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•CONTENTS•

ADMINISTRATIVE COURTS OF THE U.S.A. AND FRANCE IN THE CONTEXT OF RECEPTION OF EXPIRIENCE OF ADMINISTRATIVE JUSTICE CREATION **3**
Boyakhchyan S.

REVIEW OF THE THESIS OF BORISOV SERGEY VYACHESLAVOVICH "PROCURACY SUPERVISION OVER IMPLEMENTATION OF LAWS ON COUNTERING EXTREMIST ACTIVITY" **9**
Dugenets A. S.

THE CORRELATION OF ADMINISTRATIVE OFFENCE AND DISCIPLINARY OFFENSE **12**
Frolov V. A.

SOME ISSUES OF JUDICIAL CONTROL OVER THE LAWFULNESS OF ADMINISTRATIVE LEGAL ACTIONS (INACTION) THAT ENTAIL LEGAL CONSEQUENCES **21**
Khakhaleva E. V.

REVIEW OF THE MONOGRAPH OF THE DOCTOR OF LAW, PROFESSOR M. A. LAPINA "ADMINISTRATIVE JURISDICTION IN THE SYSTEM OF ADMINISTRATIVE PROCESS" **35**
Kizilov V. V.

LEGAL STATUS OF THE RUSSIAN FEDERATION AS A MEMBER OF THE WTO **40**
Lipatov E. G.

ABOUT THE LEGISLATIVE DEFINITION OF THE CONCEPT OF ADMINISTRATIVE OFFENCE **48**
Solovei Yu. P.

THE IMPORTANCE OF ADMINISTRATIVE PROCESS SHOULD NOT BE DIMINISHED **55**
Solov'ev A. A.

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Boyakhchyan S.

ADMINISTRATIVE COURTS OF THE U.S.A. AND FRANCE IN THE CONTEXT OF RECEPTION OF EXPIRIENCE OF ADMINISTRATIVE JUSTICE CREATION

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Based on a study of court systems in the U.S.A. and France, here is approved about the possibility of use the experience of creation and operation of the administrative courts of France in creation of administrative courts in Russia in view of the fact that the institute of administrative courts in France has originated and has been operating in close interrelationship with the bodies of executive branch.

The author gives a positive evaluation of the institute of "governmental commissioners", whose principal function is to point judges to specific legal norms that must be applied in a case.

Keywords: administrative courts, administrative justice, system of administrative courts.

Over the last two decades our country has been facing the problem of establishment of administrative courts. So, it seems very useful to study foreign experience on this matter, borrow some of the institutes and principles of the establishment and operation of these courts, study possible problems associated with the legal mechanisms of coordination their activities, determination of the area of jurisdiction, as well as the place of these courts in the judicial system of the Russian Federation.

Creation of administrative courts for our country is very urgent due to the peculiarities of historical development, the problems associated with bureaucracy and corruption, as well as the optimization of protection of the rights and interests of individuals and legal persons from the wrongful actions of public authorities.

But it is necessary to bear in mind that the creation of administrative courts in different legal systems was implemented in different ways, so the creation of a system of administrative courts should be implemented with taking into account the peculiarities of the Russian legal system, that is, direct adaptation of international standards in the field of administrative justice for our legal system.

So, let's consider administrative courts in foreign countries, and specifically in the United States and France, because it seems that the experience of these countries is particularly useful for Russia, due to the peculiarities of the constitutional system and trends of legal systems development.

There is no single opinion in the legal literature about the history of emergence of administrative justice in the countries of continental legal system. Some scholars are of the view that the institute of administrative courts emerged in France as a result of the revolution and the First Empire. However, the opinion of scientists-theorists (Kovalevskii and Taranovskii) that the history of administrative justice originates from the medieval times is more preferable. Of course, the form of manifestation of administrative justice then was different from the one we see today [3; 5, 19-20].

So, we proceed to analysis of administrative courts in France. Differentiation of France's judicial system is very thought out and is due to the practical need to resolve legal disputes of various kinds. So, the French judicial system consists of two groups of courts: the courts in civil and criminal matters (which in turn are divided into general and specialized) and administrative courts (differentiated by levels: the first, the second – the Court of Appeal, the third – State Council). When conflicts on the issue of competence arise between these groups of courts, the dispute is considered by the Conflict Court, which in the judicial system stays aside of these groups and to resolves such disputes. There is also a Constitutional Council, Supreme Chamber of Justice and Republic Court. It should be noted that having analyzed the judicial system of the Russian Federation and France, peculiarities of the constitutional system, it can be assumed that in conduct of a judicial reform it is necessary to create a kind of Conflict Court of the Russian Federation, since in judicial practice often arise cases when a particular dispute falls within the jurisdiction of two courts. And a problem arises, which of the courts must consider the dispute.

The system of administrative courts that was formed in France consisted of two levels of courts: lower – councils of prefectures and higher – the State Council; it should be noted that administrative courts in France from the beginning had a very wide range of powers, for example, they considered and resolved disputes on the issues of direct taxes, labor disputes (where the employer was the state represented by its management bodies), issues related to the various economic transactions with the state property, disputes concerning elections in municipal and state assemblies, complaints against unlawful decisions of public authorities, etc. In 1950s the councils of prefectures were converted to administrative courts of general jurisdiction, the nature of their activities remained the same, they also remained accountable to the State Council, which then was not only an appeal instance, but they also considered the most important complaints (concerning the decrees of the President of the Republic, the Prime Minister, etc.)

State Council acted as an appeal instance, as well as performed an advisory function, and was accountable to the head of the state and government.

Administrative process in France is based on complaints of a natural or legal person against unlawful actions of authorities that violate their rights and legitimate interests. Court establishes the fact and the actual content of the subjective right of a citizen by an act of public authority. Administrative process in France is investigative, that is direct basis to state about the great role of judge in gathering evidence. An important distinguishing feature of administrative process in this country is participation in the process of "government commissioners" whose main function is to indicate to judges specific legal norms that should be applied in a particular case. That is why commissioners hold a special place in the system of administrative court procedure in France, since they act neither on side of the court, nor the citizens, nor the public authorities, and are representatives of the law that should be applied in a particular dispute. It seems that the presence of this institute promotes the effective application of administrative and administrative-procedural legislation, what directly minimizes judicial errors. When creating the institute of administrative justice in the Russian Federation we should provide a body with such powers, since, given the peculiarities of the Russian legislation (conflict of law norms, legislative gaps, duplication, etc.), it is particularly necessary.

The citizens' grounds for appeal to administrative court are incompetence of public authorities, violation of subjective rights of citizens, abuse of power by officials, representatives of the government [1, 47-49; 4, 108-109].

Hence, the institute of administrative courts in France has arisen and has been functioning in close interrelation with the system of executive authority

bodies. During deep analysis we come to conclusion that administrative justice and executive authority interact with each other as part and whole, since administrative courts operate directly within the executive branch. As a result of the widespread development and application of administrative justice in France, administrative courts have also been established in Germany, Spain, Italy, Belgium, the Netherlands and so on.

Let us consider administrative courts in the United States and analyze the main differences from the system of administrative courts in France. The main feature of administrative justice of the United States is the lack of a unified, nationwide judicial system. That is why each state has its own court system and the Federal court system, which operate in parallel. It should be noted that the courts of the states in any way do not subordinate to the federal courts, as well as they are not accountable to them. Each separate state has the right to create its own judicial bodies, regardless of other states and federal agencies.

First administrative institutions in the U.S. were created by the Act of 1855 for considering complaints against financial offences of public authorities. From this moment begins the stable development of administrative institutions in the United States [2, 82-83]. More strict consolidation and formalization in the United States they received in the early 20th century, when specialized administrative bodies began to operate along with the general courts. These bodies had quasi-judicial powers and considered administrative disputes arising between citizens and government, therefore, by virtue of their competence, they were called administrative tribunals. United States Court of Claims, Tax Court and various federal agencies that have quasi-judicial powers are called administrative tribunals.

The basis to start an administrative process in the United States is the complaint of a citizen against unlawful actions of administrative bodies. A decision taken on a case must be justified and ended by issuance of an order. In case of citizen's disagreement with a taken decision, it may appeal to the appeal instance and then to general court. A characteristic feature of an U.S. administrative process is that when courts consider a particular case they express their opinion, mainly, regarding the legal aspect of an issue, that is, directly implement assessment of enforcement and implementation of the law by administrative bodies. As for the factual aspect of the dispute, they either leave it without attention, considering that the experts of administrative tribunal better understand technical issues, or deal with this aspect with caution.

Comparative legal analysis of the system of administrative courts of the U.S. and the Anglo-Saxon legal family indicates that these bodies of administrative

justice operate on the border between the executive and judicial branches of power, since they operate in close connection and close cooperation with administrative bodies, as well as have judicial powers, therefore, it is appropriate to say about the dual legal nature of this institute of administrative justice in the United States.

Comparing the Anglo-Saxon system of administrative justice with the continental one, it is worth noting that, for example, that despite absence system of administrative courts in the United States and England, actually their powers are performed by administrative tribunals. They have certain advantages, among which informality, flexibility of the system of administrative justice bodies, rapidness of resolution of cases due to the high competence of employees of administrative bodies, minor costs of maintenance the apparatus compared to France. Disadvantages: the narrow competence of administrative tribunals.

The main characteristic difference of administrative courts from administrative tribunals is that they are not controlled by the general courts. For example, the administrative courts of Germany and France do not subordinate to general courts and act independently. It seems that it is the closest to our legal system, while the emergence and development of administrative bodies in the United States with their quasi-judicial powers is due to historical factors. Therefore, it seems reasonable to conduct reception of French experience in the field of creation and development of the system of administrative justice bodies on several grounds:

- similarity of legal systems, as well as constitutional system;
- need for multilevel monitoring of administrative courts;
- functioning of administrative courts within the judicial branch in the conditions of our legal system will be much more effective than giving this body interbranch value (because of the potential possibility of erosion the competence of the body).

Having examined the system of administrative bodies in France and the U.S., we come to conclusion that the creation of this branch of the judiciary power is extremely necessary for the contemporary realities of the Russian Federation, and this is due to the development of the legal system and social relations that require adequate regulation. Law-enforcement practice testifies the high level of violation the rights and legitimate interests of citizens by public authorities, when it is unacceptable for modern democratic states.

As has been noted above, in the establishment of administrative courts in the Russian Federation a particular attention should be paid to the system of bodies of appeal instance, as well as to the staff of these agencies. Special attention shall be

paid to the control and oversight authorities in the field of administrative justice, the creation of which is proposed to do on the model of the control and oversight authorities in France. Should also provide for an authority to settle disputes arising in the case of impossibility of determination the court, to the competence of which a particular dispute has to be assigned, that is, directly semblance of the Conflict Court.

Thus, creating administrative courts in the Russian Federation, we must take into account the features of the historical development of the legal system, the existing problems in sectorial legislation and in the implementation of law norms, as well as provide for the establishment of a system of control and oversight authorities on the pattern of France.

References:

1. Bobotov S. V. French Conseil d'Etat: the Political Role and Juridical Functions [Gosudarstvennyi sovet Frantsii: politicheskaya rol' i yuridicheskie funktsii]. *Sov. Gos. i pravo – The Soviet State and Law*, Moscow: Nauka, 1987, no. 7.

2. Gussakovskii P. N. Administrative Justice [Administrativnaya yustitsiya]. *Zhurn. Min. yust. – Magazine of the Ministry of Justice*, 1906.

3. Kovalevskii M. M. *Experiences According to the History of Tax Jurisdiction in France since the* XIX *Century until the Death of Louis XIV. V.1* [1876.Opyty po istorii yurisdiktsii nalogov vo Frantsii s XIX veka do smerti Lyudovika XIV. T.1]. Moscow: 1876.

4. Lesazh M. Judicial Control over the Activities of Administration in France [Sudebnyi kontrol' za deyatel'nost'yu administratsii vo Frantsii]. *Sov. Gos. i pravo – The Soviet State and Law*, Moscow: Nauka, 1981, no. 11.

5. Taranovskii V. F. *Review of the Work of S. A. Korf "Administrative Justice in Russia"* (Vol. 1-2, St. Petersburg: 1910) [Otzyv na sochinenie S. A. Korfa «Administrativnaya yustitsiya v Rossii» (T. 1-2. SPb., 1910)]. Yuriev: 1910.

Dugenets A. S.

REVIEW OF THE THESIS OF BORISOV SERGEY VYACHESLAVOVICH "PROCURACY SUPERVISION OVER IMPLEMENTATION OF LAWS ON COUNTERING EXTREMIST ACTIVITY" DEFENDED FOR AN ACADEMIC DEGREE OF CANDIDATE OF LEGAL SCIENCES, SPECIALITY 12.00.11.

