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ADMINISTRATIVE DISPUTES AS AN INTEGRAL ELEMENT OF CONTEMPORARY RUSSIAN LEGAL SYSTEM

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The subject. The article is devoted to the study of a wide variety of administrative disputes arising in the Russian legal system, but insufficiently studied by domestic administrative legal science.

The purpose of the article is scientific substantiation of the concept, key elements and system of administrative disputes in the Russian Federation, identification of the constitutional foundations for the development of the institute of administrative disputes and proceedings for the resolution of administrative disputes.

The methodology of research includes formal logic and systemic approach as well as legal-dogmatic method, method of interpretation of legal norms, method of comparative jurisprudence.

The main results, scope of application. An administrative dispute is proposed to be understood as a documented disagreement of a subject of administrative or administrative-procedural legal relations with the decision, action or inaction of a public administration body (official) or another entity implementing or assisting in the implementation of administrative public functions which, in the opinion of the applicant of the dispute violates, infringes or encumbers his subjective right. Such disagreement is addressed to the competent authority (authorized official) of the public administration or the competent court (authorized judge) in order to resolve this disagreement in a special extrajudicial or judicial administrative procedure. The key elements that make it possible to characterize an administrative dispute are: 1) the objects; 2) the matter; 3) the purposefulness of the administrative dispute. The connecting link between the presented elements of an administrative dispute is the subjective right of participants in administrative and administrative-procedural legal relations, or to put it another way – subjective law arising from administrative and administrative-procedural legal relations, which is understood as a collective category combining such a well-known legal structure as "rights, freedoms, legitimate interests", as well as individual elements of the administrative-legal status of the applicant of the dispute, established by the administrative-procedural law, which require extra-judicial or judicial protection in an administrative dispute (first of all, procedural guarantees of innocence and good faith).

Conclusions. Administrative disputes primarily arise from administrative and administrative-procedural legal relations that develop during the implementation of administrative public functions by specialized public authorities and authorized organizations, which in a generalized form are proposed to be called public administration bodies. In some cases, administrative disputes arise from administrative and administrative-procedural legal relations in which public administration bodies and their officials do not participate. These administrative disputes arise in connection with the provision of assistance to the public administration in the performance of its administrative public functions.

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1. Introduction

The theory of administrative dispute is of great importance for the Russian legal system. The Constitution of the Russian Federation establishes the initial prerequisites for this theory are established in Articles 2, 18, 33, 46 of the Constitution of the Russian Federation. These constitutional norms unambiguously predetermine the active participation of individuals (individuals and their associations) in modern administrative and administrative-procedural legal relations as subjects capable of protecting their rights, freedoms, legitimate interests in these legal relations, as well as procedural guarantees from decisions, actions, and inaction of public authorities, their representatives, which violate, infringe or encumber these rights, freedoms, legitimate interests, guarantees. In this regard, the legal and factual situations arising in the system of administrative and administrative-procedural legal relations regarding violated, infringed or burdened rights, freedoms, legitimate interests, as well as procedural guarantees of individuals, deserve close attention of administrative and legal science. Applied research of these legal and factual situations objectively suggests the need for a scientifically based separation in the Russian legal system of disputes arising from administrative and administrative-procedural relations. It is logical to call these disputes administrative disputes.

2. Dispute as a general legal category

Dispute as a general legal category is of great importance for the development of Russian legal science as a whole. Traditionally, this category was developed in relation to a civil dispute by representatives of civil sciences. In this regard, a stable opinion has been formed that the essence of a legal dispute is expressed by the presence of disagreements among its opposite parties [1, p. 28]; that the dispute is an obstacle, resistance to the exercise of civil law [2, p. 68-69]; that a dispute should be understood as an objective state of a legal relationship caused by the non-fulfillment of obligations by one of its parties, in which there is no possibility of objective exercise of a subjective right by the other party [3, p. 35]; that a dispute acts as a conflict that is resolved in a certain procedural order [4, p. 23]; that a dispute should be understood as a contradiction between disputing parties about rights and obligations in a material legal relationship [5, p. 25].

It is important to note that the developed theory of legal dispute as a whole connects the category of dispute with the legal disagreement between the participants of material legal relations regarding mutual rights and obligations [6, pp. 205-209; 7, pp. 153-155]. It is important to point out that such a limitation of the grounds for disputes by material legal relations is due to the specifics of private law branches.

It should be pointed out that private law approaches to understanding the dispute are based on the postulate of legal equality (equality) the parties to this dispute. This approach cannot be acceptable for administrative disputes, since administrative disputes arise from public legal relations, the participants of which are not legally equal among themselves (unequal). In an administrative dispute, on the contrary, at least one of the participants in the dispute, as a general rule, has publicly authoritative powers applied to the other participant.

3. Administrative dispute in foreign legal systems

Due to the low level of study of the administrative dispute by the domestic administrative and legal science, it is worth turning to the assessment of the experience of the foreign doctrine of administrative and administrative procedural law, which has been closely studying administrative disputes for a long historical period.

