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THE REGULATORY AND PROTECTIVE NATURE OF ADMINISTRATIVE AND PROCEDURAL LEGAL RELATIONS

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The article attempts to analyze administrative and procedural legal relations from the point of view of characterizing the ratio of their regulatory and protective nature.
The methodological basis of the article is dialectical, formal-logical methods, formal-legal method and method of interpretation of law.
The paper calls into question the possibility of using the protective legal relationship as a basis for distinguishing procedural and material legal relations. The author argues that not all activities and actions that have a protective nature and are carried out in the process of public administration are procedural in nature. The assumption that the emergence of a legal process is connected not only with a protective legal relationship arising from non-compliance with obligations or the occurrence of other situations entailing the use of coercive measures, but also in order to ensure respect for the rights of participants in the process from abuse of power by persons making both interim and final procedural decisions is made. Ensuring the rights of participants in the administrative process is carried out by establishing specific administrative procedural actions, deadlines, administrative procedural decisions, procedural grounds for their adoption, etc. The legal process, including the administrative process, must be considered from the point of view of establishing the truth in the case, but at the same time guarantees must be provided that prevent the abuse of power by on the part of the ruling entity and the right on the part of all participants in the process. At the same time, administrative procedural regulation is aimed not only at establishing legal facts, comprehensiveness, completeness and objectivity of the consideration of an administrative case, but also at protecting the rights of persons involved in the case and ensuring their duties. Hence, the protective nature of administrative and procedural legal relations does not follow from the main substantive legal relationship, but from the corresponding purpose of protecting and ensuring the legitimate procedural rights and obligations of participants in the administrative process.
Administrative and procedural legal relations, realizing the regulatory function of law, are formed on the basis of regulatory norms that provide for administrative and procedural rights and obligations of relevant subjects in the consideration and resolution of administrative cases. In addition to the fact that administrative and procedural legal relations are regulatory, they also have a law enforcement character. The regulatory function of administrative and procedural law is expressed in the establishment of not only administrative and procedural actions that should (can) be committed by the subjects of administrative and procedural legal relations when initiating, establishing circumstances, considering an administrative case, but also in their specific sequence, timing of commission, as well as types of administrative and procedural decisions, etc. The protective function of administrative and procedural law is to protect the administrative and procedural rights and interests of all participants in legal relations.
Based on the above, the author comes to the conclusion that administrative and procedural legal relations are of a regulatory and protective nature.

1. Introduction

There are long-standing discussions among administrative scientists about the concept, essence, and features of the administrative process. Recently, the works of A.A. Grishkovets [1], K.V. Davydov [2], A.B. Zelentsov [3], A.I. Kaplunov [4], M.N. Kobzar-Frolova [5], P.I. Kononov [6], E.B. Lupareva [7, 8] have been devoted to these issues, D.V. Osintseva [9], P.P. Serkova [10], Yu.P. Solovya [11, 12], V.D. Sorokina [13] A.I. Stakhova [14], Yu.N. Starilova [15], etc. One of the cornerstone problems is the essential characteristic of administrative and procedural legal relations, which is given attention not only by administrationists, but also representatives of such sciences as the theory of state and law and civil procedure. The attention is often drawn to the nature of such legal relations - regulatory or protective. This is due to the fact that the allocation of procedural legal relations is usually linked to the type of material legal relations that they provide and the implemented function of law. V.N. Protasov [16, 17, 18], T.N. Radko [19], N.A. Gromoshina [20] and others have devoted their works to the characteristics of regulatory and protective legal relations as the basis for the differentiation of procedural (including administrative and procedural) and material legal relations. However, all these works do not remove the existing contradictions in the characterization of administrative and procedural legal relations. In this regard, this article will be devoted to the analysis of administrative and procedural legal relations from the point of view of characterizing the ratio of their regulatory and protective nature.