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Keywords: prosecutor's supervision, extremist activity, countering extremist activity.

There is no doubt about the relevance of problem studied in the work of Sergei Vyacheslavovich. Currently, the search for and application of additional mechanisms that restrict opportunities of extremist manifestations in the life of contemporary Russian society is urgently needed. The author of the thesis rightly relates the organization of supervising activity of procuratorial bodies in combating extremism as an important function of public administration to one of the most important tools that helps to minimize the negative consequences of extremism.

According to Sergei Vyacheslavovich, "at the beginning of the XXI century extremism has gained the most dangerous international (transnational) nature, which creates the threat of emergencies not only within a single state, but also within the entire international community; extremism poses a direct threat to the constitutional order, destroys integrity and security of any country, undermines the idea of equality of all persons, regardless of their social, ideological, political, racial, national and religious affiliation". And, therefore, the author continues, "increases the relevance of effective counteraction to extremism; improvement the quality of the prosecutor's office work to supervise the enforcement of legislation on federal security, international relations and countering extremist activities; improvement the tactics and methods of oversight activity of the prosecutor's office in this area".

That is why the applicant rightly sees the scientific problem of the thesis in the need to develop theoretical, organizational and legal issues related to the improvement of the prosecution agencies' activity in this area, on the basis of a comprehensive vision and conceptuality of approaches to the issues of theory and practice of

organization of prosecutor's supervision, legal regulation and securing countering extremist activities.

Scientific statements, conclusions and recommendations contained in the thesis of S. V. Borisov are sufficiently substantiated. Methodological basis is formed by common scientific and independent scientific methods of cognition socio-legal phenomena and law enforcement activity (historical, comparative legal, technical, specifically sociological, systemic method, etc.). The totality of applied techniques has made it possible to avoid subjectivistic approach to the issues under consideration.

In the peer-reviewed dissertation clearly defined the purpose and objectives, object, subject and scientific novelty of the conducted study, justified main provisions that have been submitted upon defense. The methodological approaches to the conduction of study are described in there.

Provisions of the thesis, which have practical importance, have been used in the preparation of information and analytical report "The Condition of Legality and Rule of Law in the Russian Federation and the Work of Prosecutor's Office Bodies in 2008"; in the educational process by the International interdepartmental center for training and retraining of specialists on the combating against terrorism and extremism of the All-Russia Institute of Professional Development of the Ministry of Internal Affairs of Russia, by Interregional Training Centre of the Russian Federal Service for the Execution of Sentences, by Academic International Institute, etc.

During preparation of the dissertation the author conducted a comparative legal research of domestic and foreign regulatory and legal framework to counter extremism, he widely used analytical materials of The General Prosecutor's Office of the Russian Federation and the prosecutor's offices of the subjects of the Russian Federation on the state of implementation of the legislation on countering extremist activity, particular criminal cases on crimes of an extremist nature. These materials allowed to give a comprehensive and objective assessment of extremism in current Russia and to determine the ways of improving the mechanism to combat against it.

Scientific novelty of the dissertation is determined by the resolving of a significant scientific task associated with the proposed by the respected author systemic structural complex of specialized state bodies in the sphere of combating extremism; development a mechanism for implementing the legislation and other normative legal acts on countering extremism by prosecution authorities of the Russian Federation; scientifically grounded suggestions for improvement of the legal regulation and legal support of the activity of procuratorial bodies in combating extremism.

The provisions developed by the applicant in their entirety represent a solution to the problem of optimal organization of the activity of procuratorial bodies in countering extremism at the current stage, are able to contribute to the practical implementation of the constitutional principle of priority of human rights and freedoms as the highest social and legal value in the system of national security

The comprehensive theoretical and legal analysis conducted by Sergei Vyacheslavovich allows to characterize extremism as international (transnational) phenomenon, which manifests itself in the actions, responsibility for which is established by national legislation, with the emphasizing of such its features as international nature, public and illegal form of expressing by an individual of its ideas and beliefs, commitment of a deed to the protection the rights and freedoms of one group to the detriment of the rights and freedoms of other citizens.

Author's justification of the position that the prosecutor's supervision over the implementation of laws on countering extremist activity in current conditions is one of the most important, relevant and priority directions of supervisory activities of procuratorial bodies to strengthen legality and rule of law is commendable on the following grounds:

- the fight against extremism is characterized by double prevention, namely, in addition to suppression of unlawful actions of extremist organizations and their emissaries, also prevent serious consequences (acts of terrorism), which may occur while wrongful actions of radical extremists;
- the number of extremist offenses, which grows from year to year, shows that it is important not only to establish the work of controlling bodies for countering extremist manifestations, but also to organize at the proper level prosecutorial oversight in this area, as well as it seems appropriate in each prosecutor's office to entrust to particular prosecutors the oversight over the implementation of laws on countering extremist activity.

Noteworthy the scientific understanding of the respected author regarding a wide range of issues related to the drafting of instructions of the Prosecutor General of the Russian Federation on the issue of strengthening prosecutorial supervision to combat extremist activities in prosecutors' offices of the subjects of the Federation.

It should be noted that Sergei Vyacheslavovich has largely managed to solve the tasks assigned at the initial stage of the dissertation. Scientific and practical conclusions, contained in the work, are trustworthy and evidentiary. They are based on comprehensive and systematic approaches, specific empirical researches conducted by the respected author.

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THE CORRELATION OF ADMINISTRATIVE OFFENCE AND DISCIPLINARY OFFENSE

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The comparative-legal analysis of normative legal acts and scientific legal literature allowed the author to identify features that distinguish administrative offences from disciplinary offences, as well as to show their similarities.

Keywords: wrongful deed, administrative offence, disciplinary offence, responsibility, composition, signs.

The problems of qualification of unlawful conduct are always debatable and actively discussed in conditions of development of civil society. In enforcement practice, the most controversial and ambiguous issues should be recognized the issues of referring a wrongful deed of a public servant to administrative offence or to disciplinary offence. There is also no single position on the content and correlation of the concepts of an offence and misconduct among theorists of law. Most scholars have expressed the view that offenses are publicly dangerous, and disciplinary misconducts do not contain the signs of public danger. There are also other positions. At that, the scientists emphasize different approaches to the content of a misconduct and offence. So, a group of authors, under edition of A. S. Pigolkin, depending on the areas of social life, in which wrongful misconducts are committed, nature of inflicted by them harm and peculiarities of punishment for committing them divides misconducts into three categories – administrative, disciplinary and civil-law ones [12, 165].

Misconduct, according to M. I. Nikulin, is a means of resolving contradictions between the need (real or falsely understood) of a man and prescription (ban) formulated in administrative-legal norm. This contradiction is not antagonistic,

is not long, the attempt to solve it through a misconduct is usually not caused by anti-social essence of the offender, but is due to the weakening of internal self-control and to the deformation of the evaluation criteria of social danger of its deed. To some extent this state of offender is due to the fact that the borders between the administrative misconduct, especially when it concerns technical norms, and allowable conduct sometimes are insufficiently justified and understandable [11, 81-82].

M. N. Kobzar-Frolova is of the opinion that misconducts are less dangerous in their nature and in their consequences differ, for example, from an offense and crime. They are committed not in the criminal-law sphere and not by criminals, but by ordinary citizens in various fields of economic, commercial, labor, administrative, cultural, family, production activities and entail not punishment, but penalties [8, 19]. Similar position is taken by N. I. Matuzov and A. V. Mal'ko [9, 209-210].

A. V. Melekhin defines offense – as a guilty, wrongful deed of a sane person causing harm to others and to society that entails legal responsibility, administrative offense – a wrongful deed with negative consequences that violates generally obligatory rules (norms) of doing certain state and socially significant affairs [10, 411].

Expressed the view that offence and misconduct are identical in content. So, D. N. Bakhrakh, B. V. Rossinskii i Yu. N. Starilov indicate that after the adoption of the Code on Administrative Offences of the RF (hereinafter CAO RF) only the name of "administrative offense" can be used in other legal acts. "But in scientific and other literature, in oral speech it is allowed to use the second name – "administrative misconduct" [5].

Given the divergence of views, it is important to understand the essence and content of the concepts of "administrative offence" and "disciplinary offence", to determine their differences and similarities.

In legal dictionary misconduct is interpreted as a wrongful deed (offence) that is less dangerous than a criminal offence. Misconducts include: administrative offence, civil offence, disciplinary offence [13].

The Law "On the Status of Judges in the Russian Federation" [1], in accordance with the note to article 4 of the Code of Honor of Russian Judges, under a misconduct, which discredit honor and dignity of a judge, understands such action or omission, which is not criminal one.

Disciplinary offence in the encyclopedic dictionary of Brockhaus and Efron is treated as a wrongful guilty violation of labor or service discipline by an employee (worker), for which provide for disciplinary responsibility [14]. Disciplinary

offences are associated with infringements of production, service, military, educational, fiscal discipline, internal work regulations of different organizations, institutions, enterprises and other government institutions. The main penalties are: reprimand, admonishment, demotion, reduction in rank, reduction in grade, deprivation of bonus, dismissal.

Legal issues of disciplinary responsibility are at the junction of sciences of administrative and labor law. Traditionally, legal literature considers disciplinary responsibility as labor responsibility [6, 54-59]. However, there is a position, according to which there is allocated an especial (special) disciplinary responsibility – disciplinary responsibility of public servants that does not refer to labor responsibility [7, 18-20]. According to the latest, there are two types of disciplinary responsibility: the general one provided for by the Labor Code of the RF, and the special one, which public servants bear in accordance with the statutes and regulations on discipline. The list of penalties under the general disciplinary responsibility provided for by article 192 of the LC RF is exhaustive. Employers cannot establish any additional disciplinary penalties. In the statutes and regulations on discipline may provide for more severe penalties that differ from those imposed on workers of labor collectives under general disciplinary responsibility. It should also be noted that offender is brought to account for disciplinary offenses by its leader, that is, by the subject of linear power, and bringing to administrative responsibility is exercised by the representative of the authorities, by the subject of functional power in respect of persons, who are not in service subordination to it.

In the Labor Code the legislator (with some exceptions) all violations of labor legislation divides into administrative offenses and disciplinary offenses. In accordance with paragraph 3 article 39 of the Labor Code of the Russian Federation: "representatives of employees participating in collective negotiations shall not, without a prior consent of the body authorizing their representation, be subject to a disciplinary penalty, transferred to another job or dismissed on the employer's initiative, except for the cases of terminating their labor contracts due to committing a misconduct..." [3].

N. I. Matuzov, A. V. Mal'ko among disciplinary offenses emit such kind as corporeal offenses (misconducts). To the latter authors refer: causing by workers and employees of material damage to their enterprises, institutions and organizations, for which provide justice restorative sanctions – withholding part of salary, obligation to reimburse the cost of damaged items etc. The authors also distinguish such kind of misconduct as procedural misconducts, which include: failure to appear in court for questioning by an investigator, refusal to voluntarily submit

a material evidence, etc. Sanction is a coercive delivering on summon to an interested official or body [9, 209-210].

There is no single concept of disciplinary offense as the ground of disciplinary responsibility of public servants in the current legislation on public service and public service relations. So, according to article 57 of the Federal Law No. 79-FL from July 27, 2004 "On Public Civil Service of the Russian Federation" [4], disciplinary offense recognize as "non-performance or improper performance by a civil servant through its fault of assigned to it official duties", for which "the representative of employer has the right to impose disciplinary sanction". At that, disciplinary offence of civil servants is expressed in violation of service discipline (article 56).

Thus, disciplinary offence, for example, of a public servant can be defined as illegal, guilty action (inaction) of the public servant (civil servant, military serviceman, public servant of a law enforcement agency), expressed in violation of service discipline, which does not entail administrative or criminal responsibility.

Consequently, the signs of a disciplinary offence are: wrongfulness, guiltiness, and punishability. A disciplinary offence is to be exercised in the form of action of a worker (employee) or inaction. The latter, in turn, can have more serious consequences and correspond to signs of a crime. The ground for disciplinary responsibility is guilty failure to perform those responsibilities, which are enshrined in labor agreement, employment contract or official regulations.

Disciplinary offences are characterized by the following features:

1) are always of illegal nature, at that, the object of interference of these deeds is very specific – it's labor (service) discipline;

2) can be expressed in the form of both action and inaction of an employee;

3) deeds are limited to the framework of that civil authority, where an employee carries out its work;

4) have a small degree of public danger.