In foreign legal doctrine, there are specific signs of an administrative dispute that distinguish it from a private law dispute.

Such signs of an administrative dispute (which are largely specific to a dispute being considered in court) include:

1) the subject resolving the case is obliged to actively investigate the circumstances of the case itself, which are subject to clarification;

2) the subject considering the case is obliged to actively assist the weaker party;

3) within the framework of the administrative process, there is a potentially wider

range of participants, since it is possible to involve third parties whose rights are affected;

4) the judge, considering the case, often checks both the primary decision and the decisions taken by the public administration on complaints about the primary decisions;

5) written evidence is widely used;

6) the subject considering the case may suspend the operation of the contested act, as well as make a temporary decision binding on the public party;

7) the judge considering the case, on the one hand, cannot replace the public administration body and make a decision instead of it, and on the other hand, may require it to make a new decision;

8) a judge, even when checking a non-normative administrative act, has the authority to assess the legality of the legal norms on the basis of which it was adopted [8, pp. 126-130; 9, pp. 446-450].

It can be noted that the above signs of an administrative dispute correspond to the basic principles on which the administrative process carried out abroad is based, namely:

1) the initial legal inequality of a private person and a public entity within the framework of the legal relationship in which the administrative dispute arose;

2) the connectedness of bodies and persons of public administration with the goals of achieving not their departmental interests, but the public interests of the state, the subject of the federation or the municipality;

3) the task of a court or other entity resolving an administrative dispute is to ensure the protection of private and public interests.

The experience of foreign countries in the formulation and application of these principles is valuable for Russia because these principles have been developed by administrative courts and tribunals for decades, and on the basis of constitutional ideas and international acts, which gives them special importance [10]. These principles can turn from declarative to instrumental, which is caused and caused precisely by their long-term development by the courts [11]. At the same time, the principles should be applied by courts and other law enforcement entities consciously, taking into account the significant legal consequences of such application for participants in legal relations [12, p. 1]. Assessing the situation when applying the principles of law, on the one hand, requires maximizing public interest, but on the other hand, requires that competing private interests be taken into account [13, p.635-636].

Based on these principles, an administrative dispute within the framework of the European legal doctrine is considered as a way to provide an ideal form of direct, absolute and "integral" protection of a citizen, since they are carried out in conditions of full publicity and independence and are subject to strict and transparent procedural rules, and at the same time various guarantees and active rights of participation in decision-making or at least in the legal process [14, p. 141]. The definition of an administrative dispute in the European (in particular, German) administrative-legal doctrine assumes that a dispute is such if the subject of the dispute relates directly to public law and it is not a private-law dispute that is resolved in an appropriate civil-legal manner. Within the framework of this doctrine, a public-legal relationship refers to a legal relationship in which an individual participant is subordinate to the authority of the state, that is, a citizen and a subject of authority are in a relationship of subordination. Within the framework of the German legal system, the subjects of public law relations are the federation, federal lands, communities and associations of communities, as well as corporations, institutions, foundations and other legal entities of public law. However, the very presence of the State does not lead to the fact that the dispute is administrative. So, if a government agency buys pencils for office needs, then we are talking about civil law relations. This is explained by the fact that in this case the state does not use its power, but acts as an ordinary participant in legal relations [15, p. 206].

Summarizing the above, we can conclude that certain elements have been developed in the doctrine of foreign countries, which partly predetermine the nature of administrative disputes arising in the Russian legal system.

4. Constitutional bases of administrative dispute in the Russian Federation

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Unfortunately, it must be stated that in the Soviet doctrine of administrative law, such a category as "administrative dispute" was not identified and developed. The Russian science of administrative and administrative procedural law, in turn, has not paid enough attention to the theory of administrative dispute, although there are works related to the analysis of individual varieties or elements of administrative dispute [16; 17; 18]. Only a few prominent administrative scientists turned to the development of key approaches to understanding the administrative dispute and therefore revealed some, separate facets of this administrative-legal phenomenon. So, E.B. Luparev refers to administrative disputes such a type of complex material and procedural administrative legal relationship, which is characterized by the presence of contradictions between the parties caused by a conflict of interests in the field of public administration or a discrepancy of views on the legality and validity of organizational actions of bodies and persons endowed with state-governmental managerial powers [19; 20, p. 36]. A.B. Zelentsov gives a definition of an administrative dispute, defining it as disagreements between the subjects of administrative and legal relations regarding the differently understood mutual rights and obligations and (or) the legality of administrative acts arising in connection with the implementation, application, violation or establishment of legal norms in the field of public administration and resolved within a certain legal procedure [21, p. 173]. In addition, A.B. Zelentsov and O.A. Yastrebov points out that an administrative dispute is a conflict arising from administrative and legal relations, a dispute about subjective public law, that is, about the right belonging to a certain person in a legal relationship involving private individuals and administrative bodies acting as public authorities, as well as about the legality of the use of public powers by these bodies in relations with private individuals [22, p. 22].

