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Administrative Justice

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Abstract

Based on an analysis of the current state of legislation and judicial practice and also of certain specific development trends, this article considers the issues relevant to administrative and judicial reforms, identifies a number of terms important for understanding the matter in question, and highlights various problems in trying administrative cases in courts as well as in pre-trial (extrajudicial) proceedings. The new Code of Administrative Judicial Procedure of the Russian Federation is examined closely for its consistency with other procedural laws. The article also points out the problem in jurisdiction over administrative cases that may arise among the several panels of the Supreme Court of the Russian Federation, which may arrive at different outcomes in similar disputes. The general jurisdictional approach used by courts to consider administrative offenses related to entrepreneurial activities is critically assessed. The disadvantages of rulemaking in administrative cases exercised by the economic panel of the RF Supreme Court are also outlined. After analyzing the problem of pre-trial compensation for damages caused by illegal actions of administrative bodies, a number of statutory innovations for establishing pretrial damages and tightening the procedures and measures of such liability for administrative entities are suggested. It is advisable to establish a special centralized administrative body for out-of-court settlement of administrative cases within Russia's executive system. This would ensure the effectiveness of the institution for handling a general administrative complaint and provide administrative protection of citizens' rights. Such a body would be able both to depoliticize and de-bureaucratize administrative authorities, and it would reduce caseloads and relieve the courts of the punitive function of prosecuting small administrative claims, a duty that is not typical for the judiciary.

Keywords

Administrative reform; administrative justice; administrative proceedings; administrative procedure; administrative jurisdiction; administrative process; administrative cases; the Code of Administrative Judicial Procedure of the Russian Federation; indemnification.

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Introduction

Administrative and judicial reforms are under way in our country; and in the context of the formation of Russian statehood under new economic conditions, the institution of administrative proceedings is a topic of great interest. Undoubtedly, the attention paid in recent years to rule of law based on the idea of legal protection for non-authoritative entities (citizens, individual entrepreneurs, enterprises) as they interact with public authorities has increased in Russia.

Theoretical and legal study of issues involving administrative procedure is needed due to: increased consideration of administrative cases by both administrative bodies and arbitration and general court judges; lack of an institution for administrative justice in Russia mandated by legislation, although it is being debated in theory; adoption of the new Code of Administrative Judicial Procedure of the Russian Federation (hereinafter referred to as CAJP RF or the Code); preparation of a draft for the general section of the new Code of Administrative Offenses of the Russian Federation (hereinafter referred to as CAO RF).[1]

One of the issues under consideration here is increasing the efficiency of Russian court proceedings by unifying legislation concerning civil, arbitration and administrative procedure.

1. Definition of terms

Terms used in this article need to be clarified at the outset.

Legal process is a kind of social process involving a sequence of legal activity (actions) and legal documents (acts), which includes trials (litigations) and legal procedures stipulated by law.

[1] Draft Law No. 703192-6.

Administrative process is a type of legal process which has all the features inherent in the latter (authoritative in nature, regulated by procedural norms; and consists of goal-oriented, deliberate actions for achieving certain legal results and formalizing them in documents). Administrative process is the part of administrative (executive and administrative) activity which is subject to legal regulation.

We distinguish three components in the administrative process of executive bodies of public authority:

administrative-normative component that regulates rule-making proceedings for the creation (amendment, suspension, cancellation) of by-laws issued by the executive bodies of public authorities in order to provide a legal framework for implementing laws;

administrative-empowering component which is carried out in an administrative and procedural form and includes proceedings governing the law enforcement and non-jurisdictional activities of a wide range of executive bodies of public authorities in order to implement the rights and obligations of individual and collective entities regarding governance;

administrative-jurisdictional component which is carried out in an administrative and procedural form and which involves law enforcement proceedings that are jurisdictional and coercive by nature with regard to a broad range of subjects of executive bodies of public authorities and are aimed at resolving disputes, implementing sanctions, and defending protective legal relations through the application of measures of state coercion (administrative, disciplinary).