Disciplinary sanction is applied directly after the revealing of a disciplinary offence. The fact of imposing on an employee (public servant) of a disciplinary sanction is fixed in a particular individual act issued by the employer, a copy of which with stating the grounds of its application is given to the employee on receipt. Thus, the procedural order of application of disciplinary sanction is quite simple. Except for the application of penalties to public officials of law enforcement agencies and military personnel. So, a prerequisite of application disciplinary sanction to an employee of customs body in connection with violation of service discipline is conducting of an official investigation in a particular procedural form.

It is important to note the fact that a public servant can be also brought to administrative responsibility, equally as for an offence, which contradict to administrative prohibition, a disciplinary sanction can be imposed to the public servant (article 2.4 CAO RF)

The legal concept of administrative offence is laid down in part 1 of article 2.1 CAO RF. A wrongful, guilty action (inaction) of a natural person or legal entity, which is administratively punishable under this Code or the laws on administrative offences of the subjects of the Russian Federation, shall be regarded as an administrative offence. Administrative offence has such characteristics as: wrongfulness, guiltiness and punishability. Administrative offence is committed in the form of action (inaction).

Administrative offence can be only guilty committed. Guilt is expressed in mental attitude of a person to the offense committed and its consequences in the form of intent or negligence. Wrongfulness of a deed lies in the fact that a person violates administrative-legal prohibitions. Punishability is due to the inevitability of administrative responsibility. At that, the only ground for administrative responsibility is an administrative offence. Thus, we can draw a preliminary conclusion that the composition of signs of an administrative offense and disciplinary offense is similar. This conclusion is confirmed by the works of separate scientists.

Theorists of administrative law D. N. Bakhrakh, B. V. Rossinskii, Yu. N. Starilov argue that the definition of administrative offense is formal, because it contains in itself not all juridical signs of a deed and does not include such substantive sign as public danger. "The deeds enumerated in the Special Part of the Code on Administrative Offences of the RF are prohibited by law because they are socially harmful. This is indirectly mentioned in article 2.2 of the Code on Administrative Offences of the RF, which links deed with harmful consequences" [5]. The authors argue that the wrongfulness itself is legal recognition of antisocial, harmful to citizens, society and the state conduct. However, then the authors contradict themselves and say that the degree of harmfulness of most administrative offences is low, therefore, they are not socially dangerous. But at the same time, the specified authors recognize public harm as the first sign of administrative offence. D. N. Bakhrakh, B. V. Rossinskii and Yu. N. Starilov also pay attention to the differences of administrative offence from disciplinary offence and from crime, through selecting of three kinds of punitive sanctions: disciplinary, criminal and administrative ones. The scientists note a circumstance, that a number of properties differentiates crime from misconducts (administrative, disciplinary). "The primary differences are public danger and type of wrongfulness. Of course, first of all, the substantive

criterion – the level of harm caused to society is taken into account. And on the basis of that evaluation decide questions of type of wrongfulness: administrative or disciplinary. Secondary criteria apply when the issue of wrongfulness has been resolved. We are talking about different procedural norms, distinction between administrative and disciplinary sanctions, the state of administrative or disciplinary punishability and other secondary signs" [5].

It seems that the above-mentioned group of authors equates the concepts of an administrative offense and disciplinary offense. However, the authors still cannot reach a consensus, whether an administrative offense and disciplinary offense are socially dangerous or not. Resolution of the issue the authors see in a distinct distinguishing by scientists of a criterion public danger of a deed, that is, the criterion of public danger. The authors suggested that as such criteria could serve a clarification of the circumstances: whether such deeds in their totality in a specific historical setting violate the conditions of existence of the society.

Administrative offenses include violations of administrative law that protects the rule of law established in society, management system, environmental objects, monuments of history and culture, sanitary and hygienic requirements, fire safety, transport operation, etc., which entail – warning, fine, administrative arrest, deprivation of a right granted to an individual and others [5].

Industry codes (Tax, Budget, Land, Air, etc.) do not contain legislative definition of an offense or misconduct. They contain only referential dispositions to CAO RF and references to bringing to administrative responsibility.

If we consider composition of an administrative offense and disciplinary offense, then the disciplinary offense and the administrative offense are similar in all four elements of composition: object, objective aspect, subject, subjective aspect. And here also lies the essence of the similarity of the legal content of these two concepts

It should be noted that the object of misconduct is relations that violate civil-law, administrative-legal or disciplinary prohibitions. The object of disciplinary offence is relations, which in one way or another related to the labor (service) activity of a natural person – an employee (public servant). The object of administrative offences is relations that are regulated by different branches of law, and are protected by administrative coercive measures. The object of administrative offences is public relations, encroachment on which entails administrative responsibility. All the diversity of the objects of administrative offence may be divided into a general object, generic object and direct object. As the general object of administrative offense serves all the totality of social relations, violation of which entails administrative

responsibility, i.e., all the objects of offenses provided for by CAO RF and the legislative acts of the subjects of the Russian Federation. As the generic object serve social relations, united by CAO RF into chapters on the grounds of an unlawful encroachment (for example, administrative offenses against the rights of citizens). The direct object of administrative offence is public relations for violations of specific administrative prohibition. Direct objects are specified in relation to specific articles of CAO RF (for example, violation of the right of a citizen to acquaint with the list of voters, participants of a referendum). In this regard, the object of disciplinary offence is very "poor" in its content and on the merits.

The objective aspect of administrative offense characterizes it as a wrongful act of the offender's conduct, expressed in action or inaction in various spheres of public life (financial, customs regulations and customs affairs, property sphere, public morality, field of communication and information, and others). The objective aspect of administrative offence characterizes a specific deed (action or inaction), its consequences and the causal relationship between them. Characteristic of the objective aspect includes such elements as the method, means, time, place of committing an administrative offense and other circumstances that are important for the qualification of the offense. The objective aspect of disciplinary offence is also quite narrow and limited to the framework of wrongful conduct of a physical person-employee (public servant), and is expressed through an action or inaction related to labor (service) activity of the person.

There are significant differences regarding the subjects of an administrative offense and disciplinary offense. So, the subject of a disciplinary offense can only be a citizen – an employee of organization or public servant of public authority. The subjects of administrative offence (administrative responsibility) are both natural and legal persons. Among natural persons the legislator selects a special subject – an official. It should also be separately noted that foreign citizens, stateless persons, refugees, and migrants – i.e. persons having special status under Russian legislation may also be brought to responsibility for violation of administrative legislation. But to disciplinary responsibility may be brought only a citizen of the Russian Federation – a worker (employee), in exceptional cases – a foreign citizen while working in the organization according to the received quota, residence permit and other cases specified by law.

Offender's guilt is the main element of the subjective aspect of both an administrative offense and disciplinary offense. Guilt is expressed in the form of intent or negligence. And this is the similarity between the two studied concepts. However, the subjective aspect of an administrative offense involves the guilt of an offender

– a natural person or legal entity, the motives of the offense and its purpose, but the subjective aspect of a disciplinary offense can be expressed only in the form of intent or negligence of a worker (employee), and in this there is their difference.

Thus, we should draw the general conclusion that the essence and content of such concepts as administrative offense and disciplinary offense have common juridical signs: wrongfulness, guiltiness and punishability, and are committed in the form of action (inaction). Comparison of administrative offence and disciplinary offence in respect of their compositions also revealed the identity of the two concepts. Also all four elements of administrative offence and disciplinary offence are similar: object, objective aspect, subject, subjective aspect.

At that, the conducted study has showed that here the similarity of these concepts ends. The basis of administrative responsibility is a violation of administrative-legal prohibitions in various spheres of public life. The basis of disciplinary responsibility is a violation of the terms specified in a concluded with an employee contract of employment, employment agreement, and official regulations.

There are significant differences in content of the composition of administrative offense and disciplinary offense, since every considered concept has its own content of the object, objective aspect, subject and subjective aspect. The essence and content of the constituent elements of disciplinary offense have specific signs that, in general, are not peculiar to administrative offense. Thus, we can conclude that such concepts as administrative offense and disciplinary offense are very independent in theoretical and legal meaning.

References:

1. Russian Federation Law No. 3132-1 from June 26, 1992 "On the Status of Judges in the Russian Federation" [Zakon RF ot 26 iyunya 1992 g. № 3132-I «O statuse sudei v Rossiiskoi Federatsii»]. *System GARANT* [Electronic resource], Moscow: 2013.
2. Code on Administrative Offenses of the Russian Federation from December 30, 2001, No. 195-FL [Kodeks Rossiiskoi Federatsii ob administrativnykh pravonarusheniyakh ot 30 dekabrya 2001 № 195-FZ]. *System GARANT* [Electronic resource], Moscow: 2013.
3. Labor Code of the Russian Federation from December 30, 2001, No. 197-FL [Trudovoi kodeks Rossijskoj Federacii ot 30 dekabrja 2001 g. № 197-FZ]. *System GARANT* [Electronic resource], Moscow: 2013.
4. Federal Law No. 79-FL from July 27, 2004 "On the Public Civil Service of the Russian Federation" [Federal'nyi zakon ot 27 iyulya 2004 g. № 79-FZ

«O gosudarstvennoi grazhdanskoi sluzhbe Rossiiskoi Federatsii»]. *System GARANT* [Electronic resource], Moscow: 2013.

5. Bakhrakh D. N., Rossinskii B. V., Starilov Yu. N. *Administrative Law. Textbook for HEI* [Administrativnoe pravo. Uchebnik dlya VUZov]. Moscow: Norma, 2004.

6. Gusov K. N., Poletaev Yu. N. *Responsibility under the Russian Labor Law: Scientific and Practical Guide* [Otvetstvennost' po rossiiskomu trudovomu pravu: nauchno-prakticheskoe posobie]. Moscow: 2008.

7. Dobrobaba M. B. The Problem of Determination of the Legal Nature of the Disciplinary Legal Relations in the Service Law [Problema opredeleniya pravovoi prirody distsiplinarnykh pravootnoshenii v sluzhebnom prave]. *Administrativnoe pravo i protsess – Administrative Law and Process*, 2012, no. 5.

8. Kobzar'-Frolova M. N. *Theoretical-legal and Practical Basis of Tax Tort Study:* thesis of a Doctor of law [Teoretiko-pravovye i prikladnye osnovy nalogovoi deliktologii: diss… dokt. yurid. nauk]. Moscow: 2011.

9. Matuzov N. I., Mal'ko A. V. *Theory of State and Law: Textbook* [Teoriya gosudarstva i prava: uchebnik]. Moscow: Jurist ", 2004.

10. Melekhin A. V. *Theory of State and Law. Textbook* [Teoriya gosudarstva i prava. Uchebnik]. Moscow: Market DS, 2007.

11. Nikulin M. I. *Problems of the Science of Administrative Tort Study*: thesis of a Doctor of law [Problemy nauki administrativnoi deliktologii: diss… dokt. yurid. nauk]. Habarovsk: 2003.

12. *Theory of State and Law: Textbook for Legal Higher Schools* [Teoriya gosudarstva i prava: uchebnik dlya yuridicheskikh VUZov]. Under edition of A. S. Prigorkin, Moscow: publishing house Gorodets, 2003.

13. *Legal Dictionary* (dictionaries and encyclopedias on Academica). Available at: http://h1.ru/inslov (accessed: 10.10.2013).

14. Available at: *www//mirslovarei.com* (accessed: 10.10.2013).

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SOME ISSUES OF JUDICIAL CONTROL OVER THE LAWFULNESS OF ADMINISTRATIVE LEGAL ACTIONS (INACTION) THAT ENTAIL LEGAL CONSEQUENCES [1]

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It is noted that there is no unity of opinion among scientists regarding the essence of administrative-legal actions (or inaction). Here is suggested to designate administrative-legal actions as an authoritative expression of will of executive authorities and officials.

Attention is focused on the search for a criterion allowing distinguishing of administrative-legal actions from other types of managerial actions. Here is argued that the identification of this criterion is important not only for creation of a full-fledged theory of administrative acts, but also for forming of a quality judicial enforcement.

The author states that the introduction of the rules of mandatory appeal of administrative-legal actions (inaction) to a superior authority (superior official) is inappropriate and creates obstacles to access to justice.

Keywords: judicial control, administrative-legal actions, inaction, legal consequences of inaction, legal consequences of administrative-legal actions, types of managerial actions, administrative acts.

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Actions (inaction) of administrative bodies and their officials, which entail legal consequences, as a category of managerial actions has passed most recently into their independent kind and not been yet supported by all scientists [13, 23; 21, 87-90; 28, 53]. As a rule, the science studied public administrative acts, which covered all activities of administrative bodies. Accordingly, no actions (inactions) of a legal nature, if they are not public administrative acts, have been studied.

