Approved by the Presidium
of the Supreme Court
of the Russian Federation
on 17 February 2021

Review of Certain Issues of Judicial Practice pertaining to Application of Legislation and Measures Aimed at Preventing the Spread of the Novel Coronavirus Infection (COVID-19) in the Russian Federation No. 3

In response to the courts' questions regarding the application of legislative amendments and measures aimed at preventing the spread of the novel coronavirus infection (COVID-19) on the territory of the Russian Federation, in order to ensure uniform application of legislation, the Supreme Court of the Russian Federation, guided by Item 1 of Part 7 of Article 2 and Item 7 of Part 1 of Article 7 of Federal Constitutional Law No. 3 of 5 February 2014 "On the Supreme Court of the Russian Federation", deems it necessary to provide clarifications regarding the following issues.

I. General Issues

Question 1: May the court stay proceedings in the case if a witness, specialist or expert is not able to attend the court session due to restrictive measures aimed at preventing the spread of the novel coronavirus infection (COVID-19)?

Answer: As follows from the answer to Question 1 of the Review of Certain Issues of Judicial Practice pertaining to Application of Legislation and Measures Aimed at Preventing the Spread of the Novel Coronavirus Infection (COVID-19) in the Russian Federation No. 1, approved by the Presidium of the Supreme Court of the Russian Federation on 21 April 2020, if necessary, the court may stay proceedings in the case under Part 4 of Article 1, the second paragraph of Article 216 of the Civil Procedure Code of the Russian Federation (CPC RF), Part 5 of Article 3, Item 4 of Article 144 of the Commercial Procedure Code of the Russian Federation (hereinafter – the ComPC RF), Part 4 of Article 2, Item 3 of Part 1 of Article 191 of the Code of Administrative Judicial Procedure of the Russian Federation (hereinafter – the CAJP RF), if the persons participating in the case are deprived of the opportunity to attend the court session due to restrictive measures aimed at preventing the spread of the novel coronavirus infection.

At the same time, the court has no right to stay proceedings in the case if a witness, specialist or expert is deprived of the opportunity to attend the court session due to the restrictions. In these instances, the court, taking into account the specific circumstances of the case, may postpone the trial, the proceedings in the case under Part 1 of Article 169 of the CPC RF, Part 5 of Article 158 of the ComPC RF, Part 2 of Article 152 of the CAJP RF.

Question 2: Do measures introduced due to the spread of the novel coronavirus infection (COVID-19) on the territory of the Russian Federation constitute grounds for staying the enforcement proceedings?

Answer: The time terms of enforcement actions are stipulated in Article 36 of Federal Law No. 229 of 2 October 2007 "On Enforcement Procedure" (hereinafter referred to as the Law on Enforcement Procedure). At the same time, according to Part 7 of said Article, these terms, in particular, do not include the time during which the enforcement actions were not performed due to their postponement; during which the enforcement proceedings were staid; the time of deferral of execution of the enforcement document or enforcement in instalments.

The grounds for the court and the bailiff to stay the enforcement proceedings are stipulated in Articles 39 and 40 of the Law on Enforcement Procedure.

The specific features of execution of judicial acts, acts of other bodies and officials, as well as of returning overdue debts during the spread of the novel coronavirus infection are stipulated in Federal Law No. 215 of 20 July 2020 "On Specific Features of Execution of Judicial Acts, Acts of Other Bodies and Officials, as well as of Return of Overdue Debts during the Spread of the Novel Coronavirus Infection" (hereinafter – Law No. 215).

As regards debtors-citizens, Parts 3–5 of Article 2 of Law No. 215 provide for enforcement documents to be executed in instalments, where such documents contain claims for recovery of debt under credit agreements (loans) in respect of debtors-citizens who are recipients of pensions due to age, disability and (or) pensions for the loss of the breadwinner and have no other sources of income or real property (except for the only residential premises suitable for permanent residence), if the total amount of the pension due to age, disability and (or) loss of breadwinner of the debtor-citizen is less than two minimum wages; prohibit implementation of actions for recovery of the overdue debt in respect of which payment in instalments was granted; and also prohibit the bailiffs from using enforcement measures related to the inspection of

movable property of the debtor held at her/his place of residence (stay), arrest of said property, as well as seizure and transfer of said property, except for transport vehicles owned by the debtor-citizen (motor vehicles, motorcycles, motorized bicycles and light quadricycles, tricycles and quadricycles, self-propelled vehicles).

Law No. 215 does not stipulate any specific features related to the stay of enforcement proceedings.

However, the introduction of measures aimed at preventing the spread of the novel coronavirus infection on the territory of the Russian Federation in accordance with Federal Law No. 68 of 21 December 1994 "On Protection of the Population and Territories against Natural and Human-Made Emergencies" implies the imposition of public-law obligations on citizens.

The inability to perform enforcement actions due to adoption of said measures can constitute grounds for the postponement of enforcement actions and enforcement measures by virtue of Article 38 of the Law on Enforcement Procedure.

In addition, where necessary, enforcement proceedings can be staid by a court or a bailiff in relation to Item 6 of Part 2 of Article 39, Item 1 of Part 2 of Article 40 of the Law on Enforcement Procedure, if the debtor is deprived of the opportunity to participate in the enforcement procedures and exercise other rights stipulated in Article 50 of the Law due to the measures aimed at preventing the spread of the novel coronavirus infection.

Herewith, the issue of whether it is necessary to postpone the enforcement actions, stay the enforcement proceedings, grant a deferral of execution (execution in instalments) should be addressed individually in each particular enforcement proceedings with due regard to the constitutionally significant principle of binding nature of court rulings, as well as the tasks of the enforcement procedure (Article 2 of the Law on Enforcement Procedure).

It is also necessary to take into account that, according to Part 8 of Article 36 of the Law on Enforcement Procedure, the expiration of terms for performance of enforcement actions and application of enforcement measures does not constitute grounds for terminating or finalizing the enforcement procedure.

II. Additional Guarantees for Medical Staff and other Employees of Healthcare Organizations

Question 3: What categories of medical staff and other employees of healthcare organizations are entitled to a special social benefit related to the provision of medical care to patients with the novel coronavirus infection (COVID-19)? Are employees of healthcare organizations performing their professional functions during this period entitled to such a payment, if they are not directly involved in providing medical care to patients infected with the novel coronavirus infection (COVID-19)?

Answer: Categories of medical staff and other employees of healthcare and other organizations (with the exception of organizations subordinated to federal executive bodies, in which federal laws stipulate military or equivalent service[1]) entitled to the special social benefit, as well as the amount of this benefit are determined by Item 2 of Decree of the Government of the Russian Federation No. 1762 of 30 October 2020 "On state social support provided in 2020–2021 to medical staff and other employees of healthcare and other organizations (their structural units) providing medical care (involved in the provision, ensuring the provision of medical care) for diagnosis and treatment of the novel coronavirus infection (COVID-19), medical staff contacting with patients diagnosed with the novel coronavirus infection (COVID-19), on amendment of the Provisional rules for recording information for preventing the spread of the novel coronavirus infection (COVID-19), and the annulment of certain acts of the Government of the Russian Federation".