Administrative procedure is a type of legal process which has all the features inherent in such a process (activities authoritative in nature, regulated by legal procedural norms, and undertaken as purposeful, deliberate activity aimed at achieving certain legal results and formalizing them in documents).

At present Russian legislation does not treat the concepts of "administrative justice" and "administrative proceeding" as interchangeable.It is a conclusion of many researchers, see for example: [Bakhrakh D.N., 2005: 19–25]; [Bakhrakh D.N., 2009: 2–6]; [Burkov A.L., 2003: 62–68]; [Dernovoy V.B., 2005: 2–11]; [Gadzhiev G.A., 2005: 163–167]; [Gromoshina N.A., 2013: 47–57]; [Starilov Yu. N., 2013: 211–276]; [Volchetskaya T.S. et al., 2003: 93–101]; [Zelentsov A.B., 2015: 39–46].

The term "administrative justice" has not been established in Russian legislation and is used by lawyers only for theoretical purposes.

Administrative justice includes consideration of administrative disputes in a special (administrative) procedure by both judicial and non-judicial (quasi-judicial) administrative-jurisdictional bodies.

Administrative jurisdiction is a set of statutory powers accorded to courts, other state authorities, local self-government bodies, and their officials for the purpose of considering administrative and legal cases and enforcing the resulting judgements.

An administrative proceeding is not an activity of administration, but a type of legal proceeding for considering administrative cases in a special way regulated by the rules of administrative-procedural law.

It should be noted that administrative court proceedings take place in arbitration courts. They have their own judiciary and specialization among judges as well as special litigation.

Four reform options had been previously proposed for making the adjudication of administrative cases more efficient:

establishing independent administrative courts;

having administrative courts operate simultaneously within the existing judicial system (in both the general and arbitration courts);

adopting a single federal constitutional law regulating the procedure for adjudicating cases arising from administrative legal relations both in general and arbitration courts;

reforming (improving) administrative proceedings within the existing judicial systems by introducing suitable amendments to the Arbitration Procedural Code of the Russian Federation (hereinafter referred to as APC RF) and the Civil Procedural Code of the Russian Federation (hereinafter referred to as CPC RF).

The new CAJP RF[2] entered into force on 15 September 2015.

By analogy with the CPC RF, the CAJP regulates the entire procedure for administrative cases in the courts from filing administrative complaints to enforcing judgements.

The new code does not address or regulate proceedings that pertain to administrative offenses (neither in courts nor in pre-trial [extrajudicial] proceedings), and that procedure remains the same.

The CAJP RF does not regulate extra-judicial proceedings in administrative cases. Its scope of regulation extends only to proceedings in general courts. Nor does the Code regulate arbitration proceedings. Arbitration courts will try the appropriate administrative cases in the same way as before.

Nevertheless, some rules of the Code have been derived from the APC RF, such as the rules for exemption from proving circumstances recognized jointly by all parties,[3] or the provision that electronic documents may be attached to an administrative claim.[4] Enacting rules of this kind could bring the procedure for administrative cases in general courts closer to the procedure for such cases in arbitration courts.

[2] Except for Article 45(2) and (4), Article 125(8), Article 126(2), Article 299(7), Article 319(3), Article 347(4), Article 353(4)(5) and (9) all of which came into force on 15 September 2016; and Article 21(14) of the CAJP that came into force on 1 January 2017.

[3] CAJP RF. Article 65.

[4] Ibid. Article 125(8).

The overwhelming majority of rules in the Code are similar to the corresponding rules in the CPC RF. For example, the procedure for considering administrative cases remains mostly unchanged.