However, recently, scientists' gaze has turned to the consideration of other actions (inaction) of administrative bodies and their officials, which they perform in their daily activities on the implementation of executive functions [22, 284; 18, 73-76; 16, 22; 20, 83-93; 23, 12; 24, 11], and individual legal scholars have dedicated independent researches to such actions (inaction) of administrative bodies and their officials entailing legal consequences [27].

Interest of scientists to the problems associated with the recognition of the category of "actions (inaction)" as an independent form of managerial actions is dictated by the current legislation. Even the RF Law "On Court Appeal against the Actions and Decisions that Violate the Rights and Freedoms of Citizens" delimited public administrative acts and other actions (inaction), which can be appealed [1]. It is quite clear that such actions (inaction) can only be actions (inaction) entailing legally significant consequences for the individuals to whom these actions are addressed. Appeal against actions (inaction), which have no legal consequences, does not make sense.

Code of Civil Procedure of the RF (hereinafter CCP RF) in the current edition separates public administrative acts from other legal significant actions (inaction) of administrative bodies and their officials. So, article 245 CCP RF clearly provides an opportunity, for example, for citizens to appeal not only against decisions of administrative authorities, but also against their actions (inaction). Focusing on these provisions, we select out from the number of managerial actions and consider separately from public administrative acts both conclusion of administrative contracts and other actions (inaction) entailing legal consequences. At the same time, if the commission of a contested action (inaction) is referred to the discretion of a body or its official, the court has no right to assess the appropriateness of such action (inaction). Otherwise the court unlawfully interferes in the competence of administrative authorities.

In accordance with article 255 CCP RF, administrative-legal actions (inaction) of bodies of executive power, its officials, which can be challenged in the courts, include the actions that result in violation of the rights and freedoms, creation of obstacles to the implementation of the rights and freedoms, unlawful placing any

obligation on a person or illegal bringing to responsibility of this person. Judicial practice interprets the actions of executive authorities and their officials as authoritative expression of will of these bodies and persons, which is not framed in the form of decision, but which has entailed a violation of the rights and freedoms of citizens and organizations or has created obstacles to their implementation (hereinafter referred to as – The Decision of the Plenum of the Supreme Court of the RF No. 2 from February 10, 2009) [5]. Administrative-legal actions include, for example, emergency response, registration, conducting of veterinary supervision, planning of financing of state-owned factories, action to control the proper execution of transferred public powers both to executive authorities of the subjects of the Russian Federation and to non-authoritative subjects, permission to do certain actions, denial of issuing a passport, driver's license, etc. The judicial practice refers to such actions the demands of officials exercising state supervision and control (The Decision of the Plenum of the Supreme Court of the RF No. 2 from February 10, 2009).

Judicial practice recognizes inaction as "failure of a body of executive authority, official to perform the duty entrusted on them by normative legal and other acts, which define the powers of these persons (job descriptions, provisions, regulations, orders)" (The Decision of the Plenum of the Supreme Court of the RF No. 2 from February 10, 2009). Inactions include, for example, failure to consider an applicant's request by an authorized person (The Decision of the Plenum of the Supreme Court of the RF No. 2 from February 10, 2009), as well as not providing by an official of information that it must provide during an audit to the head, another official or authorized representative of a legal entity, individual entrepreneur or its authorized representative (article 21 of the Federal Law No. 294-FL [2]).

There is no unity of opinion on the essence of administrative-legal actions (inaction) among scientists. Some legal scholars disclose the essence of administrative-legal actions through the category of authoritative impact, which is not formalized through an individual administrative act [27, 23-24], while others represent actions as an authoritative volitional act of conduct of executive authority body [20, 84].

Definitely, authoritative impact and authoritative expression of will are virtually identical concepts. However, if we take into account the goal of modern society – the need to combine the impact and interaction of federal executive bodies with the institutes of civil society in order to achieve social peace in the country, then it would be more correct to denote administrative-legal actions as the authoritative expression of will of executive bodies and officials.

For the formation of the definitions of administrative-legal actions we need to determine the signs of this category of managerial actions.

So, I. A. Chizhov, defining administrative-legal actions, indicates such signs as their exercising within the competence in the course of implementation by executive bodies of executive functions; the order and procedure of exercising actions is governed by the norms of administrative law; is not formalized through an individual administrative act. I. M. Masharov, in fact, complements these signs by presence of, as a rule, written formalization and by an indication of the fact that administrative-legal actions precede adoption of individual administrative acts or are committed after the adoption of such acts [20, 85-86].

We have to agree with some of the above signs, because they fully reflect the peculiarities of administrative-legal actions. For example, we recognize the sign of existence legal consequences as the main sign distinguishing administrative-legal actions from the actions undertaken by executive bodies and their officials within the framework of organizational and logistical events. At the same time, using this sign, it is impossible to distinguish administrative act from administrative-legal action, since both entail legal consequences. A similar comment may also be given in respect of such a sign as the fulfillment of administrative-legal actions to implement executive authority functions within the competence of a body. This sign is common for all managerial action, including the issuance of administrative acts, conclusion of administrative contracts. Otherwise, managerial actions would not be recognized as such.

Thus, a written or oral formalization is, of course, a sign typical of administrative-legal actions. However, this sign is characteristic also for administrative acts, which can also be in written and oral form (for example, military orders [8, 254]). In turn, a written individual administrative act is accepted as in a certain form required by law (for example, an order of the supreme executive body of state power of the subject of the Russian Federation) and in an arbitrary form (for example, a written notice of an official to refuse to satisfy a citizen's request) (see: paragraph 1 resolution of the Decision of the Plenum of the Supreme Court of the RF No. 2 from February 10, 2009 "On the Practice of Court Consideration of Cases on Contesting the Decisions, Actions (inaction) of Public Authorities, Local Self-government Bodies, Officials, State and Municipal Employees" [5]).

The presence of such a sign as defining the procedure of exercising administrative-legal actions only by the norms of administrative law, in our opinion, is debatable, primarily because at present this procedure is regulated by normative legal acts of various sectorial affiliations. As a rule, it is reflected in the administrative regulations of the bodies of executive power [3]. However, partially the procedure of conducting inspections regarding compliance with the current

legislation is also established by the Federal Law No. 294-FL [2], the Labor Code of the RF, etc.

Definition of administrative-legal actions will be incomplete if we have not detected signs of this category of managerial actions, which allows distinguishing them from issuance (adoption) of administrative acts and administrative contracts. But first, we would like to notice that nowadays the scientists are in search for a criterion that allows separation of administrative-legal actions from other kinds of managerial actions. Identification of this criterion is not only important for creation of a full-fledged theory of administrative acts, but also for development of a quality judicial enforcement.

I. M. Masharov, for example, offers to distinguish administrative-legal actions under such signs as lack of certain legal consequences for the subjects, in respect of which these acts are committed; lack of an authoritative volitional decision of an administrative body and obligatoriness of official documenting [20, 100]. We assume, that I. M. Masharov while offering these criteria contradicts itself, since in the preceding pages of his research he claimed the opposite [20, 84-86].

We believe that administrative-legal actions always entail legal consequences for the subjects, in respect of which these acts are committed, they are authoritative volitional decisions of an administrative body that require or do not require written formalization. The fact is that these actions do not only show the process of executive authorities' activity, but also constitute in the whole process of implementation by them of executive functions. We remind that the forms of executive authorities' activity may be both legal (main) and security. Accordingly, only the legal forms, i.e. managerial actions, express the essence of the executive power, promote the implementation of its public functions, thus, entail legal consequences.

It seems to us that the most appropriate criterion for delimitation of administrative-legal actions from other managerial actions is the nature of management process, since the adoption of administrative acts or conclusion of administrative contracts as a result of executive authorities' activities requires performing of certain administrative legal actions aimed at achievement of this result. Here are a few examples.

So, issuance of an order as individual administrative act is preceded by gathering by official of documents (information), their study to identify violations of the current legislation. Provision of documents (information) is exercised on the basis of the demand of an official of control and oversight body. At that, article 19.17 of the Code on Administrative Offences of the RF (hereinafter CAO RF) establishes administrative responsibility for failure to submit or late submission of

the information. Let's note that this administrative offense is committed, usually, in the form of inaction and the place of its commission should be considered a place where should be performed the duty entrusted on the person [4, 6]. Throughout the period of inspection documents are provided by supervised entity as required, including repeatedly. Only after thoroughly study of the documents of audit an official decides on the adoption of individual administrative act, that is, issuance of order to eliminate violations revealed. We see that the requirement on provision of documents as an administrative-legal action precedes the issuance of order as its result.

Issuance of order on administrative penalty (order for termination of proceedings), usually, is preceded by drawing up of a protocol on administrative offense, except for cases when the protocol is not drawn up. However, in this latter case, the issuance of order is preceded by the exercising by an official of administrative-legal actions, such as, for example, stop of vehicle when the driver has committed an administrative offense, checking its documents (chapter 12 article 28.6 CAO RF) or, for example, providing to bailiff any false information about rights to property, failing to report about dismissal from work, about a new place of work, study, place of receipt of pension, other income or place of residence (part 1 article 17.14 CAO RF), etc.

Issuance of a normative administrative act is preceded by the commission of administrative-legal actions, which are expressed in requesting the materials needed to prepare a draft of this act, both in the body that is the developer of the draft and in other executive bodies. Accordingly, after the issuance of a normative administrative act appears the need in its implementation, which also entails commission of certain administrative-legal actions that are represented both in written and in oral form.

Refusal of application of a citizen as the final decision of an official, usually, is preceded by a number of its administrative-legal actions, expressed in non-acceptance of the application to consideration, absence of registration of the application, violation of the terms of consideration the application, etc.

Given examples illustrate that administrative-legal actions do not just rarely precede or derive from the adoption (issuance) of administrative acts, they show and describe management process before its completion, that is, before the issuance (adoption) of administrative acts, and management process after their issuance (adoption). Note that the presence of administrative-legal actions committed in pursuance of administrative acts involves the subsequent adoption of new acts, what indicates about interrelation of not only administrative acts adopted (issued)

by an executive authority, but also administrative-legal actions preceding or deriving from their adoption (issuance). This is one of the manifestations of the continuity of managerial process.

The same is true when considering the correlation of administrative-legal actions and administrative contracts.

All administrative-legal actions (inaction) of an executive authority body or its official have one goal, the achievement of which leads to the effectiveness of the very actions (inaction) – issuance (adoption) of administrative acts, conclusion of administrative contracts. Otherwise, there is no need for the functioning of the very body of the state.

Accordingly, administrative acts and administrative contracts are the culmination of all the administrative-legal actions of the body of the state. So, for example, the purpose of an official's requirement to provide documents for verification is a revealing of violations to restore the rights through an individual administrative act – order (proposal, etc.). The purpose of conclusion of an administrative contract is rational implementation of public powers by the bodies of executive power. Note that in some cases this final action also is of a mesne nature and formalized additionally by an administrative act. Bringing to administrative responsibility, usually, occurs on the basis of a protocol on an administrative offense, which, in turn, is an action entailing legal consequences. Application of the measures of ensuring proceedings on a case is formalized by such administrative-legal action as protocol. This action also entails a legal consequence – taking a decision on an administrative penalty (or on the termination of proceedings), which is an individual administrative act – the culmination of administrative-legal actions.

It means, on the one hand, issuance (adoption) of an administrative act, conclusion of an administrative contract and administrative-legal action – all these are independent forms of managerial actions, but on the other hand, administrative acts and conclusion of administrative contracts in some way are the result of administrative-legal actions of an executive authority body and its officials.

Thus, administrative-legal actions can be considered in broad and narrow senses. In the broad sense as administrative-legal actions can be considered each of the managerial actions of executive authority body, but in the narrow one – only direct administrative-legal actions of the bodies delimited from other types of managerial actions. That is why the issuance (adoption) of administrative acts, conclusion of administrative contracts – it is also administrative-legal actions, but they are just of final nature, i.e., they are final administrative-legal actions. This is a conscious establishing of final action (conduct) that expresses the authoritative

expression of will of a body (official), is binding, and aimed at achieving the objectives of an authority [9, 7-8; 17, 109-111; 25, 143].

Thus, the nature of management process aimed at achieving a particular result – it is an objective criterion of distinguishing committing of administrative-legal actions from adoption (issuance) of administrative acts and conclusion of administrative contracts. The essence of this criterion is that the first reflect management process, and the second – its result. Administrative-legal actions contribute to the occurrence of the management process results – adoption (issuance) of administrative acts and conclusion of administrative contracts.

