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JUDICIAL ADMINISTRATIVE PROCEDURAL LAW V. ADMINISTRATIVE JUDICIAL LAW

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The subject. The paper deals with the search for the place of judicial administrative procedural law in the system of Russian law.
The purpose of the paper is to identify is the judicial administrative procedural law an independent branch of Russian law.
Methodology. The author uses the methods of analysis and synthesis, as well as dialectic approach. The formal-legal interpretation of the Code of Administrative Proceedings, the Code of Administrative Offences, the Commercial Procedure Code, the Civil Procedure Code of the Russian Federation and is also used.
The main results and scope of their application. The adoption of the Code of Administrative Proceedings in Russia in 2015 revealed many problems in science and legislation. A legislative decision to adopt the Code of Administrative Proceedings is considered as a political decision taken without a proper scientific basis and contrary to established scientific doc- trine. Definitions of such basic concepts as "administrative process", "administrative dispute", "administrative justice", and others have not been developed in the period up to 2015. Administrative procedural legislation is referred to the joint jurisdiction of the Russian Federation and the constituent entities of the Russian Federation, in contrast to other procedural laws, in the Constitution of the Russian Federation. Representatives of the science of civil procedural law, with reference to legal theorists, called judicial administrative procedural law (which is referred to the Code of Administrative Proceedings) the secondary formation, a sub – branch of the fundamental (profiling) branch of civil procedural law. The purpose of judicial administrative procedural law – enforcement of substantive law and conflict resolution in the field of administrative and other public relations. It is noted that the public-legal dispute is not limited to the interaction of the citizen with the executive power. Civil procedural regulation of judicial review of cases arising from public relations is a procedural mechanism of judicial protection of constitutional rights, freedoms and legitimate interests. The Code of Administrative Proceedings lowers the status of cases arising from public legal relations to the status of cases arising from administrative legal relations.
Representatives of the science of administrative law and procedure, on the contrary, believe that the adoption of the Code of Administrative Proceedings becomes the final act in the formation of a new branch of law – administrative judicial law, although it is a political decision and it's rules are practically copied from the Civil Procedure Code. At the same time, it is recognized that the Code of Administrative Proceedings needs scientific support, which still needs to be created. An alarming factor is the fact that some scientists propose to include cases concerning imposition of administrative sanctions in the this forming branch of law, although it mixes in fact disputes between individuals and a public entity and imposition of administrative sanctions to the offender by the court.
Conclusions. It is premature to say that judicial administrative procedural law has emerged as an independent branch of Russian law. Prospects for further development of administrative proceedings are very uncertain due to the high proportion of subjective, political factors in the legislative process.

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1. Introduction

The development of modern legislation in the field of administrative relations does not look logical and planned, in addition, it is not based on the doctrine, the scientific basis for such a legislative movement is not seen. At the present moment, it is possible, to a large extent conditionally, to distinguish three notable stages in this development, and the determining factor in the differentiation is a strong-willed political decision to adopt the Code of administrative procedure .

The first stage-proceedings in cases arising from public relations is in three codes (Civil procedure code (CPC), Arbitration procedure code (APC) and the Code of administrative offences (CAS), two of which are procedural. In the CPC, these rules are concentrated in subsection III of section II. The AIC has section III "Proceedings in the commercial court of first instance in cases arising from administrative and other public relations", including, inter alia, Chapter 25 on the consideration of cases of administrative offenses. Proceedings for consideration of cases of administrative offenses by courts of General jurisdiction are carried out according to the norms of the administrative Code.

The second stage is the adoption in 2015 of the CAS by separating from the CPC the rules governing the production of public relations and a number of other cases: on compensation (Chapter 22.1 of the CPC) and related to the special production of cases of involuntary hospitalization in a psychiatric hospital (Chapter 35 of the CPC).

The third stage is the gradual removal of CAS from the "parent" industry. While preserving the integral array of norms copied from the CPC, the number of cases referred by the legislator to the procedure of administrative proceedings increases. A rapprochement with the administrative Code is proposed.

The adopted CAS did not just become a "troublemaker" among processualists and administrationists. He exposed numerous problems in several branches of law, especially in administrative and administrative procedural. Both gaps in legal regulation and gaps in scientific research have become apparent, which do not currently allow presenting a complete picture of administrative, public legal relations and the cases arising from them. The juxtaposition in the title of this Article appears to be a large and intractable problem.