Administrative cases to be tried under the new Code are as follows:[5]

1) cases challenging normative legal acts in full or in part;

1.1) cases challenging acts that contain interpretation of legislation and have normative features;[6]

2) cases challenging decisions, actions (failures to act) of public authorities, other state bodies, bodies of military administration, local self-government bodies, officials, state and municipal servants;

3) cases challenging decisions, actions (failures to act) by non-commercial organizations vested with certain state or other public powers, including self-regulating organizations;

4) cases challenging decisions, actions (failures to act) by qualification boards of judges;

5) cases challenging decisions, actions (failures to act) by the High Examination Commission when conducting examination to get judicial qualifications or when examining commissions of constituent entities of the Russian Federation which are in turn designated to conduct examinations of judicial qualifications (hereinafter also referred to as examination commissions);

6) cases pertaining to protection of the electoral rights of citizens of the Russian Federation and of their right to participate in a referendum;

7) cases pertaining to payment of compensation for violation of the right to a trial within a reasonable length of time in cases considered by general courts or for violation of the right to execution of a judicial act of a court of general jurisdiction within a reasonable length of time.[7]

Under the new Code, the courts of general jurisdiction are also to consider and adjudicate administrative cases which fall within their judicial competence and which pertain to the exercise of obligatory judicial control over the observance of human and civil rights and freedoms and of the rights of organizations as they respond to certain authoritative administrative demands addressed to natural persons and organizations. Such administrative cases include:

1) cases pertaining to the suspension of activities or liquidation of a political party, its regional office or other structural division; of another public association, religious organization, or other non-commercial organization; as well as cases pertaining to the prohibition of activities of a public association or a religious orga-

[5] Ibid. Article 1(2).

[6] Introduced by Federal Law No. 18-FZ of 15 February 2016.

[7] Previously, such cases were considered through action proceedings, according to the CPC RF, Chapter 22.1.

nization that are not legal entities and cases pertaining to expunging the records concerning a non-commercial organization from a state registry;

2) cases regarding the termination of the activities of mass media;

2.1) cases regarding the limitation of access to an audiovisual service;[8]

3) cases pertaining to the recovery from natural persons of monetary sums which are required as compulsory payments and penalties stipulated in law;

4) cases pertaining to the placement of a foreign citizen or a stateless person who is subject to deportation or transfer by the Russian Federation to a foreign state in accordance with an international treaty of the Russian Federation concerning readmission, or of a transferred foreign citizen or stateless person who has been accepted by the Russian Federation from a foreign state in accordance with an international treaty of the Russian Federation concerning readmission and who has no legal grounds to stay (reside) in the Russian Federation in a designated special institution as referred to in the federal law on regulating the legal status of foreign citizens in the Russian Federation and on prolonging the stay of a foreign citizen in a special institution;

5) cases pertaining to the imposition, prolongation, and expedited termination of administrative supervision, as well as those pertaining to partial removal or supplementation of the administrative restrictions previously stipulated for a person under supervision;

6) cases pertaining to the involuntary hospitalization of a citizen at a medical organization rendering inpatient psychiatric care or to the prolongation of a citizen's involuntary hospitalization or of the involuntary psychiatric examination of a citizen;

7) cases pertaining to the involuntary hospitalization of a citizen at a medical organization specializing in treatment of tuberculosis;

8) other administrative cases pertaining to the involuntary hospitalization of a citizen at a non-psychiatric medical organization.

The provisions of this Code do not apply to proceedings in cases pertaining to administrative violations or to proceedings in cases pertaining to recovery of sums from the budgetary system of the Russian Federation.

This is because the type of protections characteristic of criminal law is applicable in adjudicating cases in which administrative sanctions are imposed and then appealed (according to some legal scholars). Therefore, lawmakers have not rolled the judicial functions for considering cases that impose administrative penalties into a single process under the CAO RF which then would include, for example, cases challenging the actions, acts, or resolutions of state bodies and officials. In those cases the different types of legal protections require processes in which the fundamentals are basically different.

[8] Introduced by the Federal Law No. 87-FZ of 1 May 2017 // SPS Consultant Plus.

The CAJP RF has been based on the principle of justice and on the "administrative" (protective) functions of the court; this enables it to deal not only with disputes but also with undisputed matters that require judicial intervention. This is administrative justice in a broad sense. However, administrative proceedings have been further categorized as either actions (contentious) or special proceedings (non-contentious). A single section of the Code establishes general rules for both categories and also includes subsections that prescribe general rules for actions and special proceedings as well as specific provisions describing particular considerations for each category of cases are classified as either actions or special proceedings. Using an approach of this kind, special proceedings within administrative litigation would constitute a rather significant part of the Code because most of the current special proceedings within civil litigation include an "administrative element" from the viewpoint of substantive law.