It follows from Item 2 of that decree of the Government of the Russian Federation that the right to receive the special social benefits is provided to the medical staff and other employees of healthcare and other organizations who provide medical care (are involved in the provision of medical care, ensure the provision of medical care) for diagnosis and treatment of the novel coronavirus infection (COVID-19) in

[1] Special social benefits for medical staff and other employees of said organizations are established by Decree of the Government of the Russian Federation No. 1896 of 23 November 2020 "On state social support provided in 2020–2021 to medical staff and other employees, military personnel in military service under contract and by conscription, employees with special ranks and in service in institutions and bodies of the penitentiary system, persons in service in the troops of the National Guard of the Russian Federation and having special ranks of the police, employees of internal affairs bodies of the Russian Federation, military personnel of rescue military units, officers and employees of the Federal Firefighting Service of the State Firefighting Service, as well as employees of the Ministry of the Russian Federation for Civil Defense, Emergencies and Elimination of Consequences of Natural Disasters, of organizations, institutions, military units, administrative bodies, territorial bodies of federal executive bodies providing medical care (participating in the provision, ensuring the provision of medical care) for diagnosis and treatment of the novel coronavirus infection (COVID-19), medical staff contacting with patients diagnosed with the novel coronavirus infection (COVID-19)".

accordance with the Temporary Procedure for organizing the work of healthcare organizations in order to implement measures aimed at preventing and reducing the risks of spread of the novel coronavirus infection (COVID-19), as established by the Ministry of Health of the Russian Federation (order No. 198н of 19 March 2020).

These include:

- doctors who provide emergency medical care, middle-level medical personnel involved in the provision of emergency medical care, junior medical personnel providing emergency medical care, who work on mobile emergency medical teams;
- paramedics (nurses) who receive emergency calls and transfer them to mobile emergency medical teams;
- doctors and medical staff with university (non-medical) degrees who provide specialized medical care in inpatient facilities, middle-level medical personnel involved in provision of medical care in inpatient facilities, junior medical personnel providing specialized medical care in inpatient facilities;
- doctors and medical staff with university (non-medical) degrees who provide primary health care, middle-level medical personnel involved in provision of primary healthcare, junior medical personnel providing primary healthcare in outpatient facilities;
- doctors and medical staff with university (non-medical) degrees, middle-level medical personnel, junior medical personnel of pathoanatomical bureaus and units of healthcare organizations performing (ensuring the performance of) pathoanatomical studies related to the novel coronavirus infection (COVID-19);
- drivers of mobile emergency teams, including those employed in organizations that provide transport services, engaged in medical evacuation of patients with the novel coronavirus infection (COVID-19);
- members of flight crews of medical aviation aircrafts, including those employed in organizations that provide transport services, engaged in medical evacuation of patients with the novel coronavirus infection (COVID-19) (Sub-item “a” of Item 2 of the Decree).

Medical staff (doctors and medical staff with university (non-medical) degrees, middle-level medical personnel, junior medical personnel) who do not provide medical care for the diagnosis and treatment of the novel coronavirus infection (COVID-19) are also entitled to the special social benefit if they come into contact with patients diagnosed with the novel coronavirus infection (COVID-19) while

performing their official duties (Sub-item “b” of Item 2 of Decree of the Government of the Russian Federation No. 1762 of 30 October 2020).

Therefore, apart from medical staff and other employees of healthcare and other organizations providing medical care (involved in the provision of medical care, ensuring the provision of medical care) for the diagnosis and treatment of the novel coronavirus infection (COVID-19), the right to receive the special social benefit is provided to medical staff who are not directly involved in the provision of medical care to patients with the new coronavirus infection (COVID-19), but contact with patients diagnosed with the novel coronavirus infection (COVID-19) in performance of official duties.

III. Issues of Application of Civil Legislation

Question 4: Do sub-lessees operating in the sectors of the Russian economy most affected by the deterioration of the situation due to the spread of the novel coronavirus infection (COVID-19) have the right to rent deferral by virtue of Part 1 of Article 19 of Federal Law No. 98 of 1 April 2020 “On Amendments to Certain Legislative Acts of the Russian Federation pertaining to Prevention and Elimination of Emergencies” (hereinafter – Law No. 98)?

Answer: In accordance with the third paragraph of Item 2 of Article 615 of the Civil Code of the Russian Federation, the rules on lease agreements apply to sub-lease agreements, unless otherwise stipulated in law or other legal acts.

Law No. 98 and the Requirements do not contain rules that exclude, in case of sub-lease agreement, the application of the rules for granting rent deferral stipulated by said normative acts.

Thus, organizations and individual entrepreneurs operating in the sectors of the Russian economy most affected by the deterioration of the situation due to the spread of the novel coronavirus infection that are sub-lessees of real property, except for residential premises, also have the right to rent deferral, by virtue of Part 1 of Article 19 of Law No. 98 and under the terms specified in Item 3 of the Requirements, in regard of agreements entered into prior to the decision of a public authority of the corresponding constituent entity of the Russian Federation to introduce the high alert or emergency regime on the territory of the constituent entity of the Russian Federation.

Question 5: May a lessee that has entered into an agreement with the lessor to reduce the rent by virtue of Part 2 or 3 of Article 19 of Law No. 98, apply for a deferral on the grounds of Part 1 of that Article?

Answer: In accordance with Part 2 of Article 19 of Law No. 98, the amount of rent under real property lease agreements signed prior to the decision of the public authority of the corresponding constituent entity of the Russian Federation to introduce the high alert or emergency regime on the territory of the constituent entity of the Russian Federation in 2020 by virtue of Article 11 of Federal Law No. 68 of 21 December 1994 "On Protection of the Population and Territories against Natural and Human-Made Emergencies" (as amended by Law No. 98) can be changed by agreement of the parties at any time during the year 2020.

Part 3 of Article 19 of Law No. 98 provides for the right of the lessee under lease agreements to claim for a reduction in the amount of rent for the period of 2020 due to loss of use of the property related to the decision to introduce the high alert or emergency regime on the territory of the constituent entity of the Russian Federation, made by a public authority of the constituent entity of the Russian Federation in accordance with Article 11 of Federal Law No. 68 of 21 December 1994 "On Protection of the Population and Territories against Natural and Human-Made Emergencies" (as amended by Law No. 98).

If the lessee and the lessor have entered into an agreement to reduce the amount of rent, or if the lease agreement has been modified by a court decision, the lessee is not deprived of the right to the deferral in accordance with Part 1 of Article 19 of Law No. 98, in particular for the periods preceding the entry into the agreement to reduce the rent or the entry into force of the corresponding court decision.

Question 6: Does the moratorium on accrual of forfeits established by Decree of the Government of the Russian Federation No. 424 of 2 April 2020 "On Specific Features of Providing Communal Services to Owners and Users of Premises in Apartment Buildings and Residential Buildings" apply to the owners and users of non-residential premises in an apartment building?

Answer: Article 18 of Law No. 98 provides that until 1 January 2021 the Government of the Russian Federation has the right to introduce specific features of accrual and payment of penalties in case of late and (or) incomplete payment for residential premises and communal services, contributions for major repairs established by the housing legislation of the Russian Federation, as well as the specific features of recovery of forfeits (fines, penalties).

Pursuant to the specified norm, the Government of the Russian Federation adopted Decree No. 424 of 2 April 2020 “On the Specific Features of Provision of Communal Services to Owners and Users of Premises in Apartment Buildings and Residential Buildings” (hereinafter – Decree No. 424), which provides for a moratorium on the accrual of forfeits, by providers of communal services, suppliers of communal resources and persons managing apartment buildings, for late or incomplete payment for residential premises and communal services (resources).

