstances established by a sentence which have entered validity, admit court, the public prosecutor, the inspector without additional check if these circumstances don't cause doubts in court. It was thus underlined that this sentence of court can't determine guilt of the persons who were not participating in earlier considered criminal case. Such edition of the law as though supposed possibility (probability) of the decision of guilt of the persons participating in process on earlier considered business, and it doesn't correspond to the major positions of the law (item 17 item, 88, 299, 307, etc. UPK).

According to instructions current ("updated") items 90 UPK of the circumstance established by a sentence which have entered validity or other judgement which has entered validity, accepted within the limits of civil, arbitration or administrative legal proceedings, admit court without additional check.

The specified changes, undoubtedly, it is possible to estimate positively, however the given amendments find sense only when business has been considered by arbitration court before removal of the decision on criminal case excitation and the more so before removal by sentence court of law on the case of a tax crime. In other cases when the arbitration court "is late"behind criminal trial, amendments to definition prejudice in UPK in any way don't correct a valid provision at which less qualified in the permission of tax affairs the court of law establishes presence or absence of the fact of infringement of the legislation on taxes and tax collections. Thus specified sentence or other decision can't determine guilt of the persons who were not participating earlier in considered criminal case. So unsuccessful formulation of the item 90 UPK can generate erroneous representations about possibility of approach of negative consequences for the persons participating in earlier taken place judicial session, though actually it not so.

There are also other dangers in practice of application of the given short story. For example, if the tax bearer in arbitration process has proved that law infringement wasn't or that wrong calculation of the tax hasn't led to its underpay in the budget, it should be considered on criminal case. But to receive the come into force decision of arbitration court it is possible only in three-five months after the tax department decision will come into force. Therefore the Russian Federation it is necessary to add item 3 of item 108 NK with a situation when the tax bearer in certain term has addressed in arbitration court with the complaint to the tax department decision is means that there is a dispute. In the conditions of economic dispute before end of proceeding bringing to criminal liability is inadmissible.

From literal interpretation of positions of item 90 UPK the Russian Federation follows that the in itself decision of arbitration court accepted in favor of the tax bearer, can't testify to the full to absence of the bases for attraction of the person to a criminal liability. The arbitration court in the decision can reflect only certain circumstances, to the discretion of

the concrete judge testifying in favor of the tax bearer. Thus in arbitration court not in full the circumstances which are subject to an establishment during carrying out of preliminary investigation and the person necessary for attraction as accused of criminal trial on tax crimes always can be investigated. For example, arbitration courts not always accept materials of operatively-search activity as admissible proofs. Thus, the decision of the arbitration court which has been taken out in favor of the tax bearer, but not containing carried, admissible and sufficient proofs of its innocence in criminal offense fulfillment, can't be considered as the unique basis for acceptance of the remedial decision on refusal in excitation of criminal case or its termination on rehabilitation to the bases. The decisions of arbitration courts taken out in favor of tax bearers are subject to corresponding legal estimation in aggregate with other collected proofs on materials pre-investigation check or criminal case by rules of item 88 UPK the Russian Federation.

There is also one more problem. About it tells S.Afanasev:"It is known that affairs in the relation of the persons who have concluded the pre-judicial cooperation agreement, and affairs of persons, agreeing with the shown charge, quite often are a part of the big affairs with many accomplices, as a rule, are allocated in separate manufacture and considered in independent processes. But considered in the simplified and frictionless order litigation criminal case comes to an end with the sentence generating completely not not simplified, and high-grade prejudice. The sentence which has taken place on such business will be prejudice for the basic business and deprives of the right of defendants to challenge actual circumstances, the fault form, motives of fulfillment of act, a legal estimation of a criminal conduct, and also character and the size of the harm caused by act accused, as they are already established by earlier taken place sentence. In essence, accused of business from which the business considered in a special order is allocated, get to a remedial trap ".

From our point of view, wrong it would be unequivocal to assert that the decision civil or the arbitration court, accepted in favor of the tax bearer, should relieve completely automatically it and of criminal prosecution. The following otherwise would turn out. For example, swindle can be considered not only as penal act - plunder by a deceit or breach of confidence in the large sizes in criminal trial, but also as default of the civil-law obligations taken on in civil or arbitration process. And if for any reasons civil or the arbitration court rejects the dissatisfied party claim, then on the basis of the above-stated statement swindle structure automatically decriminalizes. Whether such aim was pursued by the legislator? Probably, no. The decision civil or arbitration court should be estimated in criminal trial along with other proofs, but it should not be necessary in a judgement basis on criminal case in the presence of other circumstances and proofs.

Taking into account the aforesaid it is possible to draw a conclusion that it is necessary to take necessary measures to preparation of the new text of item 90 UPK as as it stands it can promote acceptance of erroneous decisions at, including, tax crimes and by that to promote infringement of legality and infringement of the rights of the citizens involved in sphere of criminal legal proceedings.

Литература

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