2. Pre-reform phase

At this stage, the norms of the administrative Code were used by courts of General jurisdiction to consider cases of administrative offenses. During this period, the courts (both General jurisdiction and arbitration) acted, in accordance with the norms of the administrative Code as one of the bodies bringing to administrative responsibility. Such cases, however, were not the only" administrative element " in the courts. As already noted above, the CPC had proceedings in cases arising from public relations (subsection III of section II), and the APK had section III "Proceedings in the commercial court of first instance in cases arising from administrative and other public relations,", Chapter 25 of which - on the consideration of cases of administrative offenses.

When considering cases arising from public legal relations, the courts used the norms of the agro-industrial complex and the CPC almost in full, unless the relevant sections of the codes for such cases established special rules. Such special rules were few and they had a clear focus-the alignment of opportunities of public and weak parties in the process to ensure the operation of the principle of procedural equality of rights of the parties in civil proceedings.

Already at this stage, the problem (both in legislation and in science) of uncertain sectoral affiliation of a number of categories of cases is manifested. Thus, the APK in section III, devoted to the regulation of proceedings in cases arising from administrative and other public relations, along with cases of challenging normative and non-normative acts, actions (inaction) of public entities, is placed and consideration of cases of administrative offenses. Moreover, Articles 189 and 190 as General rules of Chapter 22 of the APK (for example, on the settlement agreement), it turns out, are applicable

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to cases of administrative offenses. Cases of compensation for violation of the right to judicial proceedings within a reasonable time or the right to execute a judicial act within a reasonable time fell into section IV as proceedings in separate categories of cases, mixing, in particular, with writ and simplified proceedings, bankruptcy cases. Thus, not only in relation to administrative cases, but also in other cases, the agroindustrial complex looks like a normative act that does not have at its core attachment to the industry affiliation of the cases considered by the court.

The problems of the CPC in this period are of a different kind. Norms about consideration of cases on administrative offenses it was not loaded. However, inexplicable from the point of view of industry affiliation seemed to refer to a special production of cases of hospitalization of a citizen in a psychiatric hospital or psychiatric examination involuntarily (Chapter 35); as well as referring to cases arising from public legal relations, cases on temporary placement of a foreign citizen subject to readmission in a special institution, and cases on administrative supervision of persons released from prison (chapters 26.1 and 26.2 of the CPC, respectively).

Such "inclusions" in the CPC raised the question of whether the universality of the civil procedure form allows to consider cases of absolutely any industry affiliation. Considering, for example, cases on administrative supervision, the court is forced to apply criminal law to establish a legally significant circumstances (presence of relapse, crime, etc.); considering the case for readmission or deportation, the court expands the range of applying the substantive rules in civil proceedings through non-traditional [1, p. 15-20].

The problems of the ratio of material and procedural are also present in the regulation of proceedings in cases of administrative offenses. So, in the literature it is noted that the direct mail industry standards and the administrative code does not always exist (for example, legislation in the sphere of subsoil protection and subsoil use), and requires the removal of sectoral legislation as substantive, fixing the list of violations and their corresponding procedural regulations, and the concentration of these provisions in the administrative code [2].

It was noted and lack of logic of the legislator in the Law "On protection of competition", where completely enough regulates the issues of responsibility for violation of the antitrust laws provide for antitrust sanctions (e.g. Article 15 – compulsory division or allocation of commercial organizations) in detail regulates the procedure of consideration of cases on violation of antitrust laws, but the penalties imposed on legal entities for unfair competition, abuse of dominant position, conclusion of cartel agreements, etc. offences in this area are included in the administrative Code. Penalties for violations of tax legislation can be established in the Tax Code, and for violation of budget legislation-enshrined in the administrative Code. The legislator preferred to duplicate the compositions of budget offenses formulated in the Budget code (Art. 306. 4-306. 8), in the current administrative Code, providing them with appropriate administrative sanctions [3, p. 102-108].

These examples show not only the lack of legislative logic, but also the overall imbalance in the relationship of substantive and procedural law.

3. The second stage is the adoption of the Code of administrative procedure

The adoption of the CAS greatly encouraged representatives of the science of administrative and administrative procedure law, who considered such an unexpected "gift" as a sign of the formation of a new branch of law and its rejection from the civil process. Without denying the obvious fact of "cloning" of the norms of the CPC in CAS, these professionals assure that only the CCP has improved, freed from his unusual standards. At the same time, the supporters themselves are forced to note that the adoption of CAS is an unexpected and political decision, since there are no scientific developments and doctrinal justification for it. In this connection, in the works devoted to CAS, in one way or another it is called to create this doctrinal basis, simultaneously solving the long-standing problems of terminology, the subject of various industries and the method of regulation. Simply put, it is proposed to adjust the task (to compose a doctrine) under the answer (the presence of CAS), creating from scratch a new

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branch of law artificially.

