Administrative Legal Proceedings in the Russian Federation: The Concept and Essence

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Abstract: The issues related to administrative legal proceedings are considered in publications with ever increasing frequency that is caused by the implementation of administrative reform in Russia. Questions about the concept, nature and location of the proceedings in the legal system of the Russian Federation are very controversial, both in terms of science and the practice. Problems in the concerned field of legal regulation have attracted the attention of Russian scientists-processualists as long ago as the XIX century. In the Soviet period, the term "administrative justice" was widely used. Today, the legal doctrine of the Russian Federation offers a variety of approaches to understand the essence of the administrative legal proceedings. In particular, certain group of scientists defines it in terms of the bodies authorized to resolve disputes of individuals and organizations with the authorities, the other one defines in terms of administration control of the authorized bodies and the third group suggests considering the concept of "administrative justice" in a broad and the narrow sense. Differences in attitudes and ambiguous understanding of this concept in the legal literature is related to the variety of its particular diversities, which derived due to historical, socio-economic and political factors in each country.

Key words: Administrative legal proceedings • Cases arising from public legal relationships • Administrative justice

INTRODUCTION

Discussion on the concept of administrative legal proceedings and the problem of protecting the rights and interests of individuals and organizations against the lawlessness of authorities is widely practiced in legal science. In the foreign literature, different viewpoints on various aspects of the legal regulation of the cases arising from public legal relationships are considered [1-15].

In Russia, research in this field was carried out by A.T. Bonner, M.D. Zagryatskov, S.A. Korf, I.V. Panova, N.G. Salishcheva, Yu.V. Svyatokhina, V.V. Skitovich, Yu.N. Starilov, Yu.A. Tikhomirov, N.Yu. Khameyeva, D.M. Chechot and others [16-21]. In the scientific literature, both the Soviet and post-Soviet periods, lawyers operate with quite diverse terms related to the processing of court cases arising from public legal relationships ("administrative justice", "administrative process", "administrative legal proceedings", "administrative action", etc.). However, many authors use their own approach to the definition of the categories that often leads to a variety of conflicting opinions and a lack of a unified scientific concept.

Due to the fact that the term "administrative justice" is of an aggregative character, it is differently treated by scientists, so the theoretical conclusions and suggestions for improving legislation are often mutually exclusive.

Thus, a group of scientists comes up with the definition of the legal institution in terms of the bodies, authorized to resolve disputes of individuals and organizations with the authorities. However, some of them consider administration bodies to be directly administration justice (I.T.Tarasov and V.V. Ivanovsky) [22, 23], while others understand it as a special procedural order to address and resolve in court disputes arising in the field of management in connection with the activities of various government agencies (M.D. Zagryatskov, N.I. Lazarevsky, D.M.Chechot, etc.) [24-26]. D.M. Chechot notes that this concept connects two phenomena various in their nature-"administration" and "justice". Translated
from the Latin, "administration" means the management, leadership (in terms of the nature of activities), whereas in relation to relevant bodies and individuals it is considered to be executive and administrative bodies of government administration and their executive officers. Justice (justitia) is the legality, fairness, right and from the viewpoint of the bodies executing justice, it is the system of judicial institutions, i.e. judicial establishment. There are differences between governance and justice, both in the nature of the activities and in external forms of its manifestation. Peculiarity is that the administration cannot be separated from the state machinery and the lower-level administrative bodies are subjected to the higher bodies.

At that, administrative bodies, having a broad variety of competencies, not necessarily are engaged in the resolution of law problems. Moreover, not all of their actions are taken in the procedural form. On the contrary, the main and the only issue of the judicial bodies is the application of law to the legal facts established in the judicial process. These judicial bodies are formed via a specific procedure and conduct their activities in a fixed form of action [27].

The second group of jurists defines the concept of administrative justice as carrying out the monitoring of management (i.e. monitoring the management actions of the executive authorities and their officials, as well as state and municipal officials) by authorized bodies [28, 29]. We believe that such a narrow understanding of the concept nature does not allow one to explain the essence of the judicial (in civil process) defense of the rights and legitimate interests of individuals in their relations with the authorities.

Spectrum of participants of public legal relationships includes not only administrative, but also other bodies. For example, according to the Legal Resolution of the Plenum of the Supreme Court of February 10, 2009 # 2 "On the practice of court cases challenging the decisions, actions (inaction) of state authorities, local self-government bodies, officials and state and municipal officers" (hereinafter-Legal Resolution of the Plenum of the Supreme Court of February 10, 2009 # 2) it may include also the representative (legislative) body of the Russian Federation, the representative body of the municipal entity, qualification board of judges, draft committees, etc. [30].