2. General characteristics of regulatory and protective legal relations

It should be recalled that regulatory legal relations, as Professor T.N. Radko rightly notes, arise in accordance with the prescriptions of legal norms, on the basis of legitimate legal facts and are aimed to regulating public relations through the implementation of established competence, legal status, subjective rights and obligations [19, p. 170]. However, also T.N. Radko points out that the existence of regulatory legal relations indicates the possibility for citizens to exercise their rights and obligations voluntarily, without the use of state coercion, since in this case the legal obligation becomes a conscious necessity of behavior and the desire to satisfy the legitimate interest of the subjective law bearer [19, p. 171]. Let us allow ourselves to disagree with these statements in terms of fulfilling a legal obligation. Nevertheless, in the vast majority of cases in administrative, administrative and procedural, administrative and tort legal relations, the fulfillment of a legal obligation is ensured by state coercion. Most often, it is expressed in the establishment of administrative or administrative and disciplinary responsibility, or through administrative and preventive measures, etc. And this is correct, since the absence of such provision over time leads to non-fulfillment of their duties by citizens, civil servants, organizations and other subjects of administrative legal relations.

According to V.N. Protasov, the legal process is a kind of legal procedure aimed to identifying and implementing a material protective legal relationship, which determines the originality of its substantive features (mandatory presence in the composition of a power subject; the specifics of indirect measures; a high, as a rule, level of regulatory regulation, etc.), and most importantly, a special mechanism for communication with V.N. Protasov uses the protective legal relationship as the basis for distinguishing the procedural procedure from the material and law-making one. At the same time, it is noted that a number of procedural legal relations can be regulatory (for example, if procedural norms and relations are protected by procedural safeguards). At the same time, V.N. Protasov tries to explain why the chosen criterion has clarity:

1) the main relationship for the legal process is a material protective legal relationship;

2) the functional relationship of legal relations in the process should be interpreted as a relationship of relations that are directly acting and relations that ensure the action of the former, rather than regulatory and protective ones;

3) all these relations, despite their different functional orientation, already belong to the process, and there is no problem of distinguishing between material and procedural here [18, pp. 16-17].

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At the same time, V.N. Protasov understands the protective functions of protective legal relations quite broadly and does not reduce them only to ensuring the implementation of legal norms. That is why, he defines the purpose of protective legal relations as follows:

1) the presence of protective functions in relation to the social structure;

2) ensuring the normal functioning of the legal mechanism;

3) the need to put state coercion on a legal basis, to enclose it in a legal framework [17, p. 65].

It seems that V.N. Protasov based his reasoning on a fairly convenient and simple theoretical basis for distinguishing procedural and material legal relations, but is this correct? In the case of the administrative process, it seems that it is not, because the complexity of the material legal relations of the administrative type will determine the complexity of the corresponding procedural legal relations. In addition, we believe that it is necessary to distinguish administrative procedural activities, administrative procedural actions from just activities and other actions regulated by administrative and legal norms. The fact is that, as already noted, not all activities and not all actions that arise in the process of public administration are procedural in nature. Then, it must be assumed that they are regulated by the material norms of administrative law. Such actions and activities may be purely protective in nature, but not procedural. The signs of such non-procedural actions that can be distinguished are:

– there is no detailed prescription for how they are performed or in what order they should be performed;

– lack of deadlines for their implementation;

– inability to identify stages;

– there is no need to make a separate administrative decision at each stage of their commission.

The use and use by law enforcement officers of firearms, special means and physical force, various types of managerial actions related to the implementation of functions such as organization, coordination will be a good example of such actions. The entire public administration cannot be fully "processalized", as this will lead not only to excessive bureaucratization, but also to a decrease in its effectiveness. So, if you give the order of use of firearms by a law enforcement officer an administrative and procedural order, it is unlikely that this will lead to solving the tasks of law enforcement, but it will rather have the opposite effect, including the death of the employee himself.

According to T.N. Radko, the protective function is solved by various forms and methods, which will include:

– establishment of sanctions (state-legal consequences) for encroachments on protected public relations;

– establishment of prohibitions to commit actions contrary to the interests of society, the state and the individual;

– determination of legal facts that occur as a result of illegal actions of legal entities;

– establishment of a specific legal relationship between legal entities in order to implement legal responsibility (protective legal relationship);

– legal responsibility;

– measures of legal protection of relevant public relations.

