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ADMINISTRATION PROCESS AND ADMINISTRATIVE PROCEEDINGS: PROBLEMS AND FUTURE

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The subject is administrative proceedings in the system of judicial proceedings used in Russia.

The purpose of the article is definition of the essence of both legal proceedings in general and administrative proceedings in particular, as well as its varieties.

Methodology includes methods of complex analysis and synthesis of the Russian legislation and scientific sources, as well as formal-logical logical interpretation of legal rules and scientific papers.

Main results. It seems reasonable to be guided by the position of the legislator, according to which each constitutionally defined type of legal proceedings corresponds to a specific procedural form, each of which is fixed exclusively in the corresponding independent federal law. The separation of civil and commercial proceedings is of a functional nature, taking into account the totality of the specifics and the subject composition of the civil cases under consideration. Currently, in the Russian Federation, administrative proceedings are carried out in at least two independent procedural forms. Administrative court proceedings are judicial administrative proceedings, the human rights essence of which is the procedural activity of the court for the actual consideration and resolution of administrative cases and cases of administrative violations. The concept of administrative proceedings is part of a broader concept of administration process, which, in addition to considering a case accepted for trial on the merits, includes the procedural activity of the court at the stage before the acceptance of administrative claims submitted to the court under the Code of Administrative Procedure of the Russian Federation. The administration process is exclusively judicial in nature and does not preclude the activities of quasi-judicial bodies to consider disputes with citizens and organizations on issues of disagreement of the latter with the actions (inaction) of executive authorities and their officials and their decisions.

Conclusions. The components of the concept of administrative proceedings are proceedings in administrative and other cases arising from public relations (public law disputes) and judicial proceedings in cases of administrative offenses. Public law disputes and proceedings in cases of administrative offenses include a public authority as one mandatory party, nevertheless, public law disputes are of a claim nature, whereas proceedings on an administrative offense have a tort content.

1. Introduction.

The goal of the ongoing reform of public authorities in Russia and the order of their administrative activities, which is carried out from the constitutional level to the adoption of laws, is to build a modern democratic rule of law state with the priority of the highest value of man, his rights and freedoms, the main means of ensuring which is improving the judicial protection of the rights and legitimate interests of citizens and organizations, improving the quality of the administration of justice. At the same time, this reform process is the subject and, in some part, the logical result of a scientific discussion on its most important issues, including the exercise of executive power on the principles of legality and respect for the rights of citizens, which are ensured by the means of the judicial system for the administration of justice as administrative and other cases arising from public legal relations, as well as in cases of administrative offenses [1, p.3, 2, p. 59, 3, p.9.].

As part of this reform, the means of judicial power exercised in the Russian Federation, enshrined in Part 2 of Article 118 of the Constitution of the Russian Federation and initially including constitutional, criminal, administrative, and civil proceedings, were supplemented by arbitration proceedings. The introduction of legal proceedings in cases of administrative offenses into this constitutional norm did not happen, which indicates that scientific discussion about the place of legal proceedings in cases of administrative offenses among the constitutionally defined types of legal proceedings in the Russian Federation has not yet been actually resolved at the legislative level. Federation [4, p. 9, 5, p. 89.].

Thus, we believe that currently in the Russian Federation the constitutional and legal principles have constitutional, civil, arbitration, administrative and criminal proceedings.

Taking this into account, there is every reason to take into account constitutional provisions when determining the essence of both legal proceedings in general and in relation to the subject of this article - administrative, civil and arbitration proceedings, in particular.

It seems legitimate that the status and competence characteristics of the judicial system of Russia, which includes both courts of general jurisdiction, contained in Article 10, Chapter 7 of the Constitution of the Russian Federation and the Federal Constitutional Law of December 31, 1996 No. 1-FKZ “On the Judicial System of the Russian Federation” , and arbitration courts, with the leading role of the Supreme Court of the Russian Federation as the highest judicial body in civil cases, resolution of economic disputes, criminal, administrative and other cases, jurisdictional courts of general jurisdiction and arbitration courts, should be taken into account as the starting point when determining legal nature of these types of legal proceedings in the Russian Federation[6, p. 21, 7, c, 5].

