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Administrative and jurisdictional activity: the issues of concept and content

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The subject. The article defines the modern content of the following concept: administrative procedure, administrative jurisdiction.

The purpose of the study is to identify the correlation between the concepts of administrative procedure and administrative jurisdiction.

The methodology includes methods of complex analysis and synthesis of the Russian legislation and scientific sources, as well as formal-logical and formal-legal methods.

The main results and scope of application. The administrative process and administrative procedures are not regulated properly nowadays . The results of scientific research indicate a discrepancy in the interpretation of the concept of "administrative process". An administrative process consists of management and administrative jurisdiction (proceedings).

Process and production correlate as general and special phenomena.

The administrative process, which manifests itself specifically in various types of administrative proceedings, is a set of consistently performed procedural actions, which are performed at certain stages during the consideration of individual specific cases by the competent authorities.

Administrative jurisdiction in the broad sense may be understood as totality of the powers of state or municipal bodies, established by the law or other normative legal acts, to regulate social relations, to assess the legality of actions of a person, to resolve legal disputes and to consider cases on administrative offences, to carry out other legally significant actions.

Conclusions. Administrative jurisdictional activity (public, regulatory, regulative, enforcement), is connected with the solution of legal disputes. It is based on the law and is clearly regulated by it, it is carried out by special bodies, it’s result is the regulation of public relations and imposing administrative responsibility to the offenders.

Key words: law, public law, administrative law, administrative procedure, administrative jurisdiction, jurisdiction, jurisdictional activities

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1. Introduction

It should be noted that the problem of the definition of adminisrative-jurisdictional activity has not yet been solved in both theoretical and legislative versions. Analysis of the scientific literature shows scientific debate on this topic [1; 2].

It is important to emphasize that para. “k” of part 1 Art.72 of the Constitution of the Russian Federation attributed administrative procedure and administrative legislation to the joint jurisdiction of both the Russian Federation and its subjects, but the debate on the matter and ignoring administrative procedural law is still on [2, p. 27; 3].

In addition to the indicated question, there are other issues in the theory of law, the answers to which have not yet been found. V.D. Sorokin reasonably noted that the formation of scientific ideas about the essence of the procedure as a fundamental legal category occurred on the basis of actually existing civil and criminal procedures. It is no accident that the main distinguishing feature of these types of procedure is their jurisdictional nature: the resolution of the dispute over the law (civil process) and the use of coercion (criminal procedure) [2, p. 143]. Recently, the interest of Russian jurists to other types of process has become noticeably increasing to other kinds of procedure, and namely, legislative, constitutional, especially administrative procedure. The authors rightly ask questions: "Should we" design "it in the image and likeness of" grandparents" - civil and criminal procedures? What should we do with budget procedure [2, p. 141]? Is the proceedings for administrative offenses administrative process? Are the legal norms contained in the Code of the Russian Federation on Administrative Offenses and the Arbitration Procedural Code of the Russian also included in the administrative and procedural legislation of Russia? [3, p. 12]».

2. The definition of the administrative procedure and its main features

The administrative process and its components are not yet adequately provided with due legal regulation [2, p. 142; 3, p. 12; 4, p. 3].

The development of ideas about the administrative process led to the formulation of two equal concepts - jurisdictional and managing n cal, which is based on the monographs: N.G. Salishcheva "Administrative Procedure in the USSR" [1] and V.D. Sorokin's "Problems of Editing and administrative process" [5]. The most recently supporters of the management concept are: C.I. Studenikin, G.I. Petrov, V.M. Manohin, A.E. Lunev, B.M. Lazarev, A.P. Alyokhin, D.N. Bakhrakh, Yu.M. Kozlov, A.P. Korenev [6, p. 43; 7, p. 44-45], the essence of which is that the administrative procedure law is attribute only to translational jurisdiction, but also so-called positive activity of state authorities [8; 9] . Some scholars consider the administrative procedure as all acts done and executive org us (officials) for the implementation of the assigned tasks and functions. It is impossible not to agree with the conclusion about that is unlikely to individual cases of n are positive nature do not require procedural regulation [2, p. 176]. At the same time, according to N.G. Salishcheva, such

"procedural expansion" in the region and with the plenipotentiary power, in essence, belittles the organizational and creative role of substantive law and creates an explicit primacy of procedural law [1, p. 18]. Professor Yu.N. Starilov supposed that the administrative procedure is a system of administrative and legal procedural rules regulating the procedure for consideration by a court (judges) of administrative cases and disputes arising out of administrative legal relations. Law enforcement, is not related to the administrative process, the main meaning of administrative and procedural activity is administrative proceedings [3, p. 12]. B.N. Gabrichidze includes not only judges, but also quasi-judicial bodies which hear cases brought under the claims of citizens whose rights and freedoms have been violated [11, p. 267].