And T.N. Radko refers to the forms of implementation of the regulatory function:

– determination of the legal personality of citizens by means of the norms of law;

– consolidation and change of the legal status of citizens;

– determination of the competence of state bodies, including the competence (powers) of officials;

– establishment of the legal basis for the activities of non - governmental organizations;

– determination of the legal status of legal entities;

– determination of legal facts aimed at the emergence, modification and termination of legal relations;

– establishment of a specific legal relationship between legal entities (specific regulatory relations) [19, pp. 165, 184].

O.A. Kravchenko agrees with T.N. Radko's position that regulatory legal relations act as a conductor of the regulatory function of law in its static and dynamic forms, therefore they are aimed to regulating public relations by establishing the

subjective rights and legal obligations of their participants. Protective legal relations realize the protective function of law. This is the form in which a declarative statement of the state (prohibition, threat of sanction) receives concrete embodiment in the case of illegal actions by subjects, therefore such legal relations arise in the form of a reaction of the state to the illegal behavior of legal subjects and are aimed at displacing, excluding socially harmful relations [21, pp. 150-151]. At the same time, O.A. Kravchenko comes to the conclusion that in some cases procedural legal relations have a regulatory orientation [21, p. 152].

L.S. Yavich tried to characterize the procedural legal relations, pointing out the complexity of their nature. He noted the protective nature of this type of legal relationship in terms of its intended purpose and the social role of the procedural norm. Usually protective legal relations arise when they mediate the application of legal sanctions, and even then not always. According to L.S. Yavich, legal relations, which are a form of application of dispositions of the norms of law, are not protective, since their occurrence is not related to the commission of offenses. At the same time, protective legal relations arise in cases where the norms of procedural law themselves are violated. So, as L.S. Yavich believed, violation of the norms of procedural law entails the application of sanctions that provide for the restoration of the violated right (cancellation of the decision in the case of an administrative offense, etc.) or bringing the perpetrator to legal responsibility for violating the rules of the legal process. However, as a measure of responsibility, L.S. Yavich also considered bringing a person who was evading a summons to court or changing the preventive measure, which was clearly a mistake. At the same time, indicated by the scientist, it was rightly concluded, on the one hand, about the general protective orientation of all legal relations in the field of procedural law, and on the other hand, not all legal relations are actually protective. It should also be noted that understanding the process as a form of life of the law and the interpretation of procedural law as a form serving the implementation of the norms of substantive law should in no way lead to an underestimation of the process of applying the norms of both substantive and procedural law (administrative, civil and criminal) [22, p. 223].

S.I. Vershinina expressed an interesting opinion about the ratio of regulatory and protective norms. Since, in accordance with the provisions of the theory of state and law, the basis for the emergence of protective or regulatory legal relations are the relevant norms, the issues of the relationship between regulatory and protective norms are of particular interest. So, S.I. Vershinina notes that regulatory norms form standards, models of behavior of participants in legal relations, but do not contain elements of coercion, since they assume their voluntary and conscious execution. By its nature, a regulatory norm is a legal prescription that establishes a model of proper behavior, combining the material and procedural aspects of legal regulation. In turn, the protective norms of law are secondary to the regulatory ones and are designed to ensure their observance and enforcement through the use of various types of state coercion. The task of protective norms, as stated by S.I. Vershinina, it is not about regulating legal relations between the violator and other persons, but in determining the type and scope of state influence aimed at preventing and eliminating illegal actions. Further, it is concluded that protective norms are legal prescriptions of a material nature that establish the possibility of applying a measure of state coercion in the presence of some model of illegal behavior, i.e. the material nature of the protective norm manifests itself through an established measure of state influence. However, the implementation of protective norms is carried out by specially authorized persons and involves the adoption of additional rules of a procedural nature. Among other things, this scientist notes that the implementation of regulatory norms can be initiated by any entity both for the exercise of rights and for the performance of duties. Then, in the first case, the hypothesis of the norm is related to subjective law, respectively, the implementation of the norm depends on the actions of the subject to use his right, and this gives rise to the obligation of another subject to perform the prescribed actions in favor of the first person. In the second case, the hypothesis of the norm requires initial actions to implement the norm from the obligated subject, and the authorized