Without questioning the above scientific positions, it is worth noting that to date the problem of understanding an administrative dispute remains unresolved in the conditions of the constitutional separation of powers established by Article 10 of the Constitution of the Russian Federation, the separation of local self-government by virtue of Article 12 of the Constitution of the Russian Federation, as well as the recognition of a person and a citizen as the highest value in Article 2 of the Constitution of the Russian Federation.

The definition of an administrative dispute through the "prism" of the norms of the Constitution of the Russian Federation is one of the key problems of the constitutionalization of Russian administrative law, actively pursued in modern legal science [23; 24; 25].

With this approach, developing the provisions of Articles 10 and 12 of the Constitution of the Russian Federation, it should be clarified that an administrative dispute, as a general rule, may arise between subjects - holders of human and civil rights and freedoms, which it would be logical to generalize to call private persons (including individuals and organizations) and subjects performing administrative-public functions or assisting in the implementation of these functions

In modern Russian administrative and legal literature, the subjects performing administrative and public functions include: executive authorities, local self-government bodies, organizations that, by virtue of federal law, have the status of a state or other body for the purpose of performing certain administrative and public functions (the Central Bank of the Russian Federation, the Accounts Chamber of the Russian Federation, the administrative Commission, etc.). With this approach, these entities are called public administration bodies, and their representatives are authorized officials of public administration [26; 27].

The scientifically based typification of administrative and public functions makes it possible to distinguish between administrative and administrative functions performed by the public administration in Russia (including: administrative rulemaking, administrative enforcement, administrative binding, administrative stimulation) and administrative and protective functions performed by the public administration in Russia (including: administrative authorization, countering administrative torts, countering administrative cases, resolution of administrative disputes) [28, p. 24-25].

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The described functional approach of the Russian administrative and legal science allows us to conclude that administrative disputes primarily arise from administrative and administrative-procedural legal relations that develop within the framework of administrative and public functions implemented by public administration bodies (officials). Including in the areas of administrative and administrative activities of public administration bodies (officials) listed above and in the areas of administrative and protective activities of these bodies (officials).

At the same time, it should be emphasized that administrative disputes can also arise without the direct participation of public administration bodies (officials) and therefore arise:

1) from administrative legal relations that are formed without the direct participation of public administration bodies (officials), but under their control. For example, from administrative legal relations that develop between a private security guard and legitimate visitors to a protected area, or from administrative legal relations that develop between an educational organization and students;

2) administrative legal relations that are formed without the participation of public administration bodies (officials) and without their control, but are related to the implementation of administrative and public functions. For example, from the administrative legal relations that develop between the prosecutor's office and citizens, organizations on the basis of the norms of the Administrative Code of the Russian Federation, the Federal Law "On State Control (Supervision) and Municipal Control", but without the participation of supervisory and other competent bodies of public administration;

4) administrative legal relations that are formed within the system of public authority during the implementation of state civil service, military service, other types of public service, as well as during the implementation of municipal service.

Developing the provisions of Articles 33, 46 of the Constitution of the Russian Federation, it is important to note the existence of constitutional prerequisites for differentiated legislative regulation of extrajudicial and judicial protection of the subjective right of a private person in an administrative dispute. Thus, by virtue of Article 33 of the Constitution of the Russian Federation, citizens of the Russian Federation have the right to apply personally, as well as to send individual and collective appeals to state bodies and local self-government bodies. Based on part 2 of art . 46 of the Constitution of the Russian Federation, decisions and actions (or inaction) of state authorities, local self-government bodies, public associations and officials may be appealed to the court.

Thus, in accordance with the constitutional division of the competence of public authorities to resolve disputes, it is objectively necessary to separate out-of-court administrative disputes and judicial administrative disputes.

In this regard, we note that judicial administrative disputes, by virtue of Article 72 of the Constitution of the Russian Federation, can be resolved by a court in a special administrative procedural order, namely: not otherwise than through special judicial proceedings regulated by administrative procedural legislation. It is obvious that such judicial proceedings regulated by administrative procedural legislation, by virtue of Article 118 of the Constitution of the Russian Federation, are called protective administrative proceedings or otherwise - administrative protective proceedings. Currently, certain types of administrative and protective proceedings are regulated in sufficient detail by the CAS of the Russian Federation[1] and the APC of the Russian Federation[2]. Separate fragments of administrative and protective proceedings are regulated by administrative procedural norms fixed in Chapter 30 of the Administrative Code of the Russian Federation "Revision of resolutions and other decisions in cases of administrative offenses".

Setting off administrative and protective proceedings by virtue of Articles 18, 118 of the

[1] See: Code of Administrative Procedure of the Russian Federation No. 21-FZ of March 8, 2015// SZ RF. 2015. No. 10. St. 1391.