Thus, A.V. Novikov notes that the adoption of CAS in itself is not the presence of special rules of administrative proceedings, CAS is an act of political will, and not a product of scientific thought. He himself needs the scientific support to be created. It is issued "in advance" to administrative-procedural science. The law has branched off from the CPC, in many respects being its clone and the civil procedural form dominates over it. The task facing science is to determine what the rules of justice should be in order to ensure an objective, complete, timely and comprehensive clarification of the circumstances of the case related to the implementation of public discretion and to ensure that the right decision is made. The author believes that in the literature there is a tendency to consolidate scientific judgments regarding the administrative procedural form, the presence of which is necessary for the proceedings of administrative proceedings [4, p. 70-80].

The opinion on inadmissibility of regulation of an independent type of legal proceedings – administrative - by norms of the procedural code of other branch accessory is also expressed [5, p. 3]. In contrast, we note that the most important part of the cases withdrawn from the CPC in favor of CAS, were cases arising on their own will of individuals-challenging regulations; challenging actions, decisions of public authorities, local self-government, officials, state and municipal employees; protection of electoral rights and the right to participate in the referendum; demand for compensation for violation of the right to judicial proceedings within a reasonable time or the right to execute a judicial act within a reasonable time. These cases just also appeared within civil legal proceedings as Affairs of the citizens, the organizations at the will entering dispute with the public subject unequal to them, needing for guarantees of the rights in civil procedural, instead of any other form of consideration of their case by court. Yes, among the cases arising from public legal relations, there are cases initiated by non-private persons (why the civilists objected to the assignment of administrative supervision cases to them – Chapter 26.2 of the CPC). Cases of challenging regulations, for example, may be initiated by the Prosecutor. But is it necessary to explain the danger to civil society of identifying cases which they may have initiated of their own volition with a procedure in which they are placed in an unequal position with a public body?

Quite disturbing, in our opinion, is the proposal to consider the subject of administrative proceedings as an administrative dispute and an administrative offense and consistently develop scientific research based on this subject, indicating that the civilists needlessly "cling" to administrative proceedings, it is now not their subject [6, p. 7-10] (we Object to this as follows: first, it is preferable to first see the scientific justification, and only then-the legislation, and not Vice versa; secondly, the drift of administrative proceedings from civil law to criminal law (and this in fact means Association with cases of administrative offenses) is in no way able to improve the protection of citizens ' rights in a dispute with public education. Civilists do not" cling "to the outgoing type of civil proceedings, and try to explain the importance of" civil " priorities over administrative and criminal, and explain the benefits of protection, which gives it a civil procedural form.

In fairness, we note that not all authors advocate the convergence or merger of CAS and administrative Code, there are also works, on the contrary, justifying the need to distinguish between the scope of penalties for administrative offenses and the scope of another kind-the protection of the rights of persons in relations with a public entity.

Thus, V. I. Mayorov notes: one of the features of the legal regime of judicial administrative law is that it serves as a form of protection of subjective public rights of individuals. The specificity of the sectoral legal regime is determined by the need to enforce the public-legal obligations of subjects in the sphere of state and municipal administration, not related to the application of administrative penalties. "Judicial administrative law becomes a form of implementation of special administrative responsibility, which differs from the punitive administrative responsibility, which is established by the administrative Code of the Russian Federation." The procedural part plays an auxiliary service role in relation to administrative law, it is a separate administrative and jurisdictional process from administrative law. With the introduction of the CAS

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of the Russian Federation, the process of transformation of administrative judicial law into an independent branch in the system of Russian law is gradually completed [7, p. 858].

Another approach is demonstrated by Yu. N. Starilov, insisting on the connection of legislation on administrative proceedings with substantive administrative law and calls administrative procedural law part of the General system of administrative and legal regulation. In his opinion, the model of civil procedural regulation of relations arising from administrative and other public relations developed in the Soviet years and even then was criticized. He sees in CAS the potential to improve the quality of the exercise of judicial power and to increase the guarantees of legal protection of citizens and organizations. Code of civil procedure, in his opinion, will become more meaningful, freed from his unusual concepts and norms. At the same time, he recognizes that at present "there are no legal definitions of the basic concepts: "administrative process", "administrative dispute", "administrative justice", "administrative proceedings", etc.

Thus, there is no unity of opinion on the subject of the "new" administrative branch among administrationists. Note also the terminological instability, and not only among scientists. The highest judicial authorities are also inconsistent in what is considered "administrative proceedings" and it can be seen how the same term is used in relation to cases referred to the competence of the courts under the norms of the administrative Code.