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subject has the right to demand the fulfillment of this obligation. Also, the protective norm, unlike the regulatory one, establishes a model of illegal behavior, and not a model of a proper legal relationship. Protective norms have a one-sided orientation, since they act in relation to an obligated entity and provide a part of the regulatory norm related to the performance of a legal obligation. Therefore, the obligated entity has a choice: to fulfill its part of the disposition of the regulatory norm and end the legal relationship on this, or not to fulfill the legal obligation, i.e. to commit an illegal act and launch a law enforcement mechanism. Based on this, when material and procedural norms interact, legal relations arise aimed at achieving the ultimate goal - the use of state coercion measures, i.e., the disposition of the norm and its sanctions are "combined". At the end of his work, S.I. Vershinina draws the following conclusions: on the one hand, protective norms are always associated with illegal behavior and a measure of state coercion, and regulatory ones form models of behavior of participants in legal relations, focusing on the voluntary fulfillment by subjects of legal prescriptions, but at the same time, in the system of regulatory norms, it is necessary to identify a group of rules containing preventive coercive measures that are aimed at restricting rights and the freedoms of law-abiding subjects [23].

P.F. Eliseikin spoke interestingly about the connection between material and procedural legal relations and their nature. He noted that substantive legal relations, unlike civil procedural legal relations, usually exist in addition to the process. Civil procedural legal relations without material ones lose their meaning and become pointless to the same extent that the process itself turns out to be purposeless outside the protection of rights and interests. However, in order to initiate procedural activity, it is not at all necessary that the substantive legal relations, the protection of which is required by the interested person, be available. For the emergence of civil procedural legal relations, and then for their movement, it is enough to assume that there is a material legal relationship in need of protection, therefore such an assumption is formulated in the form of a special relationship that has not a regulatory, but a *protective* character [24, p. 11] (italics are mine).

V.N. Protasov, examining the protective legal relationship as the basis of the legal process, draws attention, on the one hand, to the fact that such legal relations arise in connection with an offense. The offense in this case will be the culpable non-fulfillment by the subject of the legal relationship of his legal obligation. Thus, failure to fulfill a subjective legal obligation leads to a violation of a subjective right. On the other hand, protective legal relations may be caused by behavior that is not provided for by law or may not be behavior. As such an example, V.N. Protasov cites human infection with an infection that can lead to forced hospitalization (currently, this example is confirmed by cases of COVID-19), which is carried out in a procedural manner [17, pp. 68-69]. In general, we should agree to this position of V.N. Protasov, but we believe that the emergence of a legal process is connected not only with a protective legal relationship arising from non-compliance with obligations or the occurrence of other situations entailing the use of coercive measures, but also in order to ensure respect for the rights of participants in the process from abuse of power by persons making both interim and final procedural decisions. First of all, the legal process, including the administrative process, must be considered, on the one hand, from the point of view of the need to establish the truth in the case, and on the other hand, guarantees must be provided to prevent abuse of power by the ruling entity. In this regard, it should be clarified that in the administrative process, the subjects making procedural decisions do not exercise their subjective rights and obligations, but public ones, since they act and make decisions on behalf of the state. This will significantly distinguish the administrative process, like any other legal process, from any civil legal relations. However, further V.N. Protasov notes that protective legal relations related to the implementation of administrative and preventive measures aimed at protecting public safety may also arise as a result of natural disasters that are not behavior [17, p. 69]. However, the question is: is there a procedural legal relationship in the example given by professor V.N. Protasov? It seems that there is not. There is an activity, but it may not have a

procedural form.

3. Characteristics of regulatory and protective legal relations in the administrative process

Thus, if we analyze all the main opinions about the essence of regulatory and protective legal relations, as well as which of these types administrative and procedural legal relations belong to, then we can conclude that the main difference will be that regulatory legal relations are formed on the basis of regulatory legal norms that establish the rights and obligations of participants in legal relations, determine the main "patterns of behavior". In turn, protective legal relations arise on the basis of protective legal norms that establish prohibitions and consequences for their violation, as well as regulating procedural legal relations that arose during the commission of offenses. Let's try to figure out what type of legal relationship administrative and procedural legal relations belong to, since this is not as obvious as it sometimes seems. It was already noted earlier that administrative and procedural legal relations, on the one hand, provide administrative legal relations that arise in the process of public administration in certain sectors and spheres – this is the so-called positive activity, and on the other hand – the second type of legal relations of the administrative type – administrative and tort, which are provided by administrative and procedural legal relations.