By virtue of Item 2 of Decree No. 424, the provisions of agreements containing clauses on provision of communal services, agreements containing clauses on provision of the communal service of solid municipal waste management, entered into in accordance with Items 19, 21, 148(1) 148(2) of the Rules of Provision of Communal Services to Owners and Users of Premises in Apartment Buildings and Residential Buildings, as approved by Decree of the Government of the Russian Federation No. 354 of 6 May 2011 “On Provision of Communal Services to Owners and Users of Premises in Apartment Buildings and Residential Buildings”, shall apply until 1 January 2021, insofar as they are not inconsistent with Decree No. 424.

According to Item 3 of Decree No. 424, the provisions of agreements entered into in accordance with the legislation of the Russian Federation on gas supply, power supply, heat supply, water supply and sewerage, which establish the right of suppliers of communal resources to recover a forfeit (fine, penalty) for late and (or) incomplete fulfilment of the obligation to pay for the communal resources by persons managing apartment buildings, do not apply until 1 January 2021.

Item 4 of Decree No. 424 also provides that the clauses of apartment building management contracts that establish the right of persons managing apartment buildings to recover forfeits (fines, penalties) for late and (or) incomplete payment for residential premises do not apply until 1 January 2021.

In addition, Item 5 of Decree No. 424 suspended the collection of forfeit (fine, penalty) in the event of late and (or) incomplete payment for residential premises and communal services and contributions for major repairs until 1 January 2021.

The term “payment for residential premises and communal services” as used in Decree No. 424 is stipulated in the Housing Code of the Russian Federation (hereinafter – the HC RF). In accordance with the provisions of the HC RF (in

particular, Articles 153, 154 of the HC RF) the term applies equally to the owners and users of both residential and non-residential premises in apartment buildings.

Thus, proceeding from the interpretation of Decree No. 424 in conjunction with the cited provisions of the HC RF, the moratorium on the accrual of forfeits established by Decree No. 424 also applies to owners and users of non-residential premises in an apartment building.

Issues related to application of the Regulation on Specific Features, in 2020 and 2021, of Fulfilment and Termination of Tourism Product Sale Agreements Entered into up to 31 March 2020, as approved by Decree of the Government of the Russian Federation No. 1073 of 20 July 2020 (hereinafter – the Regulation)

Question 7: Is the procedure for the refund of money paid under the tourism product sale agreement stipulated in the Regulation a mandatory pre-trial procedure, without which the plaintiff has no right to apply to court with a lawsuit?

Answer: Based on provisions of the second paragraph of Article 222 of the CPC RF, the need to comply with the pre-trial procedure of dispute resolution should be established by current federal law or, by virtue of the principle of free exercise of material and procedural rights, by the parties themselves in the agreement they enter into, which should contain clear provisions on the conditions and procedure of pre-trial dispute resolution or a clear indication on the establishment of such a procedure.

Failure to comply with the procedure for refund of money stipulated in the normative legal act of the Government of the Russian Federation – Decree of the Government of the Russian Federation No. 1073 of 20 July 2020, which approved the Regulation on Specific Features, in 2020 and 2021, of Fulfilment and Termination of Tourism Product Sale Agreements Entered into up to 31 March 2020 – does not preclude the court from accepting such a dispute for consideration.

Thus, current legislation does not establish a mandatory pre-trial procedure for resolution of disputes related to the refund of money paid under a tourism product sale agreement, where the trip did not take place due to the spread of the novel coronavirus infection, without complying with which the plaintiff has no right apply to court.

Question 8: Should the customer ordering a tourism service be considered to be in a difficult life situation if the period during which the corresponding circumstance exists does not completely coincide with the time during which the Regulation is in force?

Answer: In accordance with Item 5 of the Regulation that entered into force on 24 July 2020, in the event of termination of the contract at the request of the ordering customer, in particular where the customer does not accept an equivalent tourism product, the tour operator returns to the customer the money that he/she paid for the tourism product, no later than 31 December 2021, except where Items 6 and 7 of the Regulation apply.

Item 6 of the Regulation stipulates that, upon request of a customer who has reached the age of 65 or of a customer in a difficult life situation, the tour operator is obliged to return the money paid by the customer for the tourism product within 90 calendar days from the date of submission of the aforementioned claim, but no later than on 31 December 2021.

The difficult life situation of the ordering customer is understood to be any of the following circumstances:

- the customer is a disabled person, which is certified in the stipulated manner;
- the customer is temporarily handicapped for a period exceeding two consecutive months;
- the customer is registered as an unemployed citizen without earnings in the bodies of the employment service in order to find a suitable job.

Based on the above, the disability, temporary handicap of the customer or registration of the customer as an unemployed citizen must take place in full or in part during the effect of the Regulation, regardless of the date of occurrence of the corresponding circumstance. Thus, for instance, the fact of exceeding the two-month period of temporary handicap, a part of which (even one day) took place from 24 July 2020, is sufficient for the refund of money paid for a tourism product within 90 calendar days from the date of submission of the corresponding claim.

Question 9: Does the age of other tourists, on whose behalf the tourism product was ordered, have legal significance for the purposes of exercising the right to claim termination of the tourism product sale agreement, entered into up to 31 March 2020, and refund of money paid within 90 calendar days from the date

of such a claim by the ordering customer of the tourism product, who has reached the age of 65?

Answer: Item 5 of the Regulation stipulates that in the event of termination of the agreement at the request of the customer, in particular where the customer does not accept an equivalent tourism product, the tour operator returns to the customer the money that he/she paid for the tourism product, no later than 31 December 2021, except where Items 6 and 7 of the Regulation apply.

In particular, Item 6 of the Regulation stipulates that, upon request of a customer who has reached the age of 65, the tour operator is obliged to return the money paid by the customer for the tourism product within 90 calendar days from the date of submission of the aforementioned claim, but no later than on 31 December 2021.

Herewith, the ordering customer, by virtue of Item 1 of the Regulation, is understood to be the tourist and (or) another ordering customer of the tourism product who has paid monetary funds for the tourism product.

Thus, the right to claim termination of the tourism product sale agreement, entered into up to 31 March 2020, and refund of money paid for the tourism product within 90 calendar days from the date of such a claim is not granted to every tourist who, according to the agreement entered into, was to be provided with a range of services under the tourism product sale agreement, but only to the tourist who is the ordering customer of this tourism product or to another ordering customer of the tourism product who paid money for the tourism product and reached the age of 65 at the time of such a claim.

Herewith, the age of other tourists, on whose behalf the tourism product was ordered, has no legal significance for the purposes of exercising the right granted to the ordering customer by Item 6 of the Regulation.

Issues pertaining to application of Decree of the Government of the Russian Federation No. 991 of 6 July 2020 "On approval of the Regulation on the specific features of implementation of the contract for the carriage of passengers by air, including the right of the carrier to unilaterally modify the terms of such a contract or repudiate it, as well as on the manner and terms of the refund of the carriage charge paid for air carriage in case of a threat of occurrence and (or) the occurrence of particular emergencies, introduction of a high alert or emergency situation regime throughout the territory of the Russian Federation or its part"

(hereinafter – the Regulation on the specific features of implementation of the contract for the carriage of passengers by air)

Question 10: Is the carriage charge stipulated in Item 6 of the Regulation on the specific features of implementation of the contract for the carriage of passengers by air subject to refund before the expiration of the 3-year period to passengers who did not belong to the persons listed in the second paragraph of Item 10 of this Regulation at the moment of entering into such a contract for carriage by air, but subsequently acquired the relevant status (for instance, were recognized as disabled persons of group I or II)?