In addition to rules borrowed by the CAJP RF from the APC and the CPC, the CAJP RF contains provisions that have been established for the first time. For example, in order to initiate court proceedings under the rules of the Code, it will be necessary to apply to the court with an administrative statement of claim (at present in the procedural legislation there are only such terms as "statement of claim" and "application"). There is also a provision allowing certain court notices and summons to be delivered by SMS or by e-mail to a person involved in a proceeding provided that the court is in receipt of a statement from that person providing the telephone number or e-mail address through which they are to receive the court's communications.[9]

2. Administrative proceedings

Examination of current practices indicates that there is a substantial number of controversial judicial issues in administrative court proceedings (within the existing normative legal acts and taking into account that the CAJP RF has entered into force) and that they are in need of prompt resolution [Panov A.V., 2013: 24-25]. Among them are:

2.1. Jurisdiction

Jurisdiction is a necessary (inherent) part of competence, which links the two parties that have legal relations: the party that takes decisions and the party that is subordinate. Jurisdiction determines the entities that are to submit to the power of the subjects vested with authority.

[9] CAJP RF. Article 96(1).

At present the substantive content of the issues involved in defining and delimiting jurisdiction has changed qualitatively and has usually been converted into problems in defining and delimiting a specific jurisdiction. This in turn has led to problems in defining and delimiting the jurisdiction of disputes and other legal cases. After the merger of the two higher courts, a number of new jurisdictional problems have now arisen.

The first problem arises in the Supreme Court of the Russian Federation because administrative cases involving economic entities (legal entities) are simultaneously considered by two panels: the economic and administrative ones.

The consideration of cases arising from public legal relations presupposes special training of judges, as such cases usually involve both private and public law.

For example, the practice of the Supreme Court of the Russian Federation makes distinctions among certain cases, such as a dispute with the Treasury,[10] a customs case,[11] an antimonopoly case,[12] a dispute with the drug trafficking control body at the Federal Drug Control Service,[13] and a tax case.[14] The subjects of all of those cases are legal entities, and all of them were considered by any judge belonging to an administrative panel of the Supreme Court of the Russian Federation; all those courts rejected the claim. In a dispute between the Federal Service for the Oversight of Consumer Protection and Welfare (Rospotrebnadzor) and a grocery shop (a business entity), the case was heard by an administrative panel.[15]

The same disputes are also considered by the economic panel when they result in antitrust, tax, and customs cases. This arrangement in which one category of disputes is examined by two panels simultaneously (i.e. there is duplication), raises questions.

Here is another example. Disputes that challenge regulatory legal acts and are submitted to the Supreme Court are heard by an economic panel, for example, the dispute between the Russian Railways and the Federal Antimonopoly Service.[16] It should be noted that initially the case went to the administrative panel after the reorganization of the courts, but then (without stating any reasons) the case was submitted to the economic panel.

Although merging the courts was intended to provide greater uniformity, it has not yet been possible to avoid divergences in the interpretation and application of the rule of law in administrative cases.

[10] Case No. 305-KG14-482.

[11] Case No. 310-KG14-716.

[12] Case No. 309-KG14-541.

[13] Case No. 304-KG14-271.

[14] Case No. 305-KG14-991.

[15] Case No. 304-KG14-1680.

[16] Case No. 305-CG14-1681.

The second problem is that so far it has also been difficult to determine what kind of offense arises from entrepreneurial activity. The judges of the RF Supreme Court have proposed that the object of encroachment protected by a given CAO RF rule should be the criterion. The resolutions of the Plenum of the RF Supreme Court emphasize that administrative bodies providing fire safety, road safety, etc. protect those very relations with vendors and subcontractors and find that there is no reason to believe that an offense was committed by a person undertaking entrepreneurial activities.

Essentially, this approach establishes a presumption: until otherwise proven, it must be assumed that an offense is not related to business. And it is almost impossible to prove the contrary. After all, it is clear that everything an entrepreneur does in their capacity as entrepreneur is the result of their business activities. And if this fact does not suffice, it is difficult to present any additional arguments.