In fact, a public unilateral authoritative expression of will of an executive authority body (administrative act) is a final complex action that finishes a whole set of simple administrative-legal actions of the executive authority body. The conclusion of an administrative contract initially requires some simple administrative-legal actions, expressed, for example, in an imperious expression of will of an executive authority body to develop an administrative contract project, project preparation and other actions.

If you follow the proposed by us criterion of delimitation simple (primary) and final administrative-legal actions, it will allow you to distinctly resolve all the practical issues associated with the delimitation of the primary administrative-legal actions and administrative acts. For example, what is a protocol on administrative offence – an administrative act of intermediate nature [26, 285] or an administrative-legal action [10, 270]? Applying the proposed criterion of delimitation administrative acts or administrative-legal actions, it can be argued that protocol is a written administrative-legal action aimed at achieving its result – decision on administrative punishment or termination of proceedings on a case. Note that scientists distinguish legal management acts and protocols on administrative offences, which follows from the fact that they consider protocol as a document of written nature, which has legal significance, in the context of its differences from legal management act [19, 174].

Or there is another example. Unlawful demands of the head on inclusion in statistical reporting unrealistic numbers –is it an individual administrative act or administrative-legal action? Some scientists recognize these demands as insignificant management act [15, 115]. However, it seems to us, that in this case there is no administrative act, but a wrongful action takes place, since this demand is not of final nature.

If an official's refusal to meet the application of a citizen about violations in respect of the last of the current legislation is an individual administrative act, then

as administrative-legal actions, which precede this refusal, should be considered actions aimed at revealing these violations, expressed, for example, in the form of a verbal or written request of the official to submit documents.

The same is true, for example, in the refusal of the registration of citizen's property rights and so on.

Administrative-legal actions (but not tacit administrative acts!) can include traffic constable gesture, gesture of an authorized traffic officer to stop vehicle. This is a special form of expression of not management acts, but administrative-legal actions performed by specially authorized officials. This conclusion is based primarily on the fact that traffic rules are applied by authorized officials through regulation of traffic by gestures. Traffic lights signal – it is a technical form of expression of administrative-legal actions. Traffic lights – it's a kind mediated form of the gesture of traffic constable through technical means, but not a technical form of expression of law norms. This action aimed at the application of law norms. The matter is that traffic lights during regulating the movement of vehicles promote the application of traffic rules, and does not reflect these rules.

So, we can conclude that administrative-legal action is an authoritative expression of will of executive authority bodies (their officials) of written or oral nature, aimed at detailed regulation of the process of taking (issuance) of final decision (administrative act, administrative contract).

Legislation does not provide for mandatory pre-trial procedure of consideration in general of administrative-legal disputes, including consideration of applications for appeal of actions (inaction) of executive authority bodies and their officials. This means that an applicant has the right to choose the procedure (administrative or judicial one) of protection its rights and freedoms from violations by administrative-legal actions (inaction) (see: paragraph 1 resolution of the Decision of the Plenum of the Supreme Court of the RF No. 2 from February 10, 2009 [5]). Mandatory pre-trial procedure is provided for only in respect of appeal against the decisions (individual administrative acts) of certain executive authority bodies (paragraph 5 article 101.2 of the Tax Code of the RF).

However, scientists support the idea about the obligatoriness of pre-trial ways of settlement disputes on appeal, for example, administrative-legal actions of customs authorities [14, 6-7].

In general, of course, there are certain positive points of having a mandatory administrative procedure for appeal of administrative-legal actions (inaction). First of all, it is rapidness and operativeness of complaints consideration. However, on the other hand, even without taking into account article 46 of the RF Constitution,

which is the basis of preserving alternative procedure of complaints consideration, including against administrative-legal actions (inaction), then what for to appeal against these actions (inaction) for the second time (we mean to appeal to a higher authority) if an official on behalf of administrative authority and consequently the administrative authority in general had already expressed its position on this issue? Note that an inferior administrative authority commits administrative-legal actions (inaction) almost always being based on the position of a higher authority. Accordingly, the abolition of such decisions of an inferior body is usually accompanied by their low number.

In turn, an applicant, who appeals against administrative-legal actions (inaction), already does not agree with the decision of the body or its official. If to provide obligatoriness of special administrative complaint, thus, we make the applicant to apply again in executive authority body on the same issue. As an alternative to resolving this issue can be suggested consideration of a complaint against an individual administrative act by a collegial body [14, 7]. Yet, we think that the introduction of the rules of obligatoriness of appeal against administrative-legal actions (inaction) to a higher authority (superior official) would be inappropriate and create barriers to access to justice.

There are no doubts that the administrative-legal actions must be performed in accordance with the current legislation, with clear grounds and procedure. Legal mechanism of committing administrative-legal actions, according to I. A. Chizhov, includes grounds, content, limits, procedure and the consequences of their commission, as well as a list of competent officials [27, 24].

Elements of the mechanism of committing administrative-legal actions proposed by I. A. Chizhov are similar to the elements of such mechanism of judicial practice. In particular, when considering cases of appeal against administrative-legal actions (inaction) courts also ascertain competence of a body (official), compliance with the order of commission of an administrative-legal action (form, timing, grounds, procedure, etc.) and compliance of the content of the committed action (inaction) to the requirements of the legislation [5]. Administrative-legal action (inaction) is recognized illegal in violation of at least one of these requirements.

While agreeing in general with such elements of the mechanism of commission of administrative-legal actions (inaction), it seems correct, similarly to the requirements for administrative acts [8, 254; 11, 377-381; 22, 286, 288-291; 7, 440; 12 8-10], also allocate requirements to the legality of administrative-legal actions: substantive and procedural. Respectively, the substantive requirements for administrative-legal actions consist of requirements of the lawfulness of their content (compliance

with legislation, list of competent officials). In turn, the procedural requirements are represented in part of the form of action, order of performance, their entry into force, consequences and limits of performing.

We believe we should also use the analogy of the presumption of legality of administrative acts and apply it to administrative-legal actions – they are legitimate until appealed through administrative or court procedure. Since the appeal these actions should be considered as challengeable. As a result of judicial control they may be reclassified to unlawful actions.

With that, let's focus attention on the following feature of the requirements for administrative-legal actions. Due to the fact that they precede the issuance (adoption) of administrative acts, the non-compliance of requirements for commission of these actions entails the illegality of administrative acts taken on their basis. For example, in cases prescribed by law the non-compliance with the written form of such administrative-legal actions as drawing up a protocol on the excitation of a case on administrative offence implies the illegitimacy of subsequently adopted decision on administrative penalty. The request by an official exercising control and supervision of any documents not related to the subject of auditing, entails the voiding of the audit results, expressed, including, in issuing a binding individual administrative act – order (article 20 of the Federal Law No. 294-FL).

Thus, the requirements for the lawfulness of administrative-legal actions lie in the requirements of their compliance with the current legislation, as well as the competence of an official to the commission of certain administrative-legal actions (inaction).

References:

1. RF Law No. 4866-I from April 27, 1993 "On Appeal to Court against the Actions and Decisions that Violate the Rights and Freedoms of Citizens" [Zakon RF ot 27 aprelya 1993 g. № 4866-I «Ob obzhalovanii v sud deistvii i reshenii, narushayushchikh prava i svobody grazhdan»]. *Vedomosti SND RF i VS RF – Gazette of the Congress of People's Deputies of the RF and the Supreme Soviet of the RF*, 1993, no. 19, article 685.

2. Federal Law No. 294-FL from 26.12.2008 "On Protection of Legal Entities and Individual Entrepreneurs Rights in Implementation of State Control (supervision) and Municipal Control" (as amended on 12.11.2012) [Federal'nyi zakon ot 26 dekabrya 2008 g. № 294-FZ «O zashchite prav yuridicheskikh lits i individual'nykh predprinimatelei pri osushchestvlenii gosudarstvennogo

kontrolya (nadzora) i munitsipal'nogo kontrolya» (red. ot 12.11.2012)]. *System GARANT* [Electronic resource], Moscow: 2012.

3. Procedure for development and approval of administrative regulations for performing state functions (provision of state services), approved by the Decree of the Government of the Russian Federation No. 679 from November 11, 2005 [Poryadok razrabotki i utverzhdeniya administrativnykh reglamentov ispolneniya gosudarstvennykh funktsii (predostavleniya gosudarstvennykh uslug), utverzhdennyi postanovleniem Pravitel'stva Rossiiskoi Federatsii ot 11 noyabrya 2005 goda № 679]. *SZ RF – Collection of Laws of the Russian Federation*, 2005, no. 47, article 4933.

4. The decision of the Plenary Session of the Supreme Court of the Russian Federation No. 5 from March 24, 2005 "On some issues that arise in courts when applying the Code on Administrative Offences of the RF" [Postanovlenie Plenuma Verkhovnogo Suda Rossiiskoi Federatsii ot 24.03.2005 № 5 «O nekotorykh voprosakh, voznikayushchikh u sudov pri primenenii Kodeksa Rossiiskoi Federatsii ob administrativnykh pravonarusheniyakh»]. *Byulleten' Verkhovnogo Suda RF – Bulletin of the Supreme Court of the RF*, 2005, no. 6.

5. The decision of the Plenary Session of the Supreme Court of the Russian Federation No. 2 from February 10, 2009 "On the practice of consideration in courts of cases against decisions, actions (inaction) of state power bodies, local self-government bodies, officials, state and municipal servants" [Postanovlenie Plenuma Verkhovnogo Suda RF ot 10 fevralya 2009 g. № 2 «O praktike rassmotreniya sudami del ob osparivanii reshenii, deistvii (bezdeistviya) organov gosudarstvennoi vlasti, organov mestnogo samoupravleniya, dolzhnostnykh lits, gosudarstvennykh i munitsipal'nykh sluzhashchikh»]. *Byulleten' Verkhovnogo Suda RF – Bulletin of the Supreme Court of the RF*, 2009, no. 4.

6. Review of legislation and judicial practice of the Supreme Court of the Russian Federation for the first quarter of 2010 [Obzor zakonodatel'stva i sudebnoi praktiki Verkhovnogo Suda Rossiiskoi Federatsii za pervyi kvartal 2010 goda]. *Byulleten' Verkhovnogo Suda RF – Bulletin of the Supreme Court of the RF*, 2010, no. 9.

7. *Administrative Law of Ukraine* [Administrativnoe pravo Ukrainy]. Under edition of S. V. Kivalov and others, Kharkov: Odissey, 2004.

8. *Administrative Law: Textbook* [Administrativnoe pravo: uchebnik]. Under edition of L. L. Popov, Moscow: Jurist ", 2002.

9. *Managerial Apparatus of a Socialist State* [Apparat upravleniya sotsialisticheskogo gosudarstva]. Part 2, Moscow: 1977.

10. Bakhrakh D. N. *Administrative Law: Textbook* [Administrativnoe pravo: uchebnik]. Moscow: Norma, 2002.

11. Bakhrakh D. N., Rossinskii B. V., Starilov Yu. N. *Administrative Law: Textbook* [Administrativnoe pravo: uchebnik]. 3rd edition revised and supplemented, Moscow: Norma, 2008.

12. Bakhrakh D. N., Khazanov S. D. *Forms and Methods of Public Administration: Study Guide* [Formy i metody deyatel'nosti gosudarstvennoi administratsii: Ucheb. Posobie]. Ekaterinburg: 1999.

13. Vasil'ev R. F. *Managerial Acts (meaning, problems of research, notion)* [Akty upravleniya (znachenie, problema issledovanii, ponyatie)]. Moscow: publishing house of MSU, 1987.

14. Davydova E. V. *Pre-trial Procedure for Appealing Decisions, Actions (inaction) of Customs Bodies and their Officials*: thesis of a candidate of legal sciences [Dosudebnyi poryadok obzhalovaniya reshenii, deistvii (bezdeistviya) tamozhennykh organov i ikh dolzhnostnykh lits : diss. ... kand. yuridich. Nauk]. Moscow: 2008.

15. Demin A. A. The Legality of a Managerial Act – a Written Request of Administrative Jurisdiction [Zakonnost' akta upravleniya – pis'mennoe trebovanie administrativnoi yurisdiktsii]. *Problemy protivodeistviya administrativnoi deliktnosti: materialy nauchno-prakticheskoi konferentsii, posvyashchennoi 75-letiyu zasluzhennogo deyatelya nauki RF d. yu. n., professora A. P. Shergina (g. Moskva, 23 iyunya 2010 g.) – Issues of Combating Administrative Delinquency: proceedings of scientific-practical conference dedicated to 75th anniversary of the Honored Scientist of RF, Doctor of law, Professor A. P. Shergin (Moscow, June 23, 2010)*, Editor-in-chief A. S. Dugenets, Mosc*ow:* All-Russian Research institute of the MIA of Russia, 2010.