Answer: In accordance with Item 5 of the Regulation on the specific features of implementation of the contract for the carriage of passengers by air, in cases specified in Sub-Item "b" of Item 3 and Item 4 of the Regulation, the obligation of the carrier to transport the passenger to the destination indicated in the ticket is terminated, and the carrier is further obliged to accept the amount of the paid carriage charge in payment for air transportation services (in particular to other destinations of carriage by air) and additional services of the carrier within 3 years from the departure date indicated in the ticket.

According to Item 6 of the Regulation on the specific features of implementation of the contract for the carriage of passengers by air, the money not used as payment for services specified in Item 5 of the Regulation should be refunded to the passenger at the expiration of 3 years from the departure date indicated in the ticket, unless a different refund period is established by Item 10 of said Regulation.

Item 10 of the Regulation on the specific features of implementation of the contract for the carriage of passengers by air stipulates the general rule of the refund referred to in Item 6 of the Regulation at the expiration of 3 years from the departure date indicated in the ticket.

Herewith, the second paragraph of Item 10 of said Regulation provides the right to claim refund of the carriage charge before the expiration of 3 years from the departure date indicated in the ticket, as well as before the air carriage date indicated in the ticket, to a passenger recognized as a disabled person of group I or II, a disabled child, as well as to a veteran of the Great Patriotic War, a person accompanying a group I disabled person or a disabled child, a person who has a multi-child family certificate or other documents confirming the status of a multi-

child family in the manner stipulated in normative legal acts of constituent entities of the Russian Federation.

Thus, if a passenger who did not belong to persons listed in the second paragraph of Item 10 of said Regulation at the date of entry into the contract of carriage by air further acquires the relevant status (e.g. is recognized as a disabled person of group I or II), he/she will be granted the right to refund of the carriage charge before the expiration of 3 years from the flight departure, as well as before the air carriage date specified in the ticket.

Question 11: Should the carrier pay a penalty, compensation for moral harm, or fine in case of its refusal to fulfil the contract of carriage by air and refund the carriage charge paid for carriage by air in the manner and within the terms stipulated in Items 6, 10 of the Regulation on the specific features of implementation of the contract for the carriage of passengers by air or voluntarily before the expiration of such a term?

Answer: Federal Law No. 166 of 8 June 2020 "On Amendments to Certain Legislative Acts of the Russian Federation for the Purpose of Taking Urgent Measures Aimed at Ensuring Sustainable Economic Development and Preventing the Consequences of the Spread of the Novel Coronavirus Infection" has introduced Article 107.2 into the Air Code of the Russian Federation. In accordance with this norm, in case of a threat of occurrence and (or) occurrence of particular emergencies, introduction of a high alert or emergency situation regime throughout the territory of the Russian Federation or its part, the Government of the Russian Federation may introduce specific features of implementation of the contract for the carriage of passengers by air, including the right of the carrier to unilaterally modify the terms of such a contract or repudiate it and return the charge paid for the air carriage of the passenger in the manner and within the terms stipulated by the Government of the Russian Federation.

Pursuant to the powers granted, the Government of the Russian Federation approved, by Decree No. 991 of 6 July 2020, the Regulation on the specific features of implementation of the contract for the carriage of passengers by air, including the right of the carrier to unilaterally modify the terms of such a contract or repudiate it, as well as on the manner and terms of the refund of the carriage charge paid for air carriage in case of a threat of occurrence and (or) the occurrence of particular emergencies, introduction of a high alert or emergency situation regime throughout the territory of the Russian Federation or its part.

The first paragraph of Item 6 and the first paragraph of Item 10 of the Regulation provide for the refund of money to the passenger at the expiration of 3 years from the flight departure date specified in the ticket, unless the money is used as payment for air carriage services (in particular, to other destinations of air carriage), additional services of the carrier.

The carrier's exercise of the right, stipulated in Article 107.2 of the Air Code of the Russian Federation, to repudiate the contract of air carriage and refund the carriage charge to the passenger in the manner and within the terms stipulated by the approved Decree of the Government of the Russian Federation on the specific features of implementation of the contract for the carriage of passengers by air does not indicate that a passenger's rights are violated, and therefore the carrier cannot be held liable in the form of payment of a penalty, compensation for moral harm or a fine.

Question 12: Does the provision of the second paragraph of Item 1 of Decree No. 423 apply to the forfeit recovered by virtue a court decision in accordance with Part 2 of Article 6 of Federal Law No. 214 of 30 December 2004 "On Participation in Shared Construction of Apartment Buildings and Other Real Estate Facilities and on Amendments to Certain Legislative Acts of the Russian Federation" (hereinafter – Law No. 214) for the future?

Answer: In accordance with Part 2 of Article 6 of Law No. 214, in case of violation of the term of transfer of a shared construction facility to a participant of shared construction, the developer shall pay a forfeit (penalty) to the participant of shared construction for each day of delay.

The second paragraph of Item 1 of Decree No. 423 stipulates that the period from 3 April 2020 to 1 January 2021 shall be excluded from the period of accrual of forfeits under contracts of shared construction as required by Part 2 of Article 6 of Law No. 214.

This moratorium applies to forfeits that were subject to accrual for the specified period of delay, regardless of whether a court awarded the forfeits up to the day of actual fulfilment of the obligation by the developer upon request of a participant of shared construction before or after the introduction of the moratorium.

As stated in Item 65 of Ruling of the Plenary Session of the Supreme Court of the Russian Federation No. 7 of 24 March 2016 "On Court Application of Certain Provisions of the Civil Code of the Russian Federation regarding Liability for Breach

of Obligations", when awarding the forfeit, the court, upon request of the plaintiff, specifies the sum of the forfeit in the operative part of the decision, calculated for the date of adoption of the decision and subject to recovery, and also specifies that such recovery shall continue until the moment of actual fulfilment of the obligation.

The sum of the forfeit charged following the adoption of the decision shall be calculated in the course of enforcement of the judicial act by the bailiff, and where stipulated in law – by other bodies, organizations, including treasury bodies, banks and other credit organizations, officials and citizens (Part 1 of Article 7, Article 8, Item 16 of Part 1 of Article 64 and Part 2 of Article 70 of the Law on Enforcement Procedure). In case of any ambiguity, the bailiff, other persons executing the judicial act may apply to court for clarifications regarding the execution, in particular as to what sum is subject to recovery from the debtor (Article 202 of the CPC RF, Article 179 of the ComPC RF).

In view of the above, if the court decision awards a forfeit, established by Part 2 of Article 6 of Law No. 214, payable up to the day of actual fulfilment of the obligation by the developer, the period from 3 April 2020 to 1 January 2021 is not to be included when calculating the amount of such a forfeit.

IV. Issues of Application of Tax and Levy Legislation

Question 13: Is the spread of the novel coronavirus infection a valid reason for non-fulfilment of the obligation to pay taxes within the time stipulated in law by a taxpayer – natural person, and are penalties for the period of delay subject to accrual in this case?

Answer: According to Item 1 of Article 3 of the Tax Code of the Russian Federation (hereinafter – the TC RF), every person must pay the legally established taxes and levies. The tax and levy legislation is based on the recognition of the universality and equality of taxation. The actual ability of the taxpayer to pay taxes is taken into account in the establishment of taxes.