YU.N. Starilov reasonably believes: " scientists finally have to agree on the terms and in the administrative process and related relationships. It is advisable to answer the question if administrative procedure blowing types of procedural gosudars t-governmental activity:

1) justice in administrative matters;

2) proceedings in cases of administrative offenses;

3) numerous production facilities, in within the framework of which a normatively established procedural (or even procedural) admin and strenuous activity is carried out (the activities of special bodies and officials considering and resolving administrative matters, problems, disputes, conflicts), and also activities that are aimed at the realization of many substantive norms of both administrative and other branches of law. From a traditional point of view, all these types of administrative activities are considered to be an administrative process " [3, p. 22]. The author successfully points out that even with such an approach to elucidate the essence of administrative process and there are many ambiguities and misunderstandings, and the most important of which are questions: "Why do you need so much broadly define the same term? What are the benefits to before were lent to the theory and practice of such a solution to the issue of an administrative prospect of assignment?"[3, p. 22].

We believe that a proper understanding of this phenomenon proceeds from the fact that, since the proceedings - the concept generic, exist according to Art.118 of the Constitution of the Russian Federation its types: constitutional, criminal, civil, administrative.

B.N. Gabrichidze understands this term as administrative justice, including the quasi-judicial bodies and management, etc. of the process of [11, p. 267]. A narrow point of view is held by M.I. Maslennikov, N.G. Salishcheva and others, in their plural is primarily administrative-jurisdictional activity (administrative and jurisdictional process) [1, p. 16; 14, p. 26]. P.I. Kononov believes that the concept of "administrative procedure" covers only activities in respect of individual natural and legal persons who are not not subordinated to these bodies [15, p. 47-49]. N.P. Parigin and other authors include administrative procedure and the activities of the executive activities of these bodies, particular efforts to resolve cases of disciplinary offenses of the encouragement of employees of the internal affairs bodies (in the case of extensive production) [16, p. 43; 17, p. 255-260; 2, p. 526-530; 4, p.

27]. Some authors believe that the structure of administrative procedure includes the following kinds of it: administrative, normative, administrative protection [15, p. 72]. The widest view is held by V.D. Sorokin, Yu.M. Kozlov, A.P. Alekhin, YA Tikhomirov, considering that the administrative process is all the activities of the executive [2; 19; 20].

As a result, on the basis of existing fixed points of view in legal literature the administrative process includes administrative procedure and administrative justice. In our view, this conclusion is convincing enough and is proved in numerous works of scientists such as D.N. Bakhrakh, B.N. Gabrichidze, P.I. Kononov, S.N. Makhina, I.V. Panova, M.D. Sorokin and others [2; 10; 21, p. 14] In view of the recognition of a relative with police law, improving the legal framework of the activity and its codification in the framework of the further development of the administrative process [22].

3. The notion of administrative jurisdiction.

The concept of administrative jurisdiction does not have legal fixation. The Code of Administrative Offenses, other regulations and to the max, in including the Russian Ministry of Internal Affairs, there is no clear and unambiguous definition yet. Such pos e of the characteristic of the theory of administrative law: there is no unity among the scholars in their views on the understanding of the legal phenomenon. The analysis of scientific literature makes it possible to highlight the most important points of view on this issue.

Administrative jurisdiction has all the marks discussed, etc. and administrative process that unites it with other kinds of legal and valid in law and the jurisdiction of the process. A.P. Shergin notes that its legal nature is determined by two circumstances: on the one hand, it is an integral part of the executive and administrative activities of government, and from other - in one of the rows and jurisdiction [24, p. 29-30].

A similar view is followed by D.N. Bakhrakh, believing that administrative jurisdiction is "the jurisdictional activity of administrative bodies on the basis of administrative procedural norms. This is not justice" [25, p. 10].

It is pertinent to note that most researchers consider this type of state activity as an independent law enforcement type. For example, A.P. Korenev, under the administrative jurisdiction of the internal affairs agencies, understood the part of the administrative activities of the internal affairs bodies for reviewing and resolving cases of administrative violations, and and to resolve complaints gras w given [17, c. 22] . Of interest is the position of Yu. N. Starilov: criticizing the unified legal regulation of various types of activities, he believes that the proceedings for administrative offenses are of a contradictory nature. On the one hand, it includes justice in administrative cases with the help of the judiciary, and the other - the administrative and jurisdictional activity watching cases of offenses [3, p. 22].

However, in the legal literature there is also a slightly different approach to this definition. Some authors believe that administrative jurisdiction takes place when the subject of actions of the executive authorities (their officials) is a specific administrative and legal dispute. For example, Yu.M. Kozlov, L.L. Popov and P. I. Kononov determine the administrative jurisdiction as an administrative and proce-

dural activities carried out extrajudicial claim of a row in order to address and resolve the legal and administrative disputes and application of administrative coercive measures [15, p. 32; 27, p. 52]. A.P. Alekhin and N. Yu Hamaneva, supporting this view point out that in a jurisdictional sense, specific disputes arising in the sphere of state administration between parties regulated by administrative and legal norms of administrative legal relations arise from their source. This controversy arises legal disputes [19, p. 259; 28, p. 5].