16. Kozbanenko V. A. *Types and Legal Forms of State Managerial Decisions* [Vidy i pravovye formy gosudarstvennykh upravlencheskikh reshenii]. Moscow: 2002.

17. Kozlov Yu. M., Frolov E. S. *Law and Scientific Organization of Management* [Nauchnaya organizatsiya upravleniya i pravo]. Moscow: publishing house of MSU, 1986.

18. Kononov P. I. *Administrative Law. General part: Course of Lectures* [Administrativnoe pravo. Obshchaya chast': Kurs lektsii]. Kirov: 2002.

19. Korenev A. P. *Administrative Law in Russia. Textbook. In 3 parts. Part I* [Administrativnoe pravo Rossii. Uchebnik. V 3-kh chastyakh. Chast' I]. Moscow:

Moscow Juridical Institute of the MIA of Russia: publishing house Shchit-M, 1999.

20. Masharov I. M. *Administrative and Public Activity in Russia. Problems of Legal Regulation. Monograph* [Administrativno-publichnaya deyatel'nost' v Rossii. Problemy pravovogo regulirovaniya. Monografiya]. Moscow: 2009.

21. Mel'nikov V. A. *Administrative Law of the Russian Federation (General Part): Study Guide* [Administrativnoe pravo Rossiiskoi Federatsii (Obshchaya chast'): Uchebnoe posobie]. Volgograd: publishing house of Volgograd Academy of the MIA of Russia, 2004.

22. Popov L. L., Migachev Yu. I., Tikhomirov S. V. *Administrative Law: Textbook* [Administrativnoe pravo: uchebnik]. 2nd edition, revised and supplemented, Moscow: Prospekt, 2009.

23. Slesareva E. S. *Individual Acts of Management*: thesis abstract of a candidate of legal sciences [Individual'nye akty upravleniya. Avtoreferat dis. … kand. yurid. nauk]. Moscow: 1984.

24. Tokarev O. V. *Administrative Acts: Substantive and Procedural Issues of Modern Theory*: thesis abstract of a candidate of legal sciences [Administrativnye akty: material'nye i protsessual'nye problemy sovremennoi teorii. Avtoreferat dis. … kand. yurid. nauk]. Voronezh: 2001.

25. Tumanov G. A. *Management Organization in the Field of Public Order Protection* [Organizatsiya upravleniya v sfere okhrany obshchestvennogo poryadka]. Moscow: 1972.

26. Khazanov S. D. Code of Administrative Court Procedure: Concept and Juridical Instruments [Kodeks administrativnogo sudoproizvodstva: kontseptsiya i yuridicheskii instrumentarii]. *Teorija i praktika administrativnogo prava i processa – Theory and Practice of an Administrative Law and Procedure*: Proceedings of the all-Russian scientifically-practical conference dedicated to memory of Professor V. D. Sorokin (setl. Nebug, Ocnober 13-14, 2006), executive editor Professor V. V. Denisenko, Associate professor A. G. Ehrtel', Kuban'kino, Krasnodar: 2006.

27. Chizhov I. A. *Administrative-legal Actions*: thesis of a candidate of legal sciences [Administrativno-pravovye deistviya: Diss. … kand. yurid. nauk]. Belgorod: 2005.

28. Yusupov V. A. *Scientific Organization of Work of Executive Branch* [Nauchnaya organizatsiya ispolnitel'noi vlasti]. Volgograd: 1998.

REVIEW OF THE MONOGRAPH OF THE DOCTOR OF LAW, PROFESSOR M. A. LAPINA "ADMINISTRATIVE JURISDICTION IN THE SYSTEM OF ADMINISTRATIVE PROCESS"

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Today administrative-legal science is the most sought after area of legal knowledge. Against the background of the modernization of managerial processes in public administration, administrative process comes to the forefront. The system of administrative process includes an institute "administrative jurisdiction", which requires a unified conceptual approach to its understanding. Therefore, the subject of scientific studies of M. A. Lapina has theoretical and practical significance.

It seems that the author's monograph will be useful for undergraduate and graduate students studying in the specialty: "Jurisprudence" and "State and Municipal Management". Analysis of the theoretical and practical aspects, as set out in the study, can also be used by lecturers in the preparation for lessons, scientific workers and practitioners.

The monograph under review, in our opinion, is a result of previous studies of the author in regard of administrative and jurisdictional activity of executive authorities, as evidenced by the presence of a sufficient amount of practical material.

The author's concept of the system of administrative process and determination the place of administrative jurisdiction in the administrative process is not original for administrative law. However, one should give due assessment to the skillful synthesis of opposite points of view of famous scientists and legal scholars on the subject of the study, as well as the systematization of scientific knowledge in the studied field.

The author is absolutely right about the lack of a unified conceptual approach to the development and adoption of normative legal acts regulating the administrative-jurisdictional activities of executive bodies regarding not only proceedings on cases of administrative offences but also other administrative procedures and administrative proceedings.

It is no secret that administrative process is designed to systemically regulate public administration – activity of, mainly, executive bodies exercising managerial process with help of administrative and procedural norms. And, in this regard, there should be a systemacity of administrative process, because only if there is a generally accepted system the administrative process will effectively operate as a unified and sophisticated system.

However, as the author notes, and we agree with this, "concepts of administrative process, which are available in Russia, do not allow a comprehensive and holistic covering of the modern system of administrative process, what, in turn, reduces the efficiency in the whole of state power, bodies of public administration".

The author's examples of the structural elements of administrative process show that there is no a unified theory of the system of administrative process in the modern science of administrative law and process. Therefore, we believe, the monograph under review can be an incentive element in the formation of a consolidated point of view on the very essence of administrative process and its constituent elements.

We find interesting the logic of the author regarding the passport scientific specialty in "Administrative process", which is based "on the basis of consistently performed actions in a managerial process: first is lawmaking, then positive enforcement within the framework of the institute of administrative procedures, and in the case of a dispute or in violation of law norms both in out of court (pre-trial) and judicial procedure, including with use judicial control on the part of the judiciary – application of law enforcement forms within the framework of the relevant institutes of administrative jurisdiction and administrative justice".

We should agree with the fact that administrative process is an activity regulated by administrative and procedural norms that is aimed at the resolution of individual cases in the sphere of public administration by authorized executive authorities of the Russian Federation, and in cases stipulated by law by other authorized subjects of administrative and procedural relations. M. A. Lapina emphasizes that "administrative process is aimed at ensuring the correct implementation of the substantive norms of administrative law and other branches of law, which are inseparable from the administrative and procedural norms in the sense that the process is a form of exercising, implementation of directions contained in the substantive norms of law" (page 20).

The content of the monograph gives reason to think that the author is one of those scientists-legal scholars who define administrative and procedural activity as a kind of "legal shell" of managerial process, at that, the managerial process

itself in the exercising of executive and administrative activity is perceived by M. A. Lapina much broader than the concept of administrative and procedural activity and includes along with the legal also non-legal (organizational, material-technical) forms.

The provided in the monograph reasoning of differences between administrative procedures and administrative proceedings, for example, on the basis of positive orientation of administrative procedures and protective orientation of administrative proceedings, on the basis of the structuring of procedures and proceedings, is commendable.

Defining administrative jurisdiction as the activity of competent public authorities authorized to consider administrative and jurisdictional cases in out of court or pre-trial order and to make on them legally binding decisions, the author makes a significant reservation, that only the court, which administers justice on administrative cases, is a subject of administrative justice, otherwise the principle of "separation of powers" will be violated (page 47).

The statement that "... administrative jurisdiction is an activity of public authorities in out of court or pre-trial order", and "administrative justice is an administration of justice, mainly, in cases of administrative offenses and exercising of judicial control over the legality of normative and non-normative legal acts adopted by public authorities and their officials" (page 48) does not raise an objection.

We agree with the author that there are several points of view regarding the semantic meaning of the term of "jurisdiction", but understanding of jurisdiction as "a statutory totality of powers of relevant state bodies to resolve legal disputes and cases of offences, to evaluate the actions of a person or another subject of law from the terms of their legality, to apply legal sanctions to offenders" (page 49) is popular among legal scholars.

It seems to us, that not by accident the author has focused on the administrative jurisdiction in tax area. Indeed, the administrative jurisdiction in tax field has signs not only inherent to administrative jurisdiction in general but also distinguishing it from other areas, and control and administrative-jurisdictional activity of the FTS of Russia are closely linked, but remain independent, sequential kinds of activity. We should agree with M. A. Lapina that fulfillment the functions of tax control is primary and mandatory for the tax authorities, and jurisdictional activity has optional (secondary) nature, which can take place only when there is a legal dispute on the results of a tax audit. However, namely this situation leads, in our view, to a multitude faults in the administrative-jurisdictional activity of the FTS.

The position of M. A. Lapina on the content of the Special part of the Code on Administrative Offences of the RF causes a sensation of satisfaction. Author of the monograph like we believes that the Code on Administrative Offences of the RF shall include every single one compositions of administrative offenses, including in the area of taxes and fees, "otherwise its existence makes no sense and cannot be justified because it is designed to provide uniform regulation of all issues of the most common type of legal responsibility, regardless of the field of public relations – tax, customs, banking, sanitary-epidemiological, etc." (page 120).

Assessing the monograph, we should not forget that the science of administrative law and process is the most sought after area of legal knowledge. However, itself the branch of administrative law and process has been contradictory developing (including with the help of public authorities taking normative legal acts, which become the sources of law). The practice of administrative and jurisdictional activity of executive authorities is also not perfect.

We should agree with author in the fact that "administrative-jurisdictional legislation contains gaps and contradictions, prompt removal of which is not possible for objective reasons, in particular, because of the long duration of the rule-making process" (page128). Therefore, the author's consideration of case-law as a liaison between the law-making and law-enforcement is fully justified. Precedents, according to M. A. Lapina, performing law securing function, in the process of its implementation "can perform so-called "sublegislative" normative regulation of public relations (in other words – the means of legal regulation) that can, depending on specific political and social conditions, either enrich the law or deform it".

It seems to us that in the author's monograph has been voiced a call to the scientific community in order to ensure application of unified approaches to the forming of substantive and procedural-legal norms that will increasingly exercise the most important general legal principle – the principle of legality.

We believe that the complexity and scope of the norms of administrative-tort legislation, the difficulties in their application by judges and other authorized bodies (officials) necessitate substantial changes in the programs of higher legal education. And, in this regard, the monograph of M. A. Lapina may have a positive impact.

It should be noted that the monograph has fully disclosed the concept, content, signs and principles of administrative jurisdiction, has analyzed the system of subjects of administrative-jurisdictional legal relations and represented the main kinds of administrative-jurisdictional proceedings. On the base of the analysis of legal regulation have been identified peculiarities of administrative-jurisdictional

activity of a number of executive power bodies. Have been formulated the suggestions for improvement the theoretical foundations of the institute of administrative jurisdiction in the system of administrative process.

The visual expression and accessibility to understanding the author's viewpoint, which are achieved through the use of graphic material in the monograph, are of particular note.

In our opinion, the monograph of M. A. Lapina "Administrative jurisdiction in the system of administrative process" is an original, independent and completed scientific study, and can be attributed to a scientific work that makes contribution to the domestic administrative-legal science.

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Lipatov E. G.

LEGAL STATUS OF THE RUSSIAN FEDERATION AS A MEMBER OF THE WTO

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Alleged that the Federal Law "On Self-regulatory Organizations" has formed a corporate conspiracy of major market players to eliminate competitors, and in conditions of Russia's entry into the WTO the rules established by self-regulatory organizations become the mechanism of crowding out domestic participants of market.

The author notes a reduction in the possibility of state planning, as well as the fact that membership in the WTO restricts the ability of the state to support domestic producers.

Here are given five elements of the legal status of Russia as a member of the WTO: the rights and duties of the Russian Federation, Russia's powers to participate in a dispute resolution procedure, law-creating powers and enforcement powers.

Keywords: the WTO, objects of public administration, rights and duties of a member of the WTO, dispute settlement in the WTO.

Recently, it has become generally accepted that Russia needs a new model of economic growth and that it is necessary to abandon the current model of economic growth based on the increase in raw material prices. For the formation of the new model an important role is played by Russia's entry to the WTO. In a recent review the IMF explicitly states that the implementation of Russia's obligations under the WTO is an important tool for the implementation of the structured program for the realization of growth potential of Russia [5].

Russia's membership in the WTO, which obliges the state to ensure equal conditions for market participants, requires abandoning some traditional views on public administration, its essence and legal grounds.