Even disputes that concern administrative offenses coming from arbitration courts are tried by the administrative panel of the RF Supreme Court as is customary for disputes from courts of general jurisdiction, that is, according to the CAO RF rules and in disregard of the complex system for an adversarial process prescribed in the APC RF. A regulatory framework has been prepared for an adversarial process, but discussion of procedural amendments has diverted general attention away from it. The APC RF states that judicial acts in cases involving administrative offenses are to be appealed to the RF Supreme Court in accordance with the procedure stipulated by the CAO RF.[17] However, the CAO RF also allows such cases to be considered by a single judge upon an instruction from the Supreme Court chair or their deputy.[18] This means that there are now two "second cassations" in the arbitration process. One is a complex process that involves three judges, and the other is a simplified procedure involving only one judge. Because of changing jurisdiction, entrepreneurs will have to face the procedural intricacies of the CAO RF much more frequently.

Therefore, it must be emphasized that a clear delineation of jurisdiction is an indispensable and obligatory prerequisite for providing justice.

It is unacceptable for cases to be considered simultaneously by courts of general jurisdiction and specialized courts, or by two panels of one court. It is also abnormal when claims are not accepted in either court. Individuals are in fact deprived of the right to judicial recourse altogether.

2.2. Challenging normative legal acts

Having no single universally recognized definition of a "normative legal act" in current Russian legislation results in disputes in both legal theory and court practice.

[17] CAO RF. Article 211. Section 5.1.

[18] Ibid. Article 30.13,.Section 4.1.

Unfortunately, there is at present no concept in law of a normative legal act. It seems that the lack of a definition for a normative legal act has had some impact on judicial practice in challenges to normative legal acts. This has come about because denial of judicial protection of a right is based on the conclusion that a particular legal act is not regulatory.

Such discrepancies are both detrimental to uniformity in law enforcement and also limit judicial protection of citizens' rights (and the rights of other non-authoritative subjects, such as individual entrepreneurs, enterprises, institutions, and organizations) from illegitimate normative legal acts. The term "non-authoritative subjects" in Russian law refers to agents that may be either natural persons or legal entities and are properly entitled to engage in certain activities but have no final authority over the areas in which they function. Final authority will typically be vested in a state body or public authority.

Therefore, it is necessary to define the notion of a normative legal act.

One source frequently cited for such a definition is a resolution of the State Duma in which a normative legal act and legal norm is defined as follows:

> A normative legal act is a written official document adopted (issued) in a certain form by a law-making body within its competence and submitted to establish, amend or repeal legal provisions. In turn, a legal norm is an obligatory state rule of a permanent or temporary nature, designed for repeated use.[19]

The RF Supreme Court interprets a normative legal act as:

> ... an act of a duly authorized public authority, local self-government body, or an official establishing legal norms (rules of conduct) that are binding for an indefinite number of persons, designed for repeated use, and are effective regardless of whether the specific legal relations provided for by the act have emerged or ceased to exist.[20]

A similar definition of a normative legal act is contained in a presidential decree.[21]

Legal studies rightly criticized including "establishing rules of conduct" among the features of a normative act, and the Plenum of the RF Supreme Court[22] responded by replacing the wording "establishing legal norms" in its interpretation

[19] Resolution of the State Duma of the Federal Assembly of the Russian Federation No. 781-II GD "On appeal to the Constitutional Court of the Russian Federation" of 11 November 1996 //SPS Consultant Plus.

[20] Resolution of the Plenum of the Supreme Court of the Russian Federation No. 19 of 25 May 2000 // SPS Consultant Plus.

[21] Decree of the President of the Russian Federation No.314 "On the system and structure of federal bodies of executive power" of 9 March 2004 // SPS Consultant Plus.