By virtue of Sub-items 2 and 3 of Item 3 of Article 4 of the TC RF, in 2020, the Government of the Russian Federation is authorized to issue normative legal acts providing, from 1 January to 31 December 2020 (inclusive), for: the extension of deadlines for payment of taxes (advance payments of taxes) established by the Code (including those established by special tax regimes), for payment of levies, insurance contributions; the extension of deadlines for advance payments for transport tax,

corporate property tax and land tax, established by tax and levy legislation of the constituent entities of the Russian Federation and by normative legal acts of municipal entities regarding local taxes and levies.

In 2020, the top executive bodies of constituent entities of the Russian Federation are authorized to issue normative legal acts providing, from 1 January to 31 December 2020 (inclusive), for the extension of deadlines for payment of taxes established by special tax regimes referred to in Sub-items 1–3 and 5 of Item 2 of Article 18 of the TC RF, as well as for the extension of deadlines for payment of regional and local taxes (advance payments of taxes) and sales taxes established by the tax and levy legislation of constituent entities of the Russian Federation and normative legal acts of municipal entities regarding local taxes and levies, where these deadlines are not extended in accordance with Item 3 of said Article or Item 3 of the Article stipulates an earlier payment date (Item 4 of Article 4 of the TC RF).

The Government of the Russian Federation adopted Decree No. 409 of 2 April 2020 "On Measures Aimed at Ensuring Sustainable Economic Development", which extended, among other things, the deadlines for payment of taxes, levies and advance payments for a number of taxpayers – organizations and individual entrepreneurs.

It follows that if a normative legal act of a constituent entity of the Russian Federation or a normative legal act of a municipal entity does not establish other deadlines for payment of regional or local taxes and (or) advance payments for natural persons in 2020, they shall be payable within the period stipulated in the TC RF.

Herewith, a person claiming a change of the deadline for payment of a tax and (or) levy may file an application for deferral or payment in instalments and (or) apply for an investment tax credit (Item 3.1 of Article 61, Items 2 and 12 of Article 64 of the TC RF).

Based on Item 8 of Article 64 of the TC RF, after the decision to grant a deferral for the payment of tax (payment in instalments) enters into force, no penalty is accrued on the amount of the debt.

Thus, if a constituent entity of the Russian Federation or a municipal entity does not decide, by virtue of a normative legal act, to extend the deadlines for payment of taxes and (or) advance payments for taxpayers – natural persons, the spread of the novel coronavirus infection in itself does not constitute grounds for deferring the

deadline for the fulfilment of obligation to perform mandatory payments and for exempting from penalties for the corresponding period of delay.

Question 14: Does the mandatory pre-trial (administrative) procedure of dispute resolution established by the tax and levy legislation apply to claims related to challenging the refusal (failure to act) of tax bodies to provide subsidies to small and medium-sized businesses operating in the sectors of the Russian economy most affected by the deterioration of the situation due to the spread of the novel coronavirus infection (COVID-19)?

Answer: In accordance with Part 5 of Article 4 of the ComPC RF, economic disputes arising from administrative and other public legal relations may be submitted to the commercial court for resolution after compliance with the pre-trial dispute resolution procedure, if such a procedure is established in federal law.

By virtue of Item 2 of Article 138 of the TC RF, the mandatory pre-trial (administrative) dispute resolution procedure of filing a complaint to the higher tax body is established for claims on challenge of non-normative acts of tax bodies, actions or failure to act of their officials (with the exception of non-normative acts adopted following the consideration of complaints, appeals, non-normative acts of the federal executive body in charge of control and supervision in the sphere of taxes and levies, actions or failure to act of its officials).

By implication of provisions of Article 1 and Item 1 of Article 2 of the TC RF, this procedure applies where the tax bodies (their officials) adopt challenged acts and perform actions (fail to act) in exercising the powers stipulated in the tax and levy legislation.

The rules for granting subsidies from the federal budget in 2020 to small and medium-sized businesses operating in the sectors of the Russian economy most affected by the deterioration of the situation due to the spread of the novel coronavirus infection (as approved by Decree of the Government of the Russian Federation No. 576 of 24 April 2020) do not pertain to acts of the tax and levy legislation.

Thus, the mandatory pre-trial (administrative) procedure established by the tax and levy legislation for the resolution of disputes concerning claims of challenge of refusal of the tax bodies to grant subsidies, as well as the tax bodies' failure to act in regard of applications for subsidies for small and medium-sized businesses operating

in the sectors of the Russian economy most affected by the deterioration of the situation due to the spread of the novel coronavirus infection, is not applied.

V. Issues of Application of Criminal and Criminal Procedure Legislation

Question 15: Can citizens who are infected with COVID-19 or have been in contact with such persons be held criminally liable under Article 236 of the Criminal Code of the Russian Federation (hereinafter – the CrC RF) for violation of sanitary and epidemiological rules?

Answer: Law No. 52 imposes on citizens the duty to comply with requirements of the sanitary legislation, as well as the decrees and regulations of officials engaged in federal state sanitary and epidemiological supervision (Article 10). Such mandatory acts include, in particular, the decrees of the chief state sanitary physicians and their deputies regarding hospitalization for examination or regarding isolation of patients with infectious diseases posing a danger for the general public or of persons with suspected cases of such diseases, regarding hospitalization or isolation of citizens who have contacted patients with infectious diseases posing a danger for the general public.

If a citizen who is infected with COVID-19 or came in contact with such a person and is obliged, by virtue of a decree issued in her/his regard, to observe the sanitary and epidemiological rules, including certain restrictions, does not comply with them deliberately (violates the confinement regime, visits public places, uses public transport, etc. while knowing about her/his disease or contact with a diseased person), in the event of onset of socially dangerous consequences specified in the provisions of Parts 1–3 of Article 236 of the CrC RF, causally related to the violations of the sanitary and epidemiological rules, he/she shall be subject to criminal liability under the relevant Part of Article 236 of the CrC RF, and if such violations create a real threat of onset of consequences in the form of mass contagion of people – under Part 1 of that Article.

Question 16: Do clarifications provided in the answer to Question 16 of Review of Certain Issues of Judicial Practice pertaining to the Application of Legislation and Measures Aimed at Preventing the Spread of the Novel Coronavirus Infection (COVID-19) in the Russian Federation No. 2, as approved by the Presidium of the Supreme Court of the Russian Federation on 30 April 2020, regarding the right of the court to decide to conduct the entire trial using

videoconferencing systems in regard of each criminal case or material that requires urgent consideration remain relevant after 12 May 2020?

Answer: These clarifications remain relevant. In the context of application of restrictive measures aimed at preventing the spread of the novel coronavirus infection (COVID-19) on the territory of the Russian Federation, in order to ensure, among other things, the sanitary and epidemiological safety of participants of criminal proceedings, the court may decide to hold the entire trial with the use of videoconferencing systems in regard of each criminal case or material pertaining to issues of judicial control in pre-trial proceedings and the execution of a sentence that requires urgent consideration.

When making such a decision and taking into account that the list of criminal cases or materials requiring urgent consideration, set out in answers to Questions 17, 18 and 19 of said Review is not exhaustive, the court should specify the grounds on which the criminal case or the material is subject to urgent consideration in the ruling on the appointment of the court session and organize the consideration of this case (material) in compliance with fair trial requirements. In particular, the court should ensure, for both the defendant (including one who is not in custody but is participating in the trial through videoconferencing systems) and the victim, the opportunity to follow the course of the trial, see and hear the participants of the court session, ask them questions, be heard by the parties and the court; ensure the right of the defendant to competent legal assistance, including the possibility of communication between the defendant and her/his defence lawyer that is confidential, in the absence of other persons (e.g. via landline or cellular telephone service).