First, the abandoning of branch priorities in public administration is inevitable. Branch ceases to be a priority of national economic policy. This is due to the fact that the subjects of the market, branch participants begin to focus not on their national contracting parties, but on more profitable partners with other state affiliation. Branch as an object of public administration ceases to exist, since participants of branches enter into international production chains and break relations with their sectorial "adjacent" partners. Examples of this have already occurred for a small period of Russia's membership in the WTO. Waiver of branch priorities is also indirectly confirmed by the country's leadership. Dmitry Medvedev, in his speech at the Gaidar's Forum in January 2013, as the seventh task of the Government of the Russian Federation called strengthening the international position of the Russian economy, including adaptation to the WTO conditions, increasing the level of integration of Russian companies in the international chain of additional value creation, improving the structure of our exports [3].

Second, self-regulation as a way to organization of market participants also loses its significance. FL "On Self-regulatory Organizations" [1] has led to the restriction of competition, deterioration of the position of small and medium-sized businesses. This is due to the fact that the policy of the self-regulatory organizations is primarily aimed at protecting the interests of large producers that play a leading role in the activities of these organizations. This law led to increase in encumbrances for market participants, which proved to be the most painful for small and medium-sized businesses. In fact the law formalized a corporate conspiracy of large market players to eliminate competitors. Negative effect on economy from various forms of legislation on self-regulation has been long known. In 1776, Adam Smith pointed out: "The representatives of one and the same kind of trade and craft rarely get together even for entertainment and fun without their conversation that leads to conspiracy against the public or any agreement to raise prices" [6, 174]. In

1933, the creators of "New Course" passed a law on the recovery of national industry. It gave to industrialists the right to cooperate not only in setting prices for their products, but also in the calculation of wages and determining the length of working day. The leading players in each industry, from steel and coal production to manufacture of yarn and dog food, were offered to get together and write "codes of fair competition", which would had been required for each industry. More than 450 codes that were included in the law set a clear trend of rising prices, rising wages, reduction of working hours and elimination of competition, and at the same time innovations in industrial production. Effective businessman introducing innovations and lowering prices represented an evil, because it was believed that its activities led to lowering wages and, hence, to a decrease in the purchasing power. The new law, by promoting the codes of "fair competition", gave to all entrepreneurs the opportunity to make profit, pay high salaries and resist those who reduced prices or entered innovations. The traditional American model of free market with competition and innovation that providey the difference in prices and quality of products for customers with different tastes was overthrown. After the adoption of this law in every branch most firms approved by the state got legal right to determine what should be the extent of the expansion of this or that factory, workers wages, working hours and prices for all produced products. The law did not oblige all employers to participate in writing the codes, however, fines and prison sentences were provided for violating articles of an industry code [2, 59-61]. The policy of fixing high prices and wages led the easier capture of small businesses by big companies, increased unemployment and exacerbated crisis. Two years later, the United States Supreme Court declared this Law unconstitutional.

Today in society there is concern that the accession of the Russian Federation to the Marrakesh Agreement will lead to increased foreign participation in the various segments of the domestic market. These negative expectations have been reflected in the Decision of the Constitutional Court of the Russian Federation dated No. 17-D from July 09, 2012 "On the check of constitutionality of a not entered into force international treaty of the Russian Federation – the Protocol on the Accession of the Russian Federation to the Marrakesh Agreement on Establishing the World Trade Organization", in which two provisions deal with the possibility of providing specific services by foreign entities (legal services and services provided by patent attorneys). Therefore, it appears that the toughening of requirements to the participants of various professional communities, which is allowed by the Federal Law "On Self-regulatory Organizations", will play into the hands of foreign suppliers of goods, works and services and contribute to the crowding out of domestic

market participants. Various forms of professional self-regulation lead to collusion of major market participants against representatives of small and medium-sized businesses, and restriction of competition. This is especially dangerous during big integration processes, when a lot of competitive players of foreign origin come to the market. In this situation, the rules established by self-regulatory organizations become the mechanism of crowding out of domestic participants from the market.

Third, possibilities of state planning fundamentally decrease. Because planning involves active state influence on economic relations, it is inconceivable without serious distributive policy, without state support of industries and manufacturers. In turn, membership in the WTO limits the ability of the State to support domestic producers.

All this indicates serious discrepancies between the traditions of the state economic management and conditions of international economic integration. These circumstances explain the interest in the study of the legal status of Russia as a member of the WTO. The content of this category allows us to see the degree of compliance of the national legal system of the Russian Federation with its international obligations in this area.

Russia as a WTO member has a special legal status, which contains obligations of the Russian Federation to comply with the basic provisions of the Marrakesh Agreement on Establishing the World Trade Organization, as well as the powers of the public authorities of the Russian Federation, with the help of which the compliance with the terms of the Marrakesh Agreement is ensured. They include three groups of powers: power to participate in the resolution of disputes between Russia and the WTO; law-creating powers expressed in the adoption of normative acts that meet the requirements of the Protocol on the accession of the Russian Federation to the Marrakesh Agreement; enforcement powers aimed at compliance with the WTO requirements in functioning of the market of goods, works and services.

Thus, it can be concluded that the legal status of Russia as a member of the WTO includes five elements.

1. *Rights of the Russian Federation*. These include the rights of Russia to enjoy the benefits provided by the various trade agreements contained in the annexes to the Marrakesh Agreement from April 15, 1994. In addition, it is the right to demand from the other contracting parties to comply with these agreements. Also – the right to require protection from the WTO and its bodies in case of violation of its own interests by other participants to the agreement.

2. *Obligations of the Russian Federation*. Obligations of Russia are of general and specific nature. General obligations are contained both in the Marrakesh Agreement

and in the General Agreement on Tariffs and Trade 1994, General Agreement on Trade in Services, Agreement on the Aspects of Trade-related Intellectual Property, Agreement on Agriculture, Agreement on the Application of Sanitary and Phytosanitary Measures and other agreements. One of the main, general obligations of WTO members is to provide preferential treatment to each other in mutual trade and waiver of discriminatory measures against other participants. "Discrimination in terms of WTO law is of two types. First – discrimination of foreign goods from one country compared to foreign goods from another country. This is prohibited by paragraph 1.1 of the GATT. This paragraph says about the so-called regime of the most preferential treatment, which WTO members should provide each other in mutual trade in goods: "…any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties". Second – discrimination of foreign goods compared to the national goods. It is prohibited by article 3 of the GATT, which provides for the granting of national treatment by members of the World Trade Organization in mutual trade of foreign goods. Paragraph 2 of the said article extends national treatment on internal taxes and fees: "the products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products" [4, 4].

As for the special obligations of the Russian Federation, they are contained in the Protocol on the accession of the Russian Federation to the Marrakesh Agreement on Establishment the World Trade Organization from December 16, 2011. Special obligations are especial terms of the Russia's accession to the Marrakesh Agreement and have the highest legal force in relation to the general obligations.

3. *The powers of Russia's participation in the procedure for resolving disputes*. Procedure for resolving disputes between WTO members is provided for in Annex 2 of the Marrakesh Agreement on Establishment the World Trade Organization, "Agreement on Rules and Procedures Governing the Settlement of Disputes". These norms have already been applied to the Russian Federation. So, the first dispute with Russia emerged with regard to the payment of the utilization fee for wheeled vehicles. Request for conducting consultations regarding this fee European Union sent to Russia July 09, 2013. The law of WTO provides for the mandatory pre-trial friendly settlement of a dispute by means of consultations. Otherwise, the dispute is not reviewed by the Arbitration group created by the Body for the resolution of

disputes. The request from the European Union was later supported by the United States, China, Turkey, and Ukraine. The essence of the request for consultations was that the vehicles of local production were exempt from fee in case of compliance with certain conditions. The exemption was also provided for vehicles imported from certain countries, such as Belarus and Kazakhstan. However, there was no exemption for vehicles imported from the countries of the European Union. As a result, vehicles imported from the EU were provided less favorable treatment than vehicles of domestic production or vehicles imported from Belarus and Kazakhstan. That is, the European Union accused Russia of violating several articles of the General Agreement on Tariffs and Trade (GATT 1994), which include the prohibition of discrimination of goods.

That is, a feature of the WTO dispute settlement system is an obligatoriness of the stage of formal negotiations for purpose of amicable settlement of disputes. This allows maximal account of the interests of all parties to a conflict.

4. *Law-creating powers of the Russian Federation*. Law-creating powers of the public authorities of the Russian Federation are the most important means to ensure compliance of the national legal regime with the conditions of accession to the Marrakesh Agreement. Paragraph 4 article 3 of the GATT extends national treatment on domestic laws and regulations pertaining to international trade in goods: "…products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use".

The most important normative-legal acts that provide equality of participants of market relations, regardless of their state of origin, are such federal laws as "On the Contract System of the Procurement of Goods, Works and Services for Securing State and Municipal Needs", "On Protection of Competition". These acts enshrine the general idea of equal treatment of public authorities both to domestic market entities and to foreign market entities. Equal preferential treatment with respect to certain types of obligations may be also secured by special normative acts. So, the above described dispute between Russia and the European Union was resolved with the help of the Federal Law "On Amendments to Article 24.1 of the Federal Law "On Production and Consumption Waste"", which was signed by the RF President in October 2013. In accordance with this law Russian automakers from January 2014 will pay disposal fee on a general basis. According to the law, disposal fee from the specified date will also apply to vehicles imported from Kazakhstan and

Belarus, on equal terms with the vehicles of Russian manufacturers and third countries. The law covers the cars placed in the Kaliningrad region under the procedure of free customs zone.

5. *Enforcement powers*. This kind of powers should ensure compliance with the conditions of the Marrakesh Agreement by public authorities and market entities. Holders of these powers are courts, as well as bodies of control (supervision), which are entrusted with the duty to provide equal preferential treatment to all market participants. These bodies should include, first and foremost, antimonopoly authorities.

The above analysis leads to the conclusion that the legal status of Russia as a WTO member is an important and fundamentally new category for the national legal system, which requires a detailed study. This legal phenomenon characterizes the compliance of the national legal regime of Russia with its international obligations, discloses the mechanism of public administration of exercising the terms of the Marrakesh Agreement.

References:

1. Federal Law No. 315-FL from December 01, 2007 "On Self-regulating Organizations" [Federal'nyi zakon ot 1 dekabrya 2007 g. № 315-FZ «O samoreguliruemykh organizatsiyakh»]. *System GARANT* [Electronic resource], Moscow: 2013.

2. Berton Folsom. *A New Course or Curve Path? As the Economic Policy of Roosevelt Prolonged the Great Depression* [Novyi kurs ili krivaya dorozhka? Kak ekonomicheskaya politika F. Ruzvel'ta prodlila Velikuyu depressiyu]. Berton Folsom, translation from English by A. Plisetskaya under scientific edition of A. Kuryaev, Moscow: Mysl', 2012.

3. *D. A. Medvedev's speech at the conference "Russia and the World: Challenges of Integration" within the Gaidar Forum 2013* [Vystuplenie Medvedeva D. A. na konferentsii «Rossiya i mir: vyzovy integratsii» v ramkakh Gaidarovskogo foruma-2013]. Available at: http://magazines.russ.ru/vestnik/2013/36/m6.html (accessed: 22.10.2013).

4. Zenkin I. EU vs. Russia. Interview [ES vs Rossiya. Interv'yu]. *Grazhdanin Povolzh'ya – Volga Region Citizen*, Informational and analytical edition of P. A. Stolypin Volga Region Institute of Management, 2013 no. 12.

5. *Russia Needs a New Model of Economic Growth, According to a Review of the International Monetary Fund* [Rossii nuzhna novaya model' ekonomicheskogo

rosta, govoritsya v obzore MVF]. Available at: http://ria.ru/economy/20131022/971686767.html (accessed: 22.10.2013).

6. Smit A. *Study on the Nature and Causes of the Wealth of Nations* [Issledovanie o prirode i prichinakh bogatstva narodov]. Moscow: Eksmo, 2007.

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ABOUT THE LEGISLATIVE DEFINITION OF THE CONCEPT OF ADMINISTRATIVE OFFENCE[1]

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Noting the shortcomings of the current Code on Administrative offences of the Russian Federation, the author argues the need for its exercising and inadmissibility of selective enforcement. He offers to scientific community to finally close a discussion as to whether an administrative offence a socially dangerous deed or not.

Here is provided an author's correction of the normative definition of the concept of administrative offence.

Keywords: administrative offence, concept of administrative offence, public danger, correlation of crime and administrative offence, signs of an administrative offence.