[22] Resolution of the Plenum of the Supreme Court of the Russian Federation No. 48 "On the practice of courts in considering cases concerning challenging regulatory legal acts in whole or in part " of 29 November 2007 // SPS Consultant Plus.

quoted above with "having legal norms". The Plenum then identified the following essential features of a normative legal act: it is published in the prescribed manner by an authorized body of the government, local authority, or an official; contains legal provisions (rules of conduct); is binding for an indefinite number of persons; is designed for repeated use; is aimed at regulating social relations or a change or termination of existing relationships.

The common features in all these definitions appear to be that a normative legal act is: a written official document, adopted in a certain form by a law-making entity; aimed at the establishment, amendment, enactment or cancellation of legal norms as generally binding prescriptions of a permanent or temporary nature; designed for repeated use.

An additional practical problem to note is that until 2019 the economic panel of the RF Supreme Court did not consider the existing practice of the RF Supreme Court on this issue (including the resolutions of the Plenum of the RF Supreme Court) when it heard administrative cases involving normative control.

Introduction of the term: "acts containing explanations of legislation and having normative properties" into the CAJP RF is an important development for law enforcement because it will now serve as a viable way to rectify the lack of a separate legislative document concerning normative legal acts.

2.3. Challenging non-normative legal acts

There is at this time no concept of a non-normative legal act stipulated in law. The executive authority has extensive powers available, which are based on three pillars: money, arms, and administrative discretion. Administrative discretion has always been essential in the law enforcement activities of public bodies with executive power, but it should not be the same as judicial discretion. Law enforcement generates many administrative acts, and it is natural to ask whether all administrative acts are subject to judicial discretion including, for example, interim acts, a number of ordinances, and petitions to the public bodies of executive power. In other words, there is a question about what the nature of administrative acts is. Therefore, it seems necessary to include the concept of a "non-normative legal act" in the RF CAJP.

Case law reveals that many acts are of a mixed nature, for example, cases in which the acts approving the determination of cadastral value are disputed. The difficulty lies in identifying the nature of an act approving the determination of cadastral value:[23] on the one hand, these acts must approve only the average level of cadastral value for a municipal district;[24] but on the other hand, these acts contain information on the specific value of a particular item of real estate, as well

[23] Federal Law "On Cadastral Value". Article 24 (17).

[24] Land Code of the Russian Federation. Article 66, Section 2.

as information on the cadastral value and specific indicators of cadastral value.[25] This means that an act of an RF authority approving cadastral value is normative as regards approval of specific indicators and the average level of cadastral value,[26] but it is non-normative as regards approval of the cadastral value of particular real estate objects, i.e. it has a mixed nature. The cadastral value of a plot of land, for example, is assigned to assess the amount of property taxes payable on it. The plot's cadastral value is a function of its resemblance to a class of comparable properties with which it shares a number of features such as proximity to major roads, sources of water on the property, or slope. Those features are generally applied indicators, and the average value based on them also has general application. The act that assigns cadastral value will refer to the indicators and average as general rules that support the assessment, and therefore the act is normative. The exact cadastral value assigned or imputed to that plot of land is the result of applying those normative indicators and averages but is applicable only to that unique plot of land, and therefore the act is also non-normative.

Consequently, specific indicators and average cadastral value must be disputed in accordance with the rules for challenging normative legal acts, while the cadastral value of specific items of real estate should be disputed in accordance with the rules for challenging non-normative legal acts.

The rules of civil proceedings do not allow the court to specify the actions to be taken by public authorities in order to eliminate the violation committed in the substantive provisions of a judgement challenging a regulatory legal act. This may be a reason to change the official stance on the nature of approvals of cadastral value as well as to consider such disputes in accordance with the rules governing administrative court proceedings.

Another practical example is the debate surrounding the legal nature of a document issued as an instruction from an administrative body, such as an «instruction concerning improper budget use» issued by the Federal Service for Fiscal and Budgetary Supervision (Rosfinnadzor). Lawmakers have specified Rosfinnadzor's function in the Budgetary Code of the Russian Federation (hereinafter referred to as BC RF), and that function is to control the use of federal budget funds and of extrabudgetary funds of the Russian Federation, including the use of subventions, interbudgetary subsidies, other subsidies and budget loans provided from those budgets.