Question 17: Does the court have the right to consider the issue of selecting pre-trial custody as a pre-trial restriction measure during the high alert regime introduced in the constituent entity of the Russian Federation, having ensured that the suspect (accused) is able to participate in the court session with the use of videoconferencing systems?

Answer: If during the high alert regime introduced in the constituent entity of the Russian Federation the court recognizes a motion of the preliminary investigation body for the selection of pre-trial custody as requiring urgent consideration, such a motion may be considered by the court with the use of videoconferencing systems subject to the fair trial requirements set forth in the answer to Question 16 of Review of Certain Issues of Judicial Practice pertaining to the Application of Legislation and Measures Aimed at Preventing the Spread of the Novel Coronavirus Infection

(COVID-19) in the Russian Federation No. 2, as approved by the Presidium of the Supreme Court of the Russian Federation on 30 April 2020, and in the answer to Question 16 of this Review.

Question 18: May the court decide to consider a criminal case or material with the use of videoconferencing systems, if one or both parties object to that?

Answer: If one or both parties object to the consideration of a criminal case or material with the use of videoconferencing systems, this does not preclude the court from making such a decision. In this instance, determining the manner of holding the trial is within the exclusive competence of the court, which must proceed from the need to ensure the sanitary and epidemiological safety of the participants of criminal proceedings.

Question 19: During the high alert regime introduced in the constituent entity of the Russian Federation, where materials pertaining to issues of judicial control in pre-trial proceedings and the execution of a sentence are considered with the use of videoconferencing systems, is it possible to charge the court staff (a judge's assistant or a court session secretary) with verifying the applicant's identity at the location of the applicant, or is the judge the only one who may perform these actions, by analogy with Part 4 of Article 278.1 of the Criminal Procedure Code of the Russian Federation (hereinafter – the CrPC RF)?

Answer: Article 278.1 of the CrPC RF regulates the manner of examination of a witness with the use of videoconferencing systems when the court is considering a criminal case on the merits. In all other instances, the manner of conducting procedural actions with participation of persons via videoconferencing systems is determined by the court.

Taking into account that, in accordance with Part 2 of Article 244.1 and Part 2 of Article 245 of the CrPC RF, a judge's assistant or a court session secretary may perform other procedural actions not specified in those Articles, the judge of the court at the location of the applicant or another participant of consideration of the material may charge the judge's assistant or the court session secretary with verifying the identity of the applicant or another participant.

Question 20: In the context of application of restrictive measures aimed at the prevention of spread of the novel coronavirus infection (COVlD-19), can the need to ensure the sanitary and epidemiological safety of the court session

participants be recognized as the ground for holding a court session in a criminal case *in camera*?

Answer: Based on provisions of Item 4 of Part 2 of Article 241 of the CrPC RF in their interrelation with provisions of Part 3 of Article 11 of the CrPC RF, the court may decide to hold the trial in a criminal case *in camera*, if so required by the interests of ensuring the safety of the trial participants, of their close relatives, relatives or close ones, provided that there is sufficient information that the participants of criminal proceedings, as well as the persons listed above, are threatened with murder, violence, destruction or damage to their property, or other dangerous unlawful acts. Taking into account the above norms of criminal procedure law, the need to ensure the sanitary and epidemiological safety of court session participants cannot constitute grounds for holding a court session *in camera*.

VI. Issues of Application of Legislation on Administrative Offences

Question 21: Is it possible to re-qualify the actions (failure to act) of a person held administratively liable under Part 2 of Article 6.3 of the Code of the Russian Federation on Administrative Offences (hereinafter – the CAO RF) under Part 1 of Article 20.6.1 of the Code?

Answer: By virtue of Item 20 of Ruling of the Plenary Session of the Supreme Court of the Russian Federation No. 5 of 24 March 2005 (as amended on 19 December 2013) "On Certain Issues Encountered by the Courts in Application of the Code of the Russian Federation on Administrative Offences", the CAO RF refers the right of final legal qualification of a person's actions (failure to act) to the powers of the judge.

If during consideration of a case on an administrative offense it is established that the administrative offence report contains an incorrect qualification of the committed offense, the judge may re-qualify the actions (failure to act) of the person held administratively liable under a different Article (Part of Article) of the CAO RF, which establishes the elements of an offense with the same generic object of encroachment, in particular where the consideration of the case is referred to the competence of officials or non-judicial bodies, provided that the punishment imposed does not deteriorate the situation of the person, in whose regard the proceedings are being conducted.

The issue of re-qualification of actions (failure to act) of a person during review of a decree or decision in a case on an administrative offense can be resolved in the same manner.

As follows from the provisions of Part 1 of Article 20.6.1 of the CAO RF, it is a general rule in relation to Part 2 of Article 6.3 of the Code, which indicates the same generic object of encroachment in the elements of administrative offences stipulated in the specified norms, that object being the social relations in the sphere of public safety, including the sanitary and epidemiological well-being of the population, in particular the social relations in the sphere of prevention or elimination of threats to the lives and health of people.

The sanction of Part 1 of Article 20.6.1 of the CAO RF is less severe than the sanction of Part 2 of Article 6.3 of the CAO RF.

By virtue of Part 3 of Article 23.1 of the CAO RF, cases on administrative offenses stipulated in Part 2 of Article 6.3 and Article 20.6.1 of this Code are considered by judges of district courts.

Under such circumstances, if during the consideration of a case on an administrative offense stipulated in Part 2 of Article 6.3 of the CAO RF or a of an appeal against a decree in the case on such an administrative offense it is established that the action (failure to act) performed by a person constitutes the objective side (*actus reus*) of the elements of the administrative offense liability for which is established by Part 1 of Article 20.6.1 of the CAO RF, the following actions (failure to act) are subject to re-qualification.

Question 22: Are provisions of Part 2 of Article 1.7 of the CAO RF applicable in proceedings in cases on administrative offences stipulated in Article 20.6.1 of the CAO RF in case of cancellation of legal norms that establish the rules of conduct in case of introduction of the high alert regime in territories where there is a threat of an emergency or in the area of an emergency?

Answer: The Government of the Russian Federation establishes rules of conduct that are mandatory for citizens and organizations in case of introduction of the high alert or emergency situation regime (Decree of the Government of the Russian Federation No. 417 of 2 April 2020 “On Approval of Rules of Conduct, Mandatory for Citizens and Organizations in Case of Introduction of High Alert or Emergency Situation

Regime") (Sub-item "a.2" of Item "a" of Article 10 of Federal Law No. 68 of 21 December 1994 "On Protection of the Population and Territories against Natural and Human-Made Emergencies").

Public authorities of constituent entities of the Russian Federation adopt (pursuant to federal laws) laws and other normative legal acts in the sphere of protection of the population and territories against intermunicipal and regional emergencies, as well as rules of conduct that are mandatory for citizens and organizations in case of introduction of the high alert or emergency regime; taking into account the features of the emergency on the territory of a constituent entity of the Russian Federation or the features of the threat of its occurrence they may stipulate, subject to the rules of conduct established in accordance with Sub-item "a.2" of Item "a" of Article 10 of Federal Law No. 68 of 21 December 1994 "On Protection of the Population and Territories against Natural and Human-Made Emergencies", additional rules of conduct that are mandatory for citizens and organizations in case of introduction of the high alert or emergency regime (Sub-items "a", "y", "ф" of Item 1 of Article 11 of the aforementioned Federal Law).

Article 20.6.1 of the CAO RF establishes administrative liability for failure to comply with the above rules of conduct in an emergency situation or during the threat of its occurrence.