If we assume that administrative procedural legal relations do not arise from the moment of committing an administrative tort or the occurrence of an obligation (right), but when actions are taken to fix such facts or, for example, the application of administrative procedural measures, then it should be assumed that all administrative procedural legal relations arise from positive actions. Can they be protective? Of course, yes, since administrative procedural regulation is aimed not only at establishing legal facts, comprehensiveness, completeness and objectivity of the consideration of an administrative case, but also at protecting the rights of persons involved in the case and ensuring that they fulfill their duties. In this regard, we believe that the protective nature of administrative procedural legal relations does not follow from the main substantive legal relationship, but from the corresponding purpose of protecting and ensuring the legitimate procedural rights and obligations of participants in the administrative process. Considering administrative and procedural legal relations from the point of view of the implementation of the protective or regulatory function of law, it is impossible not to pay attention to the legal purpose as one of the foundations for the implementation of such functions. A legal goal can be considered as a model of a social condition, process or phenomenon created by the state or authorized by it, which participants in legal relations strive to achieve with the help of legal means [25]. As M.A. Kulikov rightly points out, the legal goal sets guidelines for the development of administrative and procedural legal relations, so it can serve as both a legal incentive and a legal restriction. At the same time, it can act as an important criterion for assessing the legality of the actions of participants in administrative procedural legal relations [25]. In this regard, let us assume that administrative and procedural legal relations are of a regulatory and protective nature. Administrative and procedural legal relations, realizing the regulatory function of law, are formed on the basis of regulatory norms that provide for administrative and procedural rights and obligations of relevant subjects in the consideration and resolution of administrative cases. In addition to the fact that administrative and procedural legal relations are regulatory, they also have a law enforcement character. The regulatory function of administrative and procedural law is expressed in the establishment of not only administrative and procedural actions that should (can) to be committed by the subjects of administrative and procedural legal relations when initiating, establishing circumstances, considering an administrative case, but also in their specific sequence, timing of commission, as well as types of administrative and procedural decisions, etc. The protective function of administrative and procedural law is to protect the administrative and procedural rights and interests of all participants in legal relations. Based on this, it can be stated that the administrative and procedural legal relationship, as a type of legal relationship, performs such functions as:

– specification of participants who are subject to administrative and procedural rules;

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– establishment of specific procedural rights and obligations arising in connection with the initiation, consideration of an administrative case and the execution of a decision on it;

– within the framework of emerging specific procedural legal relations, a basis may arise for the application of both measures of administrative procedural coercion and measures of responsibility for non-fulfillment of relevant administrative procedural obligations.

Let us try to analyze administrative and procedural legal relations from this point of view. Let us start our analysis with the administrative procedural legal relations that ensure administrative legal relations. Of course, not all types related to public management activities belong to this type of procedural legal relations. Currently, these include procedural legal relations related to:

– the exercise of public control;

– provision of state and municipal services;

– the implementation of licensing and licensing activities that are not related to the provision of public services;

– by performing certain managerial actions that have a procedural nature.

Administrative and procedural legal relations arising in connection with the application of administrative and tort norms will include:

– proceedings in cases of administrative offenses;

– administrative and disciplinary proceedings.

What can unite these types of administrative and procedural legal relations? We believe that one of the tasks is to protect the administrative and procedural rights and interests of participants in administrative and procedural legal relations. Moreover, in administrative and procedural legal relations, the rights and interests of not only individuals, organizations, but also the ruling entities making appropriate administrative and procedural decisions (for example, from abuse of law) should be protected. Thus, we believe that by procedurally regulating the relevant types of legal relations arising in the process of implementing various types of public administration, the state has not only streamlined such activities, but also guaranteed compliance with administrative procedural rights and fulfillment of administrative procedural duties by their participants.

4. Conclusions

Based on the above, it can be concluded that administrative and procedural legal relations are of a regulatory and protective nature. The regulatory nature of administrative and procedural legal relations is associated with the administrative and procedural regulation of the procedure for administrative proceedings, the establishment of the rights and obligations of participants in administrative and procedural legal relations, administrative and procedural deadlines and decisions. The protective nature of such legal relations is associated with ensuring the administrative and procedural rights and obligations of their participants.

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