2. Relevance and global nature of the problem

Regarding the definition of the nature of civil and arbitration proceedings, there are no fundamental contradictions either in the scientific doctrine or in the legislative sphere. Both scientists and the legislator generally agree on the civil essence of civil and arbitration proceedings, which actually have similar objects of regulated legal relations, legal content and purpose, which are carried out in similar procedural forms, although enshrined in independent federal laws - Civil Procedural Code of the Russian Federation (hereinafter referred to as the Code of Civil Procedure of the Russian Federation) and the Arbitration Procedure Code of the Russian Federation (hereinafter referred to as the Arbitration Procedure Code of the Russian Federation) [8, p. 89, 9, p.5.]. In fact, the difference between these types of proceedings lies in the implementation of arbitration proceedings in relation to private law disputes, which are of an economic nature and are carried out, as a rule, between legal entities and individual entrepreneurs regarding their economic activities. Thus, the foregoing allows us to assert that the division of civil and arbitration proceedings is of a functional nature,

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taking into account the totality of the specifics and subject composition of the civil cases under consideration with the allocation of the competence of arbitration proceedings, carried out by specialized - arbitration - courts, consideration and resolution of civil cases arising in the field of business and other economic activities with the corresponding subject composition (legal entities, individual entrepreneurs)[10, p. 9, 11, p. 5, 12, p. 9.]

From the same constitutional provisions, as well as the normative provisions of the Federal Constitutional Law "On the Judicial System", the Code of Criminal Procedure of the Russian Federation, the Code of Civil Procedure of the Russian Federation, the CAS of the Russian Federation, the Arbitration Procedure Code of the Russian Federation, it follows that the courts of general jurisdiction and arbitration courts, which constitute the main link of the judicial system, carry out the following types of legal proceedings : courts of general jurisdiction - criminal, civil, administrative proceedings and proceedings in cases of administrative offenses, and arbitration courts - arbitration and administrative proceedings and proceedings in cases of administrative offenses on bringing legal entities and individual entrepreneurs to administrative liability in connection with with their implementation of entrepreneurial and other economic activities, referred by federal law to the competence of arbitration courts.

It makes no sense to dispute that the consideration and resolution by courts of cases within their jurisdiction within the framework of the relevant legal proceedings occurs through the implementation of the procedural form established by federal law, the essence of which, in our opinion, is the judicial process for consideration and resolution by courts and arbitration courts the above cases [13, p.5, 14, p. 9.].

At the same time, it seems reasonable to be guided by the given position of the legislator, according to which each constitutionally defined type of legal proceedings corresponds to a specific procedural form, each of which is enshrined exclusively in the corresponding independent federal law: criminal proceedings are regulated by the norms of the Code of Criminal Procedure of the Russian Federation, civil proceedings provided for in the regulatory requirements of the Civil Procedure Code of the Russian Federation, arbitration proceedings are carried out according to the rules established in the Arbitration Procedure Code of the Russian Federation.

It would seem, based on this, the logical conclusion is that administrative proceedings should also be carried out in an independent procedural form established in a separate federal law, in force from September 15, 2015 to the present day, the Code of Administrative Proceedings of Russia (hereinafter referred to as the CAS RF). The Code establishes unified specific procedural forms of administrative proceedings and complies with the above constitutional norm on administrative proceedings as an independent means of exercising judicial power in the Russian Federation along with other types of proceedings in the administration of justice [15, p. 5, 16, p. 69, 17, p. 29.].

At the same time, Part 1 of Article 1 of the CAS of the Russian Federation clearly states that this Code regulates the procedure for carrying out administrative proceedings when considering and resolving administrative cases by the Supreme Court of the Russian Federation, courts of general jurisdiction, justices of the peace (hereinafter also referred to as courts) on the protection of violated or contested rights, freedoms and legitimate interests of citizens, rights and legitimate interests of organizations, as well as other administrative cases arising from administrative and other public legal relations and related to the implementation of judicial control over the legality and validity of the implementation of state or other public powers.

At the same time, Part 4 of Article 1 of the CAS of the Russian Federation directly stipulates that cases arising from public legal relations and referred by federal law to the competence of the Constitutional Court of Russia are not subject to consideration in the manner established by this law.