By virtue of Part 2 of Article 1.7 of the CAO RF, the law mitigating or abolishing administrative liability for an administrative offence or otherwise improving the situation of the person who committed an administrative offense has retroactive effect, i.e. applies to the person who committed an administrative offense prior to the entry of this law into force and in whose regard a decree on administrative punishment has not been executed.

When establishing administrative liability, depending on the nature of the protected social relations the legislator may differently design the elements of administrative offenses in full or in part, including such an element of an administrative offense as the objective side (*actus reus*), in particular by applying the blanket (reference) approach in formulating the norms for these purposes (rulings of the Constitutional Court of the Russian Federation No. 4 of 14 February 2013, No. 22 of 16 July 2015; decrees No. 122 of 21 April 2005, No. 2557 of 19 November 2015, etc.).

In turn, this means that the provisions of Part 2 of Article 1.7 of the CAO RF should be taken into account when introducing amendments not only into this Code and the

laws of constituent entities of the Russian Federation on administrative offenses adopted in accordance with it, but also into laws and other normative legal acts that establish rules and norms, the violation of which entails administrative liability (Decree of the Constitutional Court of the Russian Federation No. 2735 of 8 December 2015).

In view of the above, the cancellation of a normative legal act adopted by the authorized public authority of a constituent entity of the Russian Federation and containing rules of conduct that are mandatory for citizens and organizations in case of introduction of the high alert regime or the exclusion of certain legal norms stipulating particular rules of conduct from such an act constitute grounds for termination of proceedings in the case on an administrative offense stipulated in the corresponding Part of Article 20.6.1 of the CAO RF or annulment of a decree on administrative punishment adopted in the case on that offense, if it has not been executed (Item 5 of Part 1 of Article 24.5 of the Code).

Question 23: Is a foreign citizen or a stateless person subject to administrative liability under Part 3 of Article 20.25 of the CAO RF due to non-fulfilment of a decree on administrative punishment in the form of administrative expulsion from the Russian Federation by way of controlled independent departure from the Russian Federation, during the period stipulated in Order of the President of the Russian Federation No. 274 of 18 April 2020 "On Temporary Measures Aimed at Regulating the Legal Status of Foreign Citizens and Stateless Persons in the Russian Federation due to the Threat of Further Spread of the Novel Coronavirus Infection (COVID-19)", within which the time terms for controlled independent departure of foreign citizens and stateless persons from the Russian Federation are suspended?

Answer: Part 3 of Article 20.25 of the CAO RF stipulates administrative liability of foreign citizens or stateless persons for evading execution of an administrative punishment in the form of administrative expulsion from the Russian Federation by way of controlled independent departure from the Russian Federation.

In accordance with Part 6 of Article 32.10 of the CAO RF, a foreign citizen or a stateless person, upon whom an administrative punishment in the form of administrative expulsion from the Russian Federation by way of controlled independent departure from the Russian Federation is imposed, is required to leave the Russian Federation within five days from the date when a judge's ruling on the corresponding administrative punishment enters into force.

According to Sub-Item "c" of Item 1 of Order of the President of the Russian Federation No. 274 of 18 April 2020 (as amended by Order of the President of the Russian Federation No. 791 of 15 December 2020) "On Temporary Measures Aimed at Regulating the Legal Status of Foreign Citizens and Stateless Persons in the Russian Federation due to the Threat of Further Spread of the Novel Coronavirus Infection (COVID-19)", the time terms for voluntary departure from the Russian Federation, stipulated for foreign citizens and stateless persons in respect of whom decisions on administrative expulsion from the Russian Federation by way of controlled independent departure were adopted, are suspended from 15 March 2020 to 15 June 2021, inclusive of both dates.

Therefore, if the five-day period for execution, by a foreign citizen or a stateless person, of administrative punishment in the form of administrative expulsion from the Russian Federation by way of controlled independent departure from the Russian Federation, stipulated in Part 6 of Article 32.10 of the CAO RF, falls within the period from 15 March 2020 to 15 June 2021, inclusive, the term begins to run from 16 June 2021 (unless it will be stipulated differently by an Order of the President of the Russian Federation); this excludes the possibility of holding said subjects administratively liable under Part 3 of Article 20.25 of the CAO RF within the aforementioned period.

It should also be taken into account that if the ruling appointing the administrative punishment in the form of administrative expulsion from the Russian Federation by way of controlled independent departure from the Russian Federation entered into force before 15 March 2020, and the five-day term stipulated in Part 6 of Article 32.10 of the CAO RF began to run, but has not expired before the specified date, the term is suspended for the period established by the Order of the President of the Russian Federation. Herewith, the term will continue to run from 16 June 2021 (unless it will be stipulated differently by an Order of the President of the Russian Federation).

Question 24: May a judge return the report on an administrative offense stipulated in Part 2 of Article 6.3 of the CAO RF or Part 1 of Article 20.6.1 of the CAO RF, as well as other case materials, to the body or official that drew up the report, if there is no information in the case materials allowing to identify the natural person who committed the offense?

Answer: In accordance with Item 2 of Article 26.1 of the CAO RF, the identification of the person that committed the offence (failed to act), for which administrative liability is stipulated in the CAO RF, is part of the facts at issue and one of the circumstances subject to ascertainment in the case on an administrative offense. Herewith, the details of the person in whose regard the proceedings are conducted are indicated both in the report (Part 2 of Article 28.2 of the CAO RF) and in the ruling in the case on an administrative offence (Item 3 of Part 1 of Article 29.10 of the CAO RF).

When preparing the case for consideration, the judge must establish whether the administrative offense report was drawn up correctly in terms of completeness of study of the event of offence and completeness of information about the offender, as well as whether the procedure of drawing up the report was complied with.

The lack of data expressly listed in Part 2 of Article 28.2 of the CAO RF and of other information, depending on its significance for the particular case on an administrative offense, constitutes a significant defect of the protocol.

In view of the above, the administrative offense report must contain information that makes it possible to identify the person against whom the case on the administrative offense was initiated, in particular the family name, first name, patronymic (if any), date and place of birth, sex, citizenship.

In case of absence of the specified information in the case materials, the judge, guided by Item 4 of Part 1 of Article 29.4 of the CAO RF, returns the report regarding the administrative offense stipulated in Part 2 of Article 6.3 of the CAO RF or Part 1 of Article 20.6.1 of the CAO RF and committed by a natural person along with the other case materials to the body or official that drew up the report.

Question 25: Does the absence of data about the unique accrual identifier in the protocol or in the materials attached thereto constitute grounds for the judge to return the report regarding the administrative offense stipulated in Articles 6.3, 20.6.1 of the CAO RF, as well as other case materials, to the body or official that drew up the report, in accordance with Item 4 of Part 1 of Article 29.4 of the CAO RF?

Answer: In accordance with Item 4 of Part 1 of Article 29.4 of the CAO RF, when preparing for consideration of the case on an administrative offense, the judge returns the administrative offense report and other case materials to the body or official who

drew up the report, if the report and other case materials were completed by unauthorized persons, in improper manner, or if the submitted materials are incomplete, which cannot be remedied during the consideration of the case.

The requirements to the contents of the ruling in a case on an administrative offense are stipulated in Article 29.10 of the CAO RF.

If an administrative fine is imposed, the ruling in the case on an administrative offense must contain the information required in accordance with the rules for filling out payment documents for transfer of the amount of the administrative fine, as stipulated in legislation of the Russian Federation on the national payment system (Part 1.1 of Article 29.10 of the CAO RF).