It must be emphasized that in this case the administrative jurisdiction exercised in connection with the commission of administrative prostu n Cove will be a part of the administrative jurisdiction, understood as the "executive and administrative activities on the application of regulatory requirements established by the state to the individual cases, the resolution of the conflict of legal situations in the lyrics in the case of a dispute about the right or violation of the rules established by law " [29, p. 16].

However, as already noted, in most reference publications of the 30-80-ies . XX century. and the modern period under the jurisdiction also understand so camping is not the kind of state activity, and justice, jurisdiction allowed e Mykh cases podvedoms t vennost, authority to resolve cases and to impose sanctions, the scope of relations, which is subject to these powers, the circle is full of mochy state body legal assessment of specific facts [29, p. 414; 30, p. 972; 31, p. 672].

Some authors consider that the administrative jurisdiction - it is the jurisdiction and competence to implement and self realization pravopr and menitelnoy, enforcement of public-power, quasi-judicial review activities and resolution of legal disputes (conflicts) and cases of administrative offenses by state bodies and local self-government e Nia [32, p. 7].

We believe that such a definition does not fully reflect the content of this definition. Firstly, not only quasi-judicial bodies but also courts are authorized to consider cases of administrative violations, and secondly, the number of proceedings in the administrative-jurisdictional activity is much larger than those that have a facet and are either explicit or compulsory [2, p . 159]. It is no accident I. V. Panova emphasizes in one of his works, that the process of systematization jurisdictional production to date is in the Art and di- formation, and in the legal literature on this question expressed the views of the different nature [10, c . 117] . Some scientists consider production in view of the content of the activities of the subjects; others are allocated depending on the order of resolution; others recommend the use of such a classification criterion as procedural base or m th mechanism of occurrence administrative jurisdictional production; others take as a basis as the sole criterion of the nature of sound control functions in Lenia relevant stakeholders [33] . It rightly notes that the term "jurisdictional production" carries a different semantic and legal burden. In view of the above, in our view, it is justified are the following types of administrative and jurisdictional produ s duction:

a) executive proceedings (activities on the execution of acts with the application of measures to prevent and nullify);

b) administrative proceedings (up on the implementation of administrative and procedural coercive measures, are not measures and mi liability);

c) disciplinary proceedings;
d) proceedings on complaints;
e) proceedings in cases of administrative offenses [10, c . 117] .

One can hardly agree with the opinion of L. V. Sandalova which is based on the fact that the criterion for allocation of administrative proceedings in the Admiral and trative process is a group of homogeneous content of individual legal cases that require authorization by the competent administrative authority, has identified the following groups of administrative proceedings:

- administrative proceedings to resolve administrative enforcement cases - Editing and normative-enforcement proceedings [13, p. 5].

B.D. Sorokin, D.H. Bachrach, L. Popov, Yu.M. Kozlov, P. I. Kononov in their works indicate the positive nature of the establishment of legal facts, disputes, the implementation of decisions, decisions and other significant jurisdictional actions, and in the process of their activities they occupy a greater proportion than those of a compulsory nature. Analysis allows many authors to conclude that this term can be understood and powers are subordinate [32, p. 8].

We believe that such signs of jurisdictional activity as the existence of a legal (possibly positive) dispute, the adversarial procedure of the resolution of a case, the issuance of a jurisdictional act, are not always connected with administrative and coercive activities. They, according to L. M. Rosina, allow us to consider jurisdictional activities as part of the admin and the passionate process inherent in strictly defined types of administrative production, as a specific type of law enforcement that is strictly administrative-procedural in nature [35, p . 59] .

In our opinion, the administrative jurisdiction should be filled with a broader content and understand it not only as mandatory s hydrochloric, but as a regulatory, law enforcement.

In broad terms, the administrative jurisdiction should be understood as *established by the law or other normative legal acts totality of the powers of relevant state or municipal bodies to regulate social relations, to resolve legal disputes and consider cases on administrative offences, to perform other legal actions, including regulatory nature.*

Administrative and jurisdictional activity includes regulatory, rule-making, law-based, rights on guarding functions, including the publication of legal acts, registration, licensing, review and resolution of administrative and legal disputes and cases of administrative violations, other legal actions, provides protection against unlawful attacks (administrative offenses) in the area of public order, public safety, including road safety, and other areas public relations, the protection of which lies with the authorities of internal affairs.

As some authors rightly point out, the social value of administrative-jurisdictional activity is manifested in its regulatory function. This is a peculiar means of legal regulation of public relations, protected by the organs of internal affairs. With its help, normative acts, prescriptions are translated into specific legal relations, into the real behavior of the subjects. Administrative jurisdiction can be attributed to some functions of the police, which include: supervision, assistance, protection, investigation, inquiry, jurisdiction, execution of sentences [12, p. 145;

22, p. 10]. Its specificity is manifested in the fact that it is carried out extra-judicial government and officials with quasi-judicial powers.

4. Conclusions.

We note that the administrative-jurisdictional activity (state-domineering, regulative, law enforcement), is connected with the consideration of disputes about the law. It is based on the law, and they clearly regulated, by special subjects, it is the result of the ordering of social relations and bring the perpetrators to administrative responsibility.

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