Based on the results of an audit (inspection), the head of the Rosfinnadzor is authorized to send to audited organizations and their superior bodies guidance or binding injunctions for eliminating violations that are discovered.[27]

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[25] Federal Law "On Cadastral Value". Article 24(17).

[26] Recurring statements of the Supreme Court of the Russian Federation, para. 7 of 28 May 2008.

[27] Para. 5 (14) (3) of the Regulation on the Federal Service for Fiscal and Budgetary Supervision approved by Resolution No. 278 of 15 June 2004 of the Government of the Russian Federation;

The arbitration courts of some districts regard guidance from the heads of Rosfinnadzor and its territorial bodies pertaining to improper execution of the budget process as a coercive measure in response to a violation of budget legislation.[28] However, we cannot agree with this position if only because the BC RF provides a comprehensive list of enforcement measures to be applied in the event that budget legislation is violated, and issuing guidance concerning improper execution of the budget is not among the enumerated measures.

In addition, it is difficult to speak of a disputed guidance as a non-regulatory act at all because guidance issued by Rosfinnadzor based on the results of audits (except for guidance requiring the recovery of funds) is submitted for consideration by the audited entity and merely suggests that certain measures should be taken to prevent further violations of budget legislation as specified in the guidance. In contrast to a binding injunction, contestable guidance is only to be considered by an establishment.

This guidance is not of an executive and regulatory nature and does not give rise to any legal consequences for the establishment that receives it but merely contains information about misuse of federal budget funds by the institution and is informative and explanatory in nature. This document is not dispositive on the matter and therefore cannot be a topic for independent dispute in an arbitration court. Furthermore, because such an instruction does not contain any authoritative instructions , it therefore cannot violate the rights and legitimate interests of body under supervision.

A number of issues concerning administrative proceedings should be regulated in much greater detail, and better regulation will serve as a crucial procedural guarantee for the protection of citizens' rights.

3. Administrative procedure for dealing with administrative cases

3.1. Compensating for damages to entities with no final authority in administrative cases

A non-judicial procedure for compensation of losses in administrative cases provides substantial assistance in protecting the rights of the victim and guarantees compensation of losses or even avoids losses. It also may avert a long trial and the subsequent rather long, complex and sometimes quite costly enforcement of a

para. 122 of the Administrative Regulation for execution by the Federal Service for Fiscal and Budgetary Supervision of the state function to exercise control and supervision over compliance with the financial and budgetary legislation of the Russian Federation when using the assets of federal budget, those of state extra-budgetary funds and federal material assets, as approved by Order No. 75-n of the Ministry of Finance of the Russian Federation of 4 September 2007.

[28] BC RF. Article 284.

court decision [Lazarevsky N.I., 1905: 205]. Non-judicial procedure will contribute to preventing future disputes and to reaching a clear understanding of the level and extent of administrative liability. This will greatly restrain administrative entities.

We believe that a rule making it disadvantageous for officials to infringe the rights of entities with no final authority should be introduced into law.

In our opinion, the adoption of a federal law on the general principles and procedure for exercising the right to receive compensation from the state would help to eliminate some flaws in the legislation concerning appeals.

The overall concept for such a law could be arrived at based on the legal positions of the highest courts of the Russian Federation.

In addition, it should be feasible to introduce a procedure (like the one previously in force in accordance with the Decree of the Presidium of the Supreme Council of the USSR)[29] for providing an option for extrajudicial compensation in some strictly limited cases, such as those in which only actual damage is subject to compensation and there is an enforceable court decision confirming the fact of illegal actions by state bodies or their officials.

It should be possible to introduce an extrajudicial (administrative) procedure for recovery of damages in the event that an administrative offense or harm is caused by unlawful actions of public officials (bodies), to set the maximum amount of recovery at 100,000 rubles, and to introduce into the CAO RF an article under which the damages could be recovered as an administrative recovery measure simultaneously with consideration of administrative liability.

We propose supplementing the CAO RF with Article 4.21:

Article 4.21. Pre-trial damages

Where property damage has been caused to a citizen, entrepreneur, institution, or organization as a result of an administrative offense, the aggrieved party shall be entitled to pretrial damages in the event that the amount of the property damage does not exceed 100,000 rubles.