At the same time, for representatives of the science of civil procedural law, there was no doubt about the sectoral affiliation of administrative proceedings. In the textbook on administrative proceedings, prepared by the staff of the Department of civil procedure of the Ural Law University, it is called judicial administrative process [9, p. 24]. Judicial administrative procedural law occupies a special place in the system of procedural law, notes V. V. Yarkov. It is included in the system of procedural branches along with civil procedural and arbitration procedural, criminal procedural and constitutional procedural law. The purpose of judicial administrative procedural law is the enforcement of substantive law and the resolution of conflicts in the field of administrative and other public relations. Judicial administrative procedural law is a sub-branch of civil procedural law, it is a secondary legal entity in the normative fabric of civil procedural law. The very origin of judicial administrative procedural law occurred by the allocation of the CPC a number of chapters on cases from public relations in CAS. The General part of CAS is built on the basis of the General provisions of CPC and APK, which is obvious from their comparative analysis [9, p. 28-29].

It should be noted that the position of V. V. Yarkov is formulated on the basis of the works of legal theorists, first of all, S. S. Alekseev, on the fundamental (profiling) branch of law and secondary legal entities, the formation of which it contributes [9, p. 29].

What is the main danger of incorrect sectoral positioning of administrative proceedings? We believe that the essence of this danger is perfectly expressed by T. V. Sakhnova: it is the lowering of the status of cases arising from public legal relations to the status of cases arising from administrative legal relations. In this she sees one of the main ontological errors of the legislator, evidence of legislative regression, ignoring the General laws of the development of the procedural form and the constitutional right to judicial protection. A public-law dispute (challenging normative acts, application for compensation, etc.) is not limited to the interaction of a citizen with the Executive power. "The concept and pathos of procedural regulation of judicial consideration of cases arising from public relations is a procedural mechanism of judicial protection of constitutional rights, freedoms and legitimate interests. CAS, without creating its own concept, seeks to lower the bar, based on the promise of the doctrine of administrative justice" [10, p. 35-40]

4. About possibility of connection of all "administrative" elements

Consider the current legislation at the intersection of its rules on administrative responsibility and administrative proceedings. First, we note that the author holds the view on inadmissibility, as is the case in the current

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legislation, the assignment of ships to the number of bodies brought to administrative responsibility. The courts should be exclusively organs of justice.

The range of cases referred to arbitration courts, courts of General jurisdiction and magistrates is determined in accordance with the norms of the administrative Code, by "fixing" the specific composition of the administrative offense to a particular court. In this regard, the jurisdiction of cases of administrative offenses is not a category of civil or arbitration proceedings, as well as administrative proceedings.

With the adoption of CAS in 2015, there was some confusion in the "administrative" terminology. The term "administrative proceedings" does not apply to the procedures prescribed in the administrative Code, although they are also judicial and, in essence, administrative ("non-criminal"). The term "administrative proceedings" does not apply to the procedures used by arbitration courts in accordance with the APK, from which the rules on the consideration of cases arising from administrative and other public relations (section III of the Code) have not been removed, which also introduces an imbalance in the understanding of the issue. The current legislation does not allow to delineate the area of existence of administrative court cases with their binding 1) to material and legal features of cases and 2) to a certain, uniform procedure.

The norms of the APK and the administrative Code are not synchronized and are not related to each other, at best they do not contradict each other, but this is more an accident than a thought-out legislative technique. In General, it seems that by specifying the judge among the subjects bringing to administrative responsibility, the legislator laid the contradictions between the APK and the administrative Code, between the essence of judicial control activities and the activities of the bodies bringing to administrative responsibility and choosing a sanction for the offense.

CAS brings "cases of administrative proceedings" with the claim, and not only terminologically (through the concepts of "administrative claim", "administrative plaintiff", "administrative defendant"). Among the categories of cases regulated by the CAS (section IV), there are no cases of administrative offences. That is, to duplicate the administrative Code or Supplement it CAS is not going. A certain logic in this can be seen, since the CAS claims a specific legislative niche-the consideration of disputes of a public nature, where the weak side is opposed by a public entity, the party is obviously stronger and (in a material legal relationship) has power in relation to the administrative plaintiff.

But the special part of the CAS, which provides for the consideration of certain categories of cases, does not fully comply with this logic, since it includes cases of a completely different order, initiated, in particular, not by the will of a private person (Chapter 28 – deportation and readmission; Chapter 29 – administrative supervision). These compositions were alien to the CPC, but after the creation of the CAS, they did not become one-order with other cases also "isolated" from the CAS.