A third approach, offered by a number of authors, consists in consideration of the "administrative justice" concept in the broad and narrow sense. In a broad sense, it is a justice which is administered based on complaints of individuals concerning the legitimacy of the government bodies and public officials, including the claims of individuals to the executive authorities concerning re-employment, recovery of damage caused by the illegal actions of state bodies, etc. In a narrow sense, the "administration justice" is the resolution by courts of complaints incoming from individuals against the certain acts of officials and governing bodies [31].

There are other points of view. For example, according to V.V. Sazhina, there is a merger of two closely related but not identical concepts of "administrative justice" and "justice in administrative cases", distinguished above all, depending on how an individual can implement his or her right on consideration of the administrative complaint [32].

Ambiguous understanding of the administrative justice concept essence in the legal literature is related to the variety of its particular diversities, which derived due to historical, socio-economic and political factors in each country.

In the Western Europe countries and the U.S., two main systems in the organization of administrative justice have developed. In Prussia and other German states, as well as in France, Spain and Portugal, a model, in which the public law issues were transferred to the special administrative and judicial boards (the doctrine of administrative courts), has gained widespread acceptance. The main feature of these courts consists in their limited competence by administrative matters. At that, for example, French law exempts from judicial review a variety of administrative acts, since government regulations, as well as purely administrative decisions that are appealed only if they cause direct harm to specific individuals, can not serve as the subject of legal proceedings. The second system of administrative justice implies subjection of public law problems to courts of general jurisdiction, which are authorized for the control over administrative acts. Such a system was formed in England, the North American States, Switzerland, Denmark, Norway and Belgium and was called "the doctrine of common justice". However, the jurisdiction of the courts in regard to checking the legality of government bodies’ actions is limited [33-35]. For example, in the United States, according to the Federal Act of 1946 regarding the "Administrative Procedure", production before the court of general jurisdiction is not allowed, if the law provides another procedure for processing of complaints [36].

It should be noted that in addition to the above mentioned conventional models of administrative justice, there are mixed systems in which part of the administrative
disputes are considered by courts of general jurisdiction and some are regarded by quasi-judicial specialized agencies (the Netherlands). Despite the diversity of organizational legal forms, all existing systems in the world are combined by the main goal consisting in implementation of judicial control over the legality of acts of a public authority in relation to individuals who do not have public powers of authority.

Russia did not take fully any of the administrative justice models that exist in the U.S. and Europe. At that, the Russian judicial institution has some features in common with those of the U.S. and Britain. In particular, the cases challenging the decisions, actions (inaction) of government bodies, certain cases on the revision of judgments and decisions of administrative liability (Section 30 of the Administrative Code of the Russian Federation) and other cases, arising out of public legal relationships, are referred by applicable legislation to the jurisdiction of the regular courts. However, there are no specialized courts of justices and the category of other authorized bodies...some cases of administrative actions. The discussions in this area are still only of theoretical nature.

From our point of view, the general definition of administrative justice can be given, first, based on the approach proposed by D.M. Chechot (analysis of justice and control attributes) and secondly, in view of the above considered models of administrative justice in foreign countries. On this basis, the nature of this institution consists in activities of the court to resolve disputes in courts of general jurisdiction and arbitration courts in the field of public law. With this understanding of administrative justice, it is nothing else as the legal proceedings. In the Ozhegov Russian Dictionary, the term "legal proceedings" is defined by N.Yu. Shvedova as the case examination carried out in the court [37]. Following the etymology of the word, the "administrative proceedings" is a due course of law order of excitation, preparation, review and resolution of administrative cases by the courts. This viewpoint was confirmed in legal science. In particular, according to the V.D. Sorokin, "administrative proceedings" is a judicial process, because it is carried out not by the executive authority, but by the court [38].

It should be noted that in the Russian legislation, the term "administrative justice" is not found in any of the normative legal acts. In contrast, the concept of "administrative proceedings" is used, for example, in Art. 118 of the Russian Federation Constitution, Art. 29 of the Arbitration Procedure Code of RF, Part 1, Art. 4 of the Federal Constitutional Law "On the courts of general jurisdiction in the Russian Federation", Part 1 and Art. 6 of the Federal Law "On Advocacy and Practice of Law in the Russian Federation" [39].