Taking into account the study of scientific literature and current legislation, to this day in the Arbitration Procedure Code of the Russian Federation (hereinafter referred to as the Arbitration Procedure Code of the Russian Federation), Section III "Proceedings in the

arbitration court of first instance in cases arising from administrative and other public matters" retains its current position. legal relations", which includes Chapter 22 "Features of the consideration of cases arising from administrative and other public legal relations", Chapter 23 "Consideration by the intellectual property rights court of cases challenging normative legal acts and acts containing clarifications of legislation and having normative properties", Chapter 24 "Consideration of cases challenging non-normative legal acts, decisions and actions (inaction) of state bodies, local self-government bodies, other bodies, organizations vested by federal law with certain state or other public powers, officials", as well as Chapter 25 "Consideration of cases of administrative offenses" and Chapter 26 "Consideration of cases of collection of mandatory payments and sanctions." At the same time, Part 1 of Article 29 of the Arbitration Procedure Code of the Russian Federation directly states that arbitration courts consider, in administrative proceedings, economic disputes arising from administrative and other public legal relations and other cases related to the implementation of entrepreneurial and other economic activities by organizations and citizens.

Thus, from the analysis of the specified regulatory requirements of the CAS of the Russian Federation and the Arbitration Procedure Code of the Russian Federation, it is seen that currently in the Russian Federation administrative legal proceedings are carried out in at least two independent procedural forms, which cannot but indicate a certain inconsistency in the current state of the procedural form of administrative legal proceedings .

Moreover, the inclusion in the Arbitration Procedure Code of the Russian Federation of Section III "Proceedings in the Arbitration Court of First Instance in Cases Arising from Administrative and Other Public Legal Relations" of Chapter 25 "Consideration of Cases of Administrative Offences" to some extent suggests the position of the legislator regarding the attribution to the sphere of administrative- active legal proceedings and proceedings on administrative offenses, which to some extent corresponds to the above provisions of Article 118 of the Constitution of the Russian Federation on the implementation of administrative proceedings without limiting this type of legal proceedings both in terms of the number of independent procedural forms and in excluding from it legal proceedings in cases of administrative offenses .

Of course, the contradictory content of the concept of administrative proceedings that has developed at the legislative level contributes to the continuation of scientific discussion regarding the legal content of administrative proceedings, its relationship with the legal and administrative process, the unity or dualism of the procedural form of administrative proceedings.

Controversial issues include, among other things, the inclusion in its composition of the procedural form of legal proceedings in cases of administrative offenses, especially the independence or lack of independence of administrative legal proceedings as a means of exercising judicial power in relation to civil legal proceedings, judicial proceedings, as well as as the content of administrative judicial law as a branch of law, a branch of legislation, as well as its relationship with the concept of "administrative justice"[18, p. 29, 19, p. 29, 20, p. 2.].

3. Problems of legal regulation

Since the constitutional provisions of Article 118 of the Constitution of the Russian Federation provide for the administration of justice only by the court, including in relation to the subject under consideration in the form of administrative proceedings, it follows that administrative proceedings are a judicial administrative process, the human rights essence of which constitutes the procedural activities of the court for the actual consideration and resolution of administrative cases and cases of administrative offenses.

In the consideration and resolution of administrative cases and cases of administrative offenses, in addition to the judge (judges), persons participating in the case, as well as those providing assistance in the implementation of this type of legal proceedings (their representatives, persons assisting in the administration of justice, including experts, specialists) are involved. - alist, witness,

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translator, assistant judge, secretary of the court session) (Chapter 4 of the Code of Administrative Offenses of the Russian Federation, Chapter 5 of the Arbitration Procedure Code of the Russian Federation, Chapter 25 of the Code of Administrative Offenses of the Russian Federation).

In our opinion, the concept of administrative proceedings is part of a broader concept of administrative process, which, in addition to considering a case accepted for trial by the court on its merits, includes the procedural activities of the court at the stage before accepting administrative claims received by the court according to the CAS of the Russian Federation (in the Arbitration Procedure Code of the Russian Federation - statements and complaints, in the Administrative Code of the Russian Federation - a protocol on an administrative offense and other case materials). At the same time, in our opinion, the administrative process, which, as stated above, includes administrative proceedings, is exclusively judicial in nature and does not provide for the activities of quasi-judicial bodies to consider disputes with citizens and organizations regarding issues of the latter's disagreement with actions (inaction) of executive authorities and their officials and decisions taken by them.