[2] See: Arbitration Procedural Code of the Russian Federation No. 95-FZ of July 24, 2002// SZ RF. 2002. No. 30. St. 3012.

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Constitution of the Russian Federation, it would be logical to assert that, in accordance with Article 72 of the Constitution of the Russian Federation, extrajudicial administrative disputes are resolved by bodies and officials of public administration in a special extrajudicial administrative procedure, namely: through out-of-court proceedings regulated by administrative procedural legislation. Such out-of-court proceedings, regulated by administrative procedural legislation, would be logical comparable to art. 118 of the Constitution of the Russian Federation to call administrative and protective proceedings.

Out-of-court administrative disputes are not clearly distinguished in the norms of administrative procedural legislation. There is currently no unified systematized administrative and protective proceedings applied in conjunction with administrative proceedings in other categories of cases. In this regard, certain fragments of administrative and protective proceedings have become entrenched in various federal laws and are manifested in separate procedures for reviewing decisions taken on the merits of the resolved administrative case. For example, such procedures are regulated by separate administrative and procedural norms, enshrined in the Federal Law "On the Procedure for Considering Appeals of Citizens of the Russian Federation"[3], the Tax Code of the Russian Federation[4], the Federal Law "On State Control (Supervision) and Municipal Control in the Russian Federation"[5], etc.

The separation of administrative and procedural forms of settlement of extrajudicial and judicial administrative disputes reflects the special role of courts in the system of public power, established by Articles 18, 46, 118 of the Constitution of the Russian Federation. From this approach it becomes clear that the court ensures the protection of human and civil rights and freedoms in an administrative dispute through justice in the form of administrative and protective proceedings. In turn, public administration bodies and officials, resolving extrajudicial disputes, do not carry out justice, however, the protection of human and civil rights and freedoms in an administrative dispute is a priority for these bodies (officials) by virtue of Articles 18, 33 of the Constitution of the Russian Federation. In the presence of administrative procedural legislation guaranteed by art. 72 of the Constitution of the Russian Federation, public administration bodies (officials) have the right to ensure the protection of human and civil rights and freedoms in a special non-judicial administrative procedure, namely through administrative and protective proceedings.

Separating out-of-court and judicial administrative disputes, it is important to note that Russian legislation distinguishes cases of mandatory pre-trial resolution of a number of administrative disputes (see, for example, Part 2 of Article 138 of the Tax Code of the Russian Federation, Part 2 of Article 39 of the Federal Law "On State Control (Supervision) and Municipal Control in the Russian Federation"). However, such an establishment of mandatory pre-trial resolution of administrative disputes does not prevent further judicial protection of the subjective right of individuals in an administrative dispute if they believe that their rights, freedoms, legitimate interests or procedural guarantees have been violated, infringed or burdened by a decision, action (inaction) of a public administration body (official).

5. General characteristics of administrative disputes resolved in the Russian Federation

Developing modern approaches of Russian scientists to the understanding of an administrative dispute, formed under the influence of the Constitution of the Russian Federation, it is important to clarify the specifics of the material and procedural content of this legal dispute, based on a comprehensive analysis of the current administrative and administrative procedural legislation of the Russian Federation.

[3] See: Federal Law No. 59-FZ of May 2, 2006 "On the Procedure for Considering Appeals from Citizens of the Russian Federation"//SZ RF. 2006. No. 19. St. 2060.

[4] See: Tax Code of the Russian Federation (Part One) No. 146-FZ of July 31, 1998// SZ RF. 1998. No. 31. St. 3824.

[5] See: Federal Law No. 248-FZ of July 31, 2020 "On State Control (Supervision) and Municipal Control in the Russian Federation" //SZ RF. 2020. No. 31 (Part 1). Article 5007.

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With this approach, an administrative dispute is proposed to be understood as a documented disagreement of the subject of administrative or administrative-procedural legal relations or a representative of an indefinite circle of subjects of these legal relations with the decision, action or inaction of a body (official) of public administration or another entity implementing or assisting in the implementation of administrative-public functions, which, in the opinion of the applicant of the dispute violates, infringes or encumbers his subjective right and therefore is addressed to the competent authority (authorized official) of the public administration or the competent court (authorized judge) in order to resolve this disagreement in a special extrajudicial or judicial administrative procedure, namely: through administrative protective proceedings or through administrative protective proceedings.

The proposed understanding of an administrative dispute makes it possible to distinguish this dispute from disputes of a private law nature that are subject to settlement in civil or arbitration proceedings, as well as other public law disputes (including constitutional or criminal law disputes).

The key elements that make it possible to characterize an administrative dispute for the purpose of its differentiated understanding are: 1) the objects of the administrative dispute; 2) the subject of the administrative dispute; 3) the focus of the administrative dispute.

The object of an administrative dispute is a decision, action (inaction) of bodies and officials of the public administration or another entity implementing or assisting in the implementation of administrative and public functions, which, in the opinion of the applicant of the administrative dispute violates, restricts or infringes his subjective right., arising from administrative and administrative-procedural legal relations and therefore requires protection from the competent court or the competent authority of public administration.