The Russian Constitutional Court in its findings of late 90's actually had in mind that the activities of arbitration courts and courts of general jurisdiction, on consideration of disputes with authorities is the administrative proceedings. Thus, in the Regulation of 12.05.98 # 14-P it is stated that in cases related to the imposition to administrative sanctions, the proceedings should be of administrative character irrespective of whether it is a court of general jurisdiction or arbitration court [40]. According to the Resolution of 28.05.99 # 9-P "within the frameworks of the implementation of the administrative proceedings, courts (judges) are vested authority for consideration of cases on administrative offenses and bringing to administrative responsibility, as well as for control the legality and validity of resolutions on administrative penalties handed down by other authorized bodies...some cases of administrative offenses (for example, related to tax, committed by individuals engaged in entrepreneurial activities without forming a legal entity) are considered by courts of arbitration under the rules of the Arbitration Procedure Code of the Russian Federation" [41]. In the Resolution of 16.06.98 # 19-P it is stated that the Russian Constitution does not exclude "the right of the legislator to envisage specifically the implementation of credentials by the courts of general jurisdiction and arbitration courts in accordance with administrative legal proceedings in order to verify compliance...of the normative acts which are below the level of the federal law, to an act having greater legal force, except the Constitution of the Russian Federation" [42]. In further resolutions adopted later, the Constitutional Court of the Russian Federation follows a similar legal position [43, 44].

Undoubtedly, in the resolution of legal conflicts of individuals and organizations with the executive power, as well as in cases of administrative offenses, we are talking not about civil proceedings, but about administrative proceedings, which in the Russian Federation are currently being implemented by the courts of general jurisdiction and arbitration courts. As a feature that allows one to distinguish between these two types of proceedings, E.N. Renov suggests consider the nature of common-law practice used by the courts. Accordingly, when resolving cases on the basis of administrative and procedural rules, it comes to administrative proceedings and when resolving cases based on the Civil Practice Act of the Russian Federation, it comes to civil proceedings.
We believe that under the current circumstances in relation to the legal regulation of cases arising out of public legal relationships, this criterion is not of primary importance. Currently, in the Russian Federation there are three codes, each defining the judgment features of above-mentioned cases; these are Code of Civil Procedure (CCP), Arbitration Procedure Code (APC) and Administrative Violations Code (AVC). In addition, at the legislative level, there is no final decision taken concerning the rules of procedure to be applied to lawsuits with the bodies, which in accordance with the provisions of the Administrative Violations Code are entitled to bring one to legal liability.

Hence, the criterion proposed by E.N. Renov is important, though not sufficient to be used when distinguishing between administrative and civil proceedings. It is therefore necessary to supplement this criterion with another one by identifying a body that is empowered to resolve cases arising out of public legal relationships.

**CONCLUSION**

Given the inconsistency of the term "administrative justice" that emerged in the Russian legal regulation (securing legal process of resolving cases arising out of public legal relationships), as well as within the meaning of Art. 118 of the RF Constitution and the legal views of the Constitutional Court of the Russian Federation, at present it is appropriate to use in juridical terminology the term "administrative proceedings" as the most relevant to the applicable legislation. The word "administrative" indicates the presence of a power entity in the disputed situation.

**REFERENCES**

30. Provision of the Plenum of the Supreme Court on February 10, 2009 No. 2 "On the practice of court cases challenging the decisions, actions (inaction) of state authorities, local self-government officials, state and municipal employees". Bulletin of the Supreme Court of RF, 4: 7.
40. Decision of the Constitutional Court of the Russian Federation of 12.05.98 No.14-P "In the case on the constitutionality of certain provisions of the sixth paragraph of Article 6 and the second paragraph of Section 1, Clause 7 of the Law of Russian Federation" On the use of cash registers in the implementation of monetary settlements with the population” in connection with the request of Dmitrov District Court of Moscow region and citizens' complaints”. Legal Reference System Consultant Plus.
43. Decision of the Constitutional Court from 16.07.2004 No. 15-P "In the case on the constitutionality of section 5 of the Clause 59 of the Arbitration Procedural Code of the Russian Federation in connection with the needs of the State Assembly-Kurultai of the Republic of Bashkortostan, the Governor of the Yaroslavl region, the Arbitration Court of the Krasnoyarsk region, complaints of several organizations and citizens". Legal Reference System Consultant Plus.