5. The third stage, or why do administrative proceedings have a chance to separate from the civil process?

One reason is the possible political will to separate administrative (in the broad sense of the word) cases from the civil procedural form. We should not discount the ignorance of the subject of this political will of the basics of legal protection, judicial protection and the appointment of justice as protection (not punishment!) citizen right. The movement towards the separation of administrative proceedings appeals, as a rule, directly to Article 118 of the Constitution of the Russian Federation with its enumeration of civil, criminal, administrative and constitutional proceedings [see, for example: 7, p. 854].

Meanwhile, A. T. Bonner not without reason believes that in Article 118 of the Constitution, the legislator still had in mind the proceedings on administrative offenses [11, p. 24-51]. Such interpretation of the constitutional provision seems to us absolutely natural at the complex approach to interpretation of constitutional norms. If the framers of the Constitution had a new branch of law in mind, they would have "laid" certain guarantees and

foundations for it, at least at the Federal level of legislation. Currently, administrative and administrative-procedural legislation are jointly administered by the Federation and its subjects (paragraph "K" of Article 72). And supporters of the creation of an independent branch of law, as already mentioned above, propose to amend the Constitution.

T. V. Sakhnova also notes that administrative proceedings appeared in part 2 of Article 118 of the Constitution of the Russian Federation for subjective reasons and had no conceptual content, as well as legislative potential [10, p. 35].

A. T. Bonner calls the conditions under which a document like CAS could be needed: 1) a significant number of public-law disputes in the courts; 2) these disputes are so specific that the traditional civil procedural form is unsuitable for them; 3) instead of it, the theory has developed, and the legislator has adopted a fundamentally different administrative-procedural form; 4) a system of administrative courts has been created [11, p. 24-51].

There were no noted conditions in 2015. However, now they just can be successfully implemented by supporters of the administrative procedural form. The first condition is more than overlapped, if the few public-legal disputes (challenging regulations, etc.) to add the case of bringing to administrative responsibility. To the latter, of course, the civil procedural form is not applicable-this satisfies the second condition. The third condition is practically fulfilled by administrative scientists, calling for the creation of a new administrative procedural form. The case for the establishment of administrative courts (fourth condition). Here, as well as for the adoption of CAS, political will is needed. But who's to say it's impossible? If the legislator expressed such a will by adopting the CAS instead of a single CPC (the draft of which suddenly stalled), nothing prevents him from being consistent in his errors.

Thus, just a chain of accidents-admitting ambiguous interpretation of the wording of part 2 of Article 118 of the Constitution-hasty and questionable legislative decision on the adoption of CAS-possible volitional creation of administrative courts, but in question is the very nature of the protection of citizens and organizations (weak subjects) in public disputes.

6. Conclusions

It should be noted that the search for the optimal way of consideration and resolution of administrative cases is far from complete. The creation of a single branch of law and a single Code, which would provide a common order for any administrative affairs, and at all may be a utopian undertaking. There are many similarities between the procedural branches and a General theory of the process [12] may well exist. However, the differences were not accidental. By dragging administrative proceedings closer to the administrative Code, and, consequently, to the principles and methods close to the criminal law method of regulating relations, supporters of such an idea thereby reduce the guarantees for citizens and organizations. Where previously, with the help of civil procedural form, they were on a par with the public subject, now they can be reduced to the position of the offender, unequal in the struggle for their rights with the administrative machine, to the level of the subject awaiting administrative punishment, and not equal consideration of the dispute. This is a very dangerous trend, along with another emerging trend – the substitution of criminal law for civil law. Let us not forget that the constant companion of the relationship between criminal law and administrative law is the criminalization or decriminalization of individual compositions.

Administrative liability is essentially a type of criminal liability, only for less dangerous acts. In the Russian legislation and doctrine administrative offense and administrative punishment are described in many respects on model of a criminal offense and punishment: structure of an offense, a form of fault, prescription of attraction to responsibility, etc. [3, p. 102-108]. Therefore to connect CAS and administrative Code all the same as criminal law to connect with civil. The enthusiasm of the builders of the "new" branch of law is understandable. Indeed, not every day there is an opportunity to create a new industry. That's just to start at the same time from the questionable

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decision of the legislator, to encourage the legislator to commit new erroneous actions, is hardly productive. The creation of an administrative-procedural form, which some scientists call for, can have dangerous consequences if this form "buries" the civilistic component. As the experience of foreign countries shows, the issues of determining the subject of administrative law and administrative process are largely debatable in various legal systems [13, p. 3; 14, p. 224; 15, p. 389]. Legislative decisions in this area can also be different, the main thing is the focus on protecting the rights of citizens and organizations and on a fair, high-quality trial.

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