It is important to emphasize that the subjective right protected by a court or a competent authority of public administration in an administrative dispute is understood as a collective category, based on the established scientific approaches in the general theory of law [29].

On the one hand, this subjective right arises from administrative and administrative-procedural legal relations, in which the legally formalized inequality of participants in legal relations presupposes freedom of expression. Accordingly, the subjective right of the participants in these legal relations is proposed to be considered as a set of rights, freedoms and legitimate interests arising from favorable administrative and administrative-procedural legal relations. For example, such a subjective right protected in an administrative dispute is the ownership right of an individual or legal entity to immovable or movable property arising from administrative and administrative-procedural legal relations during the state registration of this property by the competent authority of public administration.

On the other hand, subjective law arises from administrative and administrative-procedural legal relations, in which the legally formalized inequality of participants in legal relations excludes freedom of expression. This subjective right of participants in legal relations is a set of procedural guarantees and rights arising from compulsory administrative and administrative-procedural legal relations. The constituent elements of this subjective right protected in an administrative dispute are, for example, the procedural guarantee of innocence established by Article 1.5 of the Administrative Code of the Russian Federation, and the procedural guarantee of good faith established by Article 3 of the Federal Law "On the Protection of the Rights of Legal Entities and Individual Entrepreneurs in the Exercise of State Control (Supervision) and Municipal Control"[6], Article 8 Federal Law "On State Control (Supervision) and Municipal Control in the Russian Federation".

The subject of an administrative dispute is a violated, infringed, burdened subjective right of

[6] See: Federal Law No. 294-FZ of December 26, 2008 "On the Protection of the Rights of Legal Entities and Individual Entrepreneurs in the Exercise of State Control (Supervision) and Municipal Control"// SZ RF. 2008. No. 52 (Part 1). Article 6249.

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participants in administrative and administrative procedural legal relations, subject to extrajudicial and judicial protection in an administrative dispute.

The purposefulness of the administrative dispute is expressed in the fact that this dispute is aimed at protecting subjective law in order to establish a balance between private and public rights that are legitimate to the interests of the participants in the administrative dispute in the conditions of a legally formalized inequality between the applicant of this dispute and the defendant. With such a purposeful administrative dispute, as a general rule, the burden of proof is placed on the bodies (officials) of the public administration, which has legal authority over the applicant of the dispute.

6. Systematization of administrative disputes resolved in the Russian Federation

The scope of administrative dispute resolution is a common element for all functional spheres of activity of public administration bodies (officials), since administrative disputes can arise in any functional sphere of activity of public administration bodies (officials). Administrative disputes may arise both from administrative and administrative spheres (including: from the sphere of administrative rulemaking, administrative law enforcement, administrative binding, administrative incentives) and from the spheres of administrative and protective (including from the sphere of: administrative authorization, countering administrative torts, countering administrative and legal incidents). The very sphere of resolving administrative disputes is among the administrative and protective spheres, since it involves ensuring the protection of subjective law in an administrative dispute.

At the same time, as noted earlier, administrative disputes may arise from administrative and administrative-procedural relations in which public administration bodies (officials) do not participate.

The revealed variety of administrative and administrative-procedural legal relations, from which administrative disputes arise, necessitate the categorization of these disputes using special evaluation criteria in order to systematize them.

1. Depending on the nature of the connection of an administrative dispute with the activities of public administration, it is proposed to distinguish three basic categories of these disputes: 1) administrative public disputes; 2) administrative organizational disputes; 3) other administrative disputes.

Administrative public disputes arise from administrative and administrative-procedural legal relations with the mandatory participation of a public administration body (official) within the framework of implemented administrative public functions. Consequently, administrative public disputes arise during the interaction of public administration bodies (officials) (including executive authorities, local self-government bodies, authorized organizations) with private individuals (including individuals and organizations). With this approach, it is reasonable to single out a system of administrative and administrative disputes with the public administration (including disputes in the areas of: administrative rulemaking, administrative enforcement, administrative binding, administrative incentives) and a system of administrative and protective disputes with the public administration (including disputes in the areas of: administrative authorization, countering administrative torts, countering administrative incidents).

Administrative organizational disputes arise and develop from administrative legal relations that develop within the system of public authority. Administrative organizational disputes should include disputes about the passage of state and municipal service in various public authorities. Accordingly, the applicants of these disputes are state and municipal employees. The subject of such a dispute is the subjective right of a public official, and the object is the decisions, actions (inaction) of the employer's representative. As an example of administrative-organizational disputes, one can point to service and disciplinary disputes. Within their framework, the public rights of civil servants of various types are protected, who are brought to disciplinary responsibility for a particular violation of official discipline. Service discipline, in turn (with respect to state civil servants), is mandatory for civil servants to comply with the official regulations of a state body and official regulations, that is, legal acts regulating administrative and organizational legal

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relations[7]. Similarly, military discipline is the observance by military personnel of the order and rules established by regulatory legal acts and orders (orders) of commanders (chiefs)[8], and the service discipline of police officers is the observance by an employee of internal affairs bodies established by regulatory legal acts, contract, orders and orders of managers of the order and rules for the performance of official duties and the exercise of the rights granted[9]. Service discipline is determined by administrative organizational norms, which distinguishes it from labor discipline and labor regulations, which are established by labor law norms.