Currently, a scientific discussion is ongoing about the possibility of considering the concept of "administrative process" in a broad sense, including, along with administrative proceedings, such components as "executive administrative process", "administrative procedural activities of public administration", which are carried out by bodies executive power and local self-government, defining it not as an administrative proceeding, but as an activity regulated by law to bring to administrative responsibility, both by the courts and authorized state bodies [21, p. 42].

It is important to note that in accordance with paragraph "o" of Article 71 of the Constitution of the Russian Federation, it is the subject of the exclusive jurisdiction of the Russian Federation, along with issues of judicial system; prosecutor's office; criminal and penal legislation; amnesties and pardons; Civil legislation also includes procedural legislation.

The fact that in paragraph "k" of Part 1 of Article 72 of the Constitution of the Russian Federation issues of administrative and administrative procedural legislation are referred to the subject of joint jurisdiction of the Russian Federation and its constituent entities does not in itself indicate a discrepancy between such legal phenomena as administrative proceedings and administrative process.

Based on the specifics of legal regulation at the level of the constituent entities of the Russian Federation, in particular, using the example of the Law of the Omsk Region dated July 24, 2006 No. 770-OZ "Code of the Omsk Region on Administrative Offenses" (adopted by Resolution of the Legislative Assembly of the Omsk Region dated July 13, 2006 No. 229), it is clear that it takes place by bringing citizens and organizations to administrative responsibility with establishing the jurisdiction of a number of cases of administrative offenses provided for in Chapters 1, 2, Articles 45, 46, 63, 63.2, 63.3 of this Law, magistrates, as well as other types of administrative offenses - administrative commissions. This structure of the Law of the Omsk Region dated July 24, 2006 corresponds to the principles of federal legislation on administrative responsibility, which are enshrined in the norms of the Code of Administrative Offenses of the Russian Federation.

Of course, it is possible to judge that this Law is a manifestation of the private, but upon closer examination of the legislation of other subjects of the Russian Federation with a view to their implementation of the powers granted by virtue of paragraph "k" of Part 1 of Article 72 of the Constitution of the Russian Federation, one can see that in general the law is creativity of the subjects of the Russian Federation on such a joint subject with the Russian Federation as administrative and administrative procedural legislation is carried out according to general standards [22, p. 7, 23, p. 12.].

4. Conclusions

Thus, the enshrinement in the Constitution of the Russian Federation of joint jurisdiction of both the Russian Federation and its subjects on the subject of administrative and administrative procedural legislation cannot in itself indicate that the administrative process and administrative

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proceedings are different legal concepts. In this case, given the absence of legislatively established definitions of administrative and administrative procedural law, it is possible to conclude that there is an incompletely resolved issue of delimitation of administrative procedural legislation for the inclusion or exclusion from it of judicial proceedings in cases of administrative offenses both in the federal level, and at the level of the constituent entities of the Russian Federation, on which until now there is a scientific discussion, within the framework of which diametrically opposed opinions are expressed.

This is largely due to the fact that, on the one hand, at the linguistic level, the concept of administrative proceedings and proceedings for administrative offenses has some synonymy, and on the other hand, at the essential level, despite the fact that both public law disputes and proceedings on administrative offenses include a public authority as one obligatory party, however, public law disputes have an actionable nature, whereas proceedings on an administrative offense have tortious content.

In this regard, we can agree with Professor Yu.P. Solovyov both regarding his position on the need to reform legislation in relation to the two main types of public liability - criminal and administrative[15, p.37], and regarding the opinion he developed that the relationship between crime and administrative offense is the question is not the presence or absence of public danger, but its nature and degree, which is an independent basis for the transformation of legislation on administrative offenses[16, p.5].

Based on this, as well as the indicated constitutional provisions on the implementation of administrative proceedings in the Russian Federation, we believe that it is necessary to conclude that it is necessary and legal to define as existing components the concept of administrative proceedings - legal proceedings on administrative and other issues arising from public relations affairs and legal proceedings in cases of administrative offenses.

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