The unique accrual identifier is included into such information by Rules for specifying information in the details of orders for the transfer of money as payment to the budgetary system of the Russian Federation, approved by Order of the Ministry of Finance of the Russian Federation No. 107н of 12 November 2013.

Due to the fact that such information as the unique accrual identifier cannot affect the correctness of resolution of the case on an administrative offence and can be completed during the consideration of the case by the judge, the absence of such information in the report on an administrative offence stipulated in Articles 6.3, 20.6.1 of the CAO RF and in other materials of the case does not constitute grounds for them to be returned to the body or official that drew up the report.

Question 26: If individual sanitary and epidemiological measures aimed at preventing the spread of the novel coronavirus infection (COVID-19) (hereinafter – individual measures) are taken in regard of a defence lawyer of a person in whose regard proceedings are conducted in a case on an administrative offense, and this person motions for the consideration of the case to be postponed, as her/his defence lawyer is not able to participate in the court session, does this constitute grounds for postponing the consideration of the case?

Answer: The CAO RF provides the person, in respect of whom proceedings are conducted in a case on an administrative offense, with the opportunity to employ legal assistance of a defence lawyer, who can participate in such proceedings from the moment of initiation of the case on an administrative offense and exercise

procedural rights in accordance with the Code (Part 1 of Article 25.1, Parts 1, 4 and 5 of Article 25.5 of the CAO RF).

In accordance with Article 24.4 of the CAO RF, persons participating in proceedings in a case on an administrative offense have the right to file motions.

The judge handling the case is obliged to consider motions filed by the participants of proceedings in a case on an administrative offense; this does not, however, imply that the judge is obliged to satisfy the motions (Part 1 of Article 24.4 of the CAO RF).

When considering the motion of the person, in whose regard proceedings are conducted, for postponing the consideration of the case, as her/his defence lawyer is not able to participate in the court session due to individual measures, the judge handling the case on the administrative offense should take into account the need for comprehensive, full, objective and timely ascertainment of the facts of every case, the need to observe the rights of said person as stipulated in Part 1 of Article 25.1 of the CAO RF (Article 24.1 and 24.4 of the CAO RF), in particular should clarify it to the person, in whose regard proceedings are conducted, her/his right to draw another defence lawyer to participation in the case on the administrative offense.

When considering the motion for postponement of consideration of the case, the judge should take into account the facts of unfair use of procedural rights by the participants of proceedings in the case on the administrative offense.

ANNEX

Translation of certain applicable articles
of the Code of the Russian Federation on Administrative Offences (CAO RF)
and of the Criminal Code of the Russian Federation (CrC RF)

CAO RF

Article 6.3. Violation of Legislation Ensuring the Sanitary and Epidemiological Well-Being of the Population

1. Violation of legislation ensuring the sanitary and epidemiological well-being of the population in the form of violation of effective sanitary rules and hygienic standards, failure to comply with sanitary-hygienic measures and epidemic countermeasures, -
is punished by a warning or an administrative fine in the amount of 100 to 500 rubles for citizens; 500 to 1000 rubles for officials; administrative fine in the amount of 500 to 1000 rubles or administrative halt of activities for a term up to 90 days for persons engaged in entrepreneurial activities without forming a legal person; 10 000 to 20 000 rubles or administrative halt of activities for a term up to 90 days for legal persons.

2. The same actions (failure to act) performed during an emergency situation regime, or in case of danger of spread of a disease posing a danger to the public, or during implementation of restrictive measures (quarantine) on the corresponding territory, or failure to carry out, within the stipulated term, a lawful instruction (decree) or request issued by the body (official) in charge of federal state sanitary and epidemiological supervision, regarding the implementation of sanitary-epidemiological (preventive) measures -
are punished by an administrative fine in the amount of 15 000 to 40 000 rubles for citizens; 50 000 to 150 000 rubles for officials; administrative fine in the amount of 50 000 to 150 000 rubles or administrative halt of activities for a term up to 90 days for persons engaged in entrepreneurial activities without forming a legal person; 200 000 to 500 000 rubles or administrative halt of activities for a term up to 90 days for legal persons.

3. Actions (failure to act) stipulated in Part 2 of this Article, where they entail harm to the health of a person or death of a person, unless these actions (failure to act) contain a criminal offence, -
are punished by an administrative fine in the amount of 150 000 to 300 000 rubles for citizens; 300 000 to 500 000 rubles or disqualification for a term of 1 to 3 years for

officials; administrative fine in the amount of 500 000 to 1 000 000 rubles or administrative halt of activities for a term up to 90 days for persons engaged in entrepreneurial activities without forming a legal person; 500 000 to 1 000 000 rubles or administrative halt of activities for a term up to 90 days for legal persons.

Article 20.6.1. Failure to Comply with Rules of Conduct in an Emergency or During Threat of Its Occurrence

1. Failure to comply with rules of conduct when a high alert regime is introduced on a territory where there is a danger of occurrence of an emergency, or in an emergency situation zone, except when Part 2 of Article 6.3 of this Code applies, -
is punished by a warning or an administrative fine in the amount of 1 000 to 30 000 rubles for citizens; 10 000 to 50 000 rubles for officials; 30 000 to 50 000 rubles for persons engaged in entrepreneurial activities without forming a legal person; 100 000 to 300 000 rubles for legal persons.

2. Actions (failure to act) stipulated in Part 1 of this Article, where they entail harm to the health of a person or to property, except where Part 3 of Article 6.3 of this Code applies, unless these actions (failure to act) contain a criminal offence, or repeated perpetration of an administrative offence stipulated in Part 1 of this Article -
are punished by an administrative fine in the amount of 15 000 to 50 000 rubles for citizens; 300 000 to 500 000 rubles or disqualification for a term of 1 to 3 years for officials; administrative fine in the amount of 500 000 to 1 000 000 rubles or administrative halt of activities for a term up to 90 days for persons engaged in entrepreneurial activities without forming a legal person; 500 000 to 1 000 000 rubles or administrative halt of activities for a term up to 90 days for legal persons.

CrC RF

Article 236. Violation of Sanitary and Epidemiological Rules

1. Violation of sanitary and epidemiological rules, where this entails, through negligence, mass contagion or poisoning of people, or creates a danger of such consequences, -
is punished by a fine in the amount of 500 000 to 700 000 rubles or in the amount of salary or other income of the convicted person for a period of 1 year to 18 months, or by deprivation of right to hold a certain office or engage in certain activities for a

term of 1 to 3 years, or by restriction of liberty for a term up to 2 years, or by compulsory labour for a term up to 2 years, or by deprivation of liberty for the same term.

2. Violation of sanitary and epidemiological rules, where this entails, through negligence, death of a person, -
is punished by a fine in the amount of 1 000 000 to 2 000 000 rubles or in the amount of salary or other income of the convicted person for a period of 1 to 3 years, or by restriction of liberty for a term of 2 to 4 years, or by compulsory labour for a term of 3 to 5 years, or by deprivation of liberty for the same term.

3. Violation of sanitary and epidemiological rules, where this entails, through negligence, death of two or more persons, -
is punished by compulsory labour for a term of 4 to 5 years or by deprivation of liberty for a term of 5 to 7 years.

DISCLAIMER

This publication is made for information purposes only.
It does not constitute the official texts of the Review and the Codes.
In order to consult the authoritative versions,
please turn to the original texts of the documents in the Russian language.