Other administrative disputes arise from administrative legal relations in which the public administration body (official) did not participate, but these disputes are resolved in accordance with the procedure established by administrative procedural legislation. On the one hand, these administrative disputes may arise with the participation of a number of entities that take part in the implementation of certain administrative and public functions, but are not controlled by the public administration. For example: prosecutor's offices and organizations that assist public administration in the implementation of administrative and public functions. On the other hand, it is logical to include disputes arising from administrative legal relations among other administrative disputes, which are also formed without the direct participation of bodies (officials) by the public administration, but under their control. For example, disputes arising between private security organizations and citizens, antimonopoly disputes arising between business entities, disputes between participants in procurement for state and municipal needs, etc.

2. Taking into account the objectively determined need for an increased level of protection of subjective rights in the conditions of administrative and legal coercion, it seems reasonable to distinguish: 1) administrative disputes arising from administrative-compulsory legal relations, which it is logical to call administrative-tort or administrative-rehabilitation disputes; 2) administrative disputes arising from other administrative and administrative-procedural legal relations. It is logical to call such disputes administrative-favorable or otherwise – administrative law-restoring disputes.

With this approach, we emphasize that administrative-rehabilitation disputes are a separate category of administrative disputes resolved through administrative proceedings or administrative proceedings to restore a subjective right violated, infringed or burdened in the course of administrative and compulsory legal relations. Within the framework of the administrative-rehabilitation dispute being resolved, rights, freedoms, legitimate interests, as well as procedural guarantees, including guarantees of innocence and good faith, are protected.

Administrative law-restoring disputes are a separate category of administrative disputes resolved through the administration of justice or administrative out-of-court proceedings to restore a subjective right violated, infringed or burdened in the course of administrative-favorable legal relations. The resolution of an administrative law-restoring dispute is limited to the protection of rights, freedoms, and legitimate interests. The provision of procedural guarantees does not relate to the subject of these administrative disputes.

At the same time, it is important to note that in the current system of legal regulation, administrative-rehabilitation disputes can only be administrative public. Among the many administrative law-restoring disputes, one can find administrative public disputes, as well as other administrative disputes.

[7] See: Federal Law No. 79-FZ of July 27, 2004 "On the State Civil Service of the Russian Federation"// SZ RF. 2004. No. 31. St. 3215.

[8] See: Disciplinary Regulations of the Armed Forces of the Russian Federation, approved by Presidential Decree No. 1495 of November 10, 2007// SZ RF. 2007. No. 47 (Part 1). Article 5749.

[9] See: Federal Law No. 342-FZ of November 30, 2011 "On Service in the Internal Affairs Bodies of the Russian Federation and Amendments to Certain Legislative Acts of the Russian Federation"// SZ RF. 2011. No. 49 (part 1). Article 7020.

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3. Taking into account the constitutional division of subjects authorized to resolve an administrative dispute, we will single out judicial and extrajudicial administrative disputes.

7. Out-of-court administrative disputes

An out-of-court administrative dispute is a documented disagreement of the applicant of the dispute with the decision, action or inaction of a public administration body (official) or other entity implementing or facilitating the implementation of administrative and public functions, which, from the point of view of this applicant, violates, infringes or encumbers his subjective right arising from administrative or administrative procedural legal relations, applied for the permission of the competent administrative and public authority, its authorized representative through administrative and protective proceedings.

Depending on the nature of the competence of the public administration body (official) in the resolved administrative dispute, out-of-court administrative disputes, in turn, are divided into two generic categories, namely: 1) administrative-ascending disputes; 2) administrative-arbitration disputes.

In an administrative-ascending dispute, the body (official) of the public administration, whose competence includes the resolution of an administrative dispute, is the superior body (official) in relation to the respondent in this dispute. Such administrative disputes are provided for by federal laws: "On the procedure for Considering Appeals from Citizens of the Russian Federation"[10], "On Customs Regulation in the Russian Federation and on Amendments to Certain Legislative Acts of the Russian Federation"[11], "On the Contract System in the Procurement of Goods, Works, Services for State and Municipal Needs"[12], "On the Central Bank of the Russian Federation (Bank of Russia)"[13], "On Enforcement Proceedings"[14], "On State Registration of Legal Entities and Individual Entrepreneurs"[15], "On the organization of the provision of state and municipal services"[16], as well as the Tax Code of the Russian Federation[17].