Pre-trial investigation shall be carried out by the executive authority of the Russian Federation, i.e. the Bureau of the Federal Antimonopoly Service of the Russian Federation.

In other cases, the issue of compensation for property damage caused by an administrative offense shall be resolved according to the general rules of civil proceedings in compliance with the relevant jurisdiction.

In addition, it is advisable to supplement the CAJP RF with the following provision:

[29] Decree No. 4892 X of 18 May 1981.

Citizens have the right to file an application in court for compensation of harm or losses caused by unlawful actions of administrative authorities in the event of a written refusal by an official to comply with the pre-trial procedure for settling disputes.

We also propose supplementing the CAJP RF with the following paragraph:

In cases stipulated by law, when considering a claim for compensation of damages (harm) caused by illegal actions (or failures to act) of an official, the court shall consider the obligation to observe the pre-trial procedure for the compensation of losses (harm) up to the amount of 100,000 rubles.

It would also be advisable to introduce into the CAJP RF a rule under which a body or a superior officer would be held liable in court for the unlawful behavior by an official (who failed to reimburse the losses in an administrative procedure). In keeping with the provisions previously mentioned, we propose supplementing the CAJP RF with the following paragraph:

If an official who is obliged by law to compensate losses through an administrative order but has not compensated these losses (harm) caused by illegal actions (or failure to act) of such person and (or) evades appearing in court, then the obligation of such compensation due to the principle of subordination passes to a superior official.

It is also advisable to correct in the respective articles of the APC RF, the CPC RF and the CAJP RF the following rule:

If the relevant entity does not voluntarily pay the losses caused by illegal actions (or failures to act) of officials in the administrative proceeding, the amount recoverable through the court may be increased.

In other words, the legislation should encourage administrative compensation of damages as opposed to incurring large expenses in the courts.

3.2. Establishing a special administrative body to deal with administrative cases in the Russian Federation

The reform of administrative proceedings is not possible without a parallel reform of administrative procedure, which could relieve the courts from: the inappropriate punitive function of imposing administrative liability; undisputed small claims. The value of nationwide control in state like the Russian Federation with its vast territories is obvious, as it would: effectively (objectively, free of charge, and promptly) protect the rights and legitimate interests of the entities with no final authority; augment the powers of public executive authorities; relieve the courts from inappropriate or superfluous functions and prevent violation of the

principle of separation of powers when considering a number of administrative cases in courts.

Russia has never set up a special administrative-jurisdictional body for handling general administrative complaints that pertain to matters beyond departmental interests. The Administrative Directorate of the President of the RF could be such a body. It would have three main functions when dealing with cases arising from administrative legal relations.

First, it would consider general administrative complaints.

Second, it would impose administrative liability on individuals and legal entities with respect to those administrative offenses that are specified in the CAO RF[30] and are currently within the jurisdiction of justices of the peace, courts of general jurisdiction, and arbitration courts (or administrative extra-judicial procedures). Appeals of these decisions concerning administrative offenses would be allowed in court only.

Third, there should be a review of decisions on administrative offenses in all categories of cases irrespective of the subject matter (administrative pre-trial procedure). At the same time, administrative law should establish a procedure whereby administrative pre-trial proceedings would be mandatory in certain categories of administrative cases.

Conclusion

The establishment of a specialized body for hearing general administrative complaints in the system of executive authorities will depoliticize consideration of administrative cases, make it more efficient and prompt, reduce bureaucracy and corruption among executive authorities, and allow handling administrative cases free of charge. This way of implementing the statutory rights of citizens and legal entities will relieve the courts of an excessive workload and free judges to hear more complicated cases, thereby reducing budgetary expenses and improving the quality of justice, as well as preventing violations of the principle of separation of powers when considering certain classes of administrative cases in court.

Any administrative procedure used to try administrative cases should not replicate the complexity of judicial proceedings but should instead be as simple and open as possible and, most importantly, free of charge for entities with no final authority (citizens and collective entities).

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