In an administrative arbitration dispute, the body (official) of the public administration, whose competence includes the resolution of an administrative dispute, is not a superior body (official) in relation to the defendant and therefore acts as an arbitrator in this dispute. Currently, Russian legislation provides for administrative arbitration disputes in certain areas of administrative and legal regulation, including: concurention protection[18], patent regulation[19], tariff

[10] See: Federal Law No. 59-FZ of May 2, 2006 "On the Procedure for Considering Appeals from Citizens of the Russian Federation"//SZ RF. 2006. No. 19. St. 2060.

[11] See: Federal Law No. 289-FZ of August 3, 2018 "On Customs Regulation in the Russian Federation and on Amendments to Certain Legislative Acts of the Russian Federation"// SZ RF. 2018. No. 32 (part 1). Article 5082.

[12] See: Federal Law No. 44-FZ of April 5, 2013 "On the Contract System in the Field of procurement of Goods, Works, Services for State and Municipal Needs"// SZ RF. 2013. No. 14. St. 1652.

[13] See: Federal Law No. 86-FZ of July 10, 2002 "On the Central Bank of the Russian Federation (Bank of Russia)"// SZ RF. 2002. No. 28. St. 2790.

[14] See: Federal Law No. 229-FZ of October 2, 2007 "On Enforcement Proceedings"//SZ RF. 2007. No. 41. St. 4849.

[15] See: Federal Law No. 129-FZ of August 8, 2001 "On State Registration of Legal Entities and Individual Entrepreneurs"// SZ RF. 2001. No. 33 (Part 1). Article 3431.

[16] See: Federal Law No. 210-FZ of July 27, 2010 "On the Organization of the provision of State and Municipal Services"// SZ RF. 2010. No. 31. St. 4179.

[17] See: Tax Code of the Russian Federation (Part One) No. 146-FZ of July 31, 1998// SZ RF. 1998. No. 31. Article 3824.

[18] See: Federal Law No. 135-FZ of July 26, 2006 "On Protection of Concurention"// SZ RF. 2006. No. 31 (Part 1). Article 3434.

[19] See: Order of the Ministry of Science and Higher Education of the Russian Federation and the Ministry of Economic Development of the

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regulation[20].

8. Judicial administrative disputes

A judicial administrative dispute is a documented disagreement of the applicant of the dispute with the decision, action or inaction of a public administration body (official) or other entity implementing or assisting in the implementation of administrative and public functions, which, from his point of view, violates, infringes or encumbers his subjective right arising from administrative or administrative procedural legal relations, addressed to the resolution of the competent court (judge) through administrative and protective proceedings.

Within the framework of judicial administrative disputes, two pairs of generic categories are distinguished, depending on the presence or absence of the applicant's connection of this dispute with the implementation of entrepreneurial and other economic activities.

According to this criterion, judicial administrative disputes can be divided into judicial administrative non-economic disputes, or otherwise – general administrative disputes and judicial administrative economic disputes, or otherwise - arbitration administrative disputes.

Judicial administrative non-economic disputes have been singled out and recalled to the competence of the court of general jurisdiction of the specific rules of paragraph 1), 1.1), 2), 3), 4), 5), 6) Part 2 of Article 1 of the CAS of the Russian Federation and Part 1, 1.1 of Article 30.1., Part 1, 2 of Article 30.9, Article 30.10, Article 30.12 of the Administrative Code of the Russian Federation.

Judicial administrative economic disputes are singled out and referred to capable arbitration courts by special rules of paragraph 1.1), 1.2), 2), 3) Part 1. 29, Part 1. 207 of the APC of the Russian Federation and Part 3. 30.1, Part 4.1. Article 30.13. of the Administrative Code of the Russian Federation.

9. Special types of administrative disputes

The conducted categorization of out-of-court and judicial administrative disputes will not be complete, unless special categories of these disputes are identified, which allow a more complete understanding of the picture of the development of administrative disputes in the Russian legal system.

So, taking into account the specifics of the objects of an administrative dispute, it is proposed to distinguish: a) administrative disputes about the legality of decisions, b) administrative disputes about the legality of actions; c) administrative disputes about the legality of inaction.

Administrative disputes about the legality of decisions, in turn, can be divided into disputes about the legality of a normative legal act and disputes about the legality of a non-normative legal act, which are clearly delineated within the framework of judicial administrative process and are characterized by different procedural regulation, as well as different legal consequences of their resolution.

In addition, one of the specific features of administrative disputes that distinguish them from civil disputes is that these disputes can arise from both material and procedural relations. This makes it possible to classify administrative disputes, taking into account the specifics of the content of legal relations, from which a dispute arises into two types: 1) disputes arising from material administrative legal relations; 2) disputes arising from administrative procedural relations.

As a general rule, out–of-court administrative disputes can be resolved within a separate segment of administrative proceedings -

Russian Federation No. 644/261 dated April 30, 2020 "On the Rules for Filing Objections and applications and their consideration in the Chamber for Patent Disputes"// Official Internet Portal legal information www.pravo.gov.ru , August 26, 2020, No. 0001202008260011.

[20] See: Resolution of the Government of the Russian Federation No. 533 of April 30, 2018 "On Approval of the Rules for Consideration (Settlement) of Disputes and Disagreements Related to the Establishment and (or) Application of Prices (Tariffs), on Amendments to Resolution of the Government of the Russian Federation No. 14 of January 9, 2009 and Invalidation of Certain Acts of the Government Of the Russian Federation"// SZ RF. 2018. No. 19. St. 2755.

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the stage of reviewing a decision made on the merits of an administrative case, or an out-of-court dispute can be resolved through a separate systematized administrative and protective proceedings. A similar situation is observed in relation to judicial administrative disputes. In this regard, it is proposed to distinguish between instantiated and separate (autonomous) administrative disputes.

Given the specifics of the regulatory impact of the contested administrative procedural decision, it would be logical to distinguish between administrative disputes about the legality of final (finishing) administrative procedural decisions and administrative disputes about the legality of intermediate (route) administrative procedural decisions. Disputes about the legality of finishing decisions can be designated as final administrative disputes. Disputes about the legality of route decisions can be designated as interim administrative disputes.

10. Conclusions

1. Taking into account the analysis, it can be concluded that in the doctrine of foreign countries, as well as in the domestic doctrine, separate elements have been developed that partially predetermine the nature of administrative disputes arising in the Russian legal system. In the Russian Federation, a number of constitutional prerequisites have been established (the key of which are the provisions of art. 33 and 46 of the Constitution of the Russian Federation), which are detailed and specified in the norms of the administrative and administrative procedural legislation of the Russian Federation, a comprehensive analysis of which makes it possible to distinguish administrative disputes among other legal disputes, as well as to identify special administrative procedural forms of resolving these disputes, namely: administrative protective litigation and administrative protective proceedings.

2. From the standpoint of the functional approach developed by modern Russian administrative legal science, administrative disputes primarily arise from administrative and administrative-procedural legal relations that develop during the implementation of administrative public functions by specialized public authorities and authorized organizations, which in a generalized form are proposed to be called public administration bodies. In some cases, administrative disputes arise from administrative and administrative-procedural legal relations in which public administration bodies and their officials do not participate. These administrative disputes arise in connection with the provision of assistance to the public administration in the performance of its administrative public functions.

3. In order to characterize an administrative dispute, it is proposed to use the following key elements that reveal the theoretical construction of this dispute: a) the objects of the administrative dispute; b) the matter of the administrative dispute; c) the purposefulness of the administrative dispute. The connecting link between the presented elements of an administrative dispute is the subjective right of participants in administrative and administrative-procedural legal relations, or to put it another way – subjective law arising from administrative and administrative-procedural legal relations, which is understood as a collective category combining such a well-known legal structure as "rights, freedoms, legitimate interests", as well as individual elements of the administrative-legal status of the applicant of the dispute, established by the administrative-procedural law, which require extra-judicial or judicial protection in an administrative dispute (first of all, procedural guarantees of innocence and good faith).

4. In order to systematize administrative disputes arising in the Russian legal system, it is proposed to categorize these disputes using special evaluation criteria. The conducted categorization of administrative disputes makes it possible to distinguish: a) judicial and non-judicial administrative disputes (in accordance with the constitutional division of the competence of public authorities to resolve disputes); b) administrative public disputes; administrative organizational disputes and other administrative disputes (depending on the nature of the connection of the administrative dispute with the activities of public administration); c) administrative-restoring or

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otherwise - administrative-favorable disputes and administrative-tort or otherwise - administrative-rehabilitation disputes (taking into account the objectively conditioned need for an increased level of protection of subjective law in the conditions of administrative-legal coercion); d) administrative-ascending and administrative-arbitration extra-judicial disputes (depending on the nature of the competence of the body (official) of public administration); e) judicial administrative–non-economic disputes or otherwise – general administrative disputes and judicial administrative-economic disputes or otherwise - arbitration administrative disputes (depending on the presence or absence of the applicant's connection dispute with the implementation of his entrepreneurial and other economic activities); f) administrative disputes arising from material administrative legal relations and administrative disputes arising from administrative procedural relations (taking into account the specifics of the content of legal relations from which an administrative dispute arises); g) administrative disputes about the legality of decisions and administrative disputes about the legality of actions or omissions (taking into account the specifics of the objects of administrative dispute); h) administrative disputes on the legality of final (finishing) administrative procedural decisions - final administrative disputes and administrative disputes on the legality of intermediate (route) administrative procedural decisions - interim administrative disputes (taking into account the specifics of the regulatory impact of the contested administrative procedural decision).

The formulated theoretical approaches to understanding administrative disputes and assessing their diversity are scientifically based guidelines for the development of administrative procedural legislation of the Russian Federation.

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