July 1 of this year marked the 10th anniversary of the entry into force of the Code of the Russian Federation on Administrative Offences [2] (hereinafter –CAO). This period, especially if you add to it 18 years' experience of application the preceding the said legislative act Code of the RSFSR on Administrative Offences [1] (hereinafter – CAO RSFSR), is enough for reaching by the domestic administrative-legal science the new level of understanding of the essence and social destination of administrative responsibility in the state, which has called itself constitutional. This, unfortunately, is not happening. Continuing to take place low elaboration,

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inconsistency, and even the erroneousness of a number of conceptual provisions of CAO do not leave any doubt that the theory of administrative-tort law, at least, to the extent to which it is opened up by the developers of CAO and almost two with a half hundreds of corrective federal laws, still is at stop, more precisely goes round in circles. In support of such a disappointing conclusion, I would like to focus only on one point – legislative definition of the concept of administrative offense.

Proper legal definition of the concept of administrative offense is extremely important because it is a fundamental reference point for taking by the federal and 83 regional legislators of adequate to social, political-legal realities decisions on bringing to or termination of administrative responsibility for certain deeds.

CAO RSFSR (part 1 article 10) determined administrative offense as "an infringing upon the state or public order, socialist property, rights and freedoms of citizens, established order of management wrongful guilty (intentional or negligent) action or inaction, for which the legislation provides for administrative responsibility".

In accordance with part 1 article 2.1 CAO, administrative offence is recognized as "a wrongful, guilty action (inaction) of a natural person or legal entity, which is administratively punishable under this Code or the laws on administrative offences of subjects of the Russian Federation". Since in the domestic jurisprudence the very term of "encroachment" is usually mated with the words "socially dangerous", it can be argued that the former legislative definition of the concept of administrative offense contained at least a remote hint on such its substantive sign as public danger. The specified hint is absolutely absent in the current legal interpretation of the concept of administrative offence. Such legal regulation allows a number of specialists, including prominent practicing lawyers, to argue that unlike crimes administrative offenses do not fall into the category of socially dangerous deeds (See: Dissenting Opinion of the Judge of the Constitutional Court of the Russian Federation A. L. Kononov on verification the constitutionality of the provisions of article 113 of the Tax Code of the Russian Federation [4]).

Thus, the federal legislator assigns to itself and provides to other subjects of administrative-tort law-making a completely unnecessary, virtually unlimited freedom in the announcement of any unwanted (or only seemingly unwanted) for them deeds of individuals and legal entities as administratively punishable.

I believe that the definition of the concept of administrative offense, as enshrined in part 1 article 2.1 of CAO, was formulated by people who sought to link the norms of CAO with the norms of the Criminal Code of the Russian Federation [3] (hereinafter – CC), but at the same time were not clear about the essence of

the last. Indeed, in accordance with part 2 article 14 CC, action (inaction) is not a crime, although formally containing signs of any deed provided for by CC, "but because of insignificance it does not represent public danger". Hence a simple but wrong conclusion: public danger – sign only of a crime, but not of an administrative offence. Meanwhile, after careful reading the text of part 2 article 14 CC, it can be seen that it deals only with an action (or inaction), which formally contains signs of any deed under CC. The compositions of the majority of administrative offences do not have their analogues in CC. Therefore, part 2 article 14 CC affirming the given by part 1 of the same article description of crime as always socially dangerous deed, in principle, contrary to popular belief, does not deprive, administrative offences of the sign of public danger.

From my point of view, the concept of "action (inaction), although formally containing signs of any deed provided for by CC, but because of insignificance does not represent public danger", covers such deeds, which are neither a crime nor (very important!) an administrative offence. Different understanding would not let proper addressing of the issue of responsibility while the competition of the norms of the Special parts of CC and CAO.

Part 2 article 10 CAO RSFSR contained a rule, according to which administrative responsibility arose if violations provided for by the Code by their nature did not entail criminal responsibility. This rule was not included in its general form in CAO, however, in the wordings of compositions of administrative offences envisaged by 38 articles of the Special part of CAO (articles 5.16, 5.18-5.20, 5.46, 5.53, 5.63, 6.16.1, 6.17, 6.18, 7.27, 7.27.1, 8.28, 10.5.1, 11.1, 11.4, 13.14, 14.12, 14.13, 14.16, 14.25, 14.29, 14.33, 14.35, 15.14, 15,17-15.19, 15.21, 15.24.1, 15.27, 15.30, 19.7.3, 19.24, 20.2, 20.2.2, 20.8, 20.30), it found its enshrining ("if these actions do not contain a criminally punishable deed", "in the absence of signs of crime", "if it does not entail criminal responsibility"). It is noteworthy that at the time of its adoption CAO provided for only 4 articles of this kind. Deprivation of administrative offenses, the compositions of which compete with the compositions crimes, of the sign of public danger ("due to insignificance") will automatically cause the inability of application the relevant rules of the Special part of CC, while the intention of the legislator was just the opposite. In other words, the correlation of crimes and administrative offenses is not a question of presence or absence of public danger, but the question of its nature and extent. However, it might be that the time has come to reconsider existing views on how the conflicts of criminal-legal and administrative-legal norms should be resolved. It seems that in order to ensure effective protection of the rights and freedoms of citizens the issue of what of competing norms – CC's or

CAO's – should be applied in this particular case should be resolved in favor of the latter.

Conclusion that an administrative offense is a socially dangerous deed is also confirmed by coincidence, up to the complete identity, of the tasks of CC (part 1 article 2) and tasks of the legislation on administrative offences (article 1.2 CAO) – "protection rights and freedoms of man and citizen", etc. Noteworthy in this regard also part 2 article 2 CC, according to which the specified code "determines which dangerous to the person, society or the state acts are recognized as crimes". Legislator makes it clear that not all socially dangerous acts are crimes, and there is possible other state-legal assessment of such deeds, including recognition them as administrative offenses.

The authors of CAO found it useful to keep in it the former norm on the possibility of release from administrative responsibility "when a committed administrative offense is insignificant" (article 2.9 CAO). What can underlie the division of administrative offenses into insignificant and, if we may say so, "non-insignificant"? Of course, it is the nature and extent of public danger of deeds. Insignificance is one of the qualitative-quantitative characteristics of such danger. And it had to be announced with certainty that public danger is inherent to administrative offences.

The current legal definition of the concept of administrative offense coupled with the provisions of articles 2.2 and 2.7 CAO, out of which derives the possibility of occurrence of "harmful consequences" of administratively punishable deed, as well as possibility of causing by committing of an administrative offense of "harm to legally protected interests", can be interpreted in the sense that the legislator finally has decided on the corresponding substantive sign of an administrative offense , having abandoned "public danger" in favor of "public harmfulness". It appears that the dilemma of socially dangerous or socially harmful administrative offence, which has long denoted and still seriously discussed in the literature, is completely contrived. In Russian language the word "dangerous" means "capable to cause, inflict some harm, misfortune", and the word "harmful" means "causing harm, dangerous" [6, 89, 388]. In other words, public harmfulness is a materialized public danger of a deed, and it is senseless to seek on this way any differences between crime and administrative offense. Another thing is that the degree of public danger of an average administrative offense, in general, is lower than the degree of public danger of a crime. In the gradation adopted by CC (article 15), administrative offenses could be placed somewhere between "non-grave crimes" and deeds that contain elements of a crime, but because of insignificance not representing public danger.

I hope that from informative point of view the stated above allows us to completely close the debate about whether an administrative offense is socially dangerous deed or not. As the formal act of completion of that discussion can be considered the adoption of the Resolution of the Constitutional Court of the RF No. 9-R from June 16, 2009 "On the Case on Verification the Constitutionality of a Number of Provisions of Articles 24.5, 27.1, 27.3, 27.5 and 30.7 of the 2 Code on Administrative Offenses of the RF, clause 1 article 1070 and paragraph 3 article 1100 of the Civil Code of the RF and article 60 Civil Procedural Code of the RF in Connection to Claims of the Citizens M. Yu. Karelin, V. K. Rogozhkin and M. V. Filandrov", in which, finally, clearly stated that "... the administrative offenses ... unlike crimes entailing criminal responsibility, represent a lower public danger..." [5].

Along with the public danger, wrongfulness is an inherent sign of administrative offence. There is no doubt that it should be enshrined in the legal definition of its concept. Objection is that how it has been done by the developers of CAO.

According to part 1 article 2.1CAO that repeats part 1 article 10 CAO RSFSR, "wrongful … action (inaction) of a natural person or legal entity, which is administratively punishable under this Code or the laws on administrative offences of subjects of the Russian Federation", shall be regarded as an administrative offence. Literal interpretation of this provision leads to the conclusion that the fact of prohibition a deed by the legislation on administrative offenses under the threat of an administrative penalty is insufficient for consideration the deed as an administrative offense; it is required that it has to be additionally recognized wrongful, but, at that, it is not clear by whom.

Some of deeds stipulated by CAO are, indeed, prohibited or declared wrongful by normative legal acts of various legal force, which do not contain norms on legal responsibility (for example, paragraph 2.7 of traffic rules prohibits a driver to operate a vehicle while intoxicated). But there are such (e.g., disorderly conduct), which are textually not defined as wrongful in any of the current normative legal acts, and therefore, do not formally fall under the statutory definition of administrative offense.

It seems that in order to avoid unnecessary doubts, we should get rid of pleonasm that has crept into part 1 article 2.1 CAO through deleting the word "wrongful". Wrongfulness of a deed is fully shown by its prohibition under threat of punishment. The legal definition of the concept of crime was formed exactly on these positions (part 1article 14 CC).

With that said, we can offer for the enshrining in CAO the following definition of the concept of administrative offense:

"Socially dangerous action (inaction) committed by a guilty physical or legal person, which is prohibited by this Code or the laws of the subjects of the Russian Federation under threat of administrative punishment, shall be regarded as an administrative offence".

In conclusion of the present study, it should be noted that CAO to some extent repeats the fate of the Criminal Procedure Code of the Russian Federation, which began to be subjected to extensive changes in just a few days after the adoption. Obviously, the issue of elaboration and adopting a new codified Federal law on administrative responsibility is long overdue.

At the same time, however, we should not forget that the shortcomings of the current law in any way cannot serve as justification for its non-performance or selective enforcement. It is important to understand that strict, exact adherence to the law, as a result of which the society entirely feels the social effect (including negative one that is due to errors or legislator's inadvertence) of its action, is precisely the best way, by which the shortcomings of the law can be eliminated with the least social cost.

References:

1. Code on Administrative Offenses of the RSFSR from June 20, 1984 [Kodeks RSFSR ob administrativnykh pravonarusheniyakh ot 20 iyunya 1984 g.]. *System GARANT* [Electronic resource], Moscow: 2012.

2. Code on Administrative Offenses of the Russian Federation from December 30, 2001, No. 195-FL [Kodeks Rossiiskoi Federatsii ob administrativnykh pravonarusheniyakh ot 30 dekabrya 2001 № 195-FZ]. *System GARANT* [Electronic resource], Moscow: 2012.

3. Criminal Code of the Russian Federation from June 13, 1996, No. 63-FL [Ugolovnyi kodeks Rossiiskoi Federatsii ot 13 iyunya 1996 № 63-FZ]. *System GARANT* [Electronic resource], Moscow: 2012.

4. Resolution of the Constitutional Court of the RF No. 9-R from July 14, 2005 "On the Case on Verification the Constitutionality of the Provision of Article 113 of the Tax Code of the RF in Connection to Claims of the Citizen G. A. Polyakova and Request of the Moscow District Federal Arbitration Court" [Postanovlenie Konstitutsionnogo Suda RF ot 14 iyulya 2005 g. № 9-P «Po delu o proverke konstitutsionnosti polozhenii stat'i 113 Nalogovogo kodeksa Rossiiskoi Federatsii v svyazi s zhaloboi grazhdanki G. A. Polyakovoi i zaprosom Federal'nogo arbitrazhnogo suda Moskovskogo okruga»]. *SZ RF –Collection of Laws of the RF*, 2005, no. 30 (part 2), article 3200.

5. Resolution of the Constitutional Court of the RF No. 9-R from June 16, 2009 "On the Case on Verification the Constitutionality of a Number of Provisions of Articles 24.5, 27.1, 27.3, 27.5 and 30.7 of the 2 Code on Administrative Offenses of the RF, clause 1 article 1070 and paragraph 3 article 1100 of the Civil Code of the RF and article 60 Civil Procedural Code of the RF in Connection to Claims of the Citizens M. Yu. Karelin, V. K. Rogozhkin and M. V. Filandrov" [Postanovlenie Konstitutsionnogo Suda Rossiiskoi Federatsii ot 16 iyunya 2009 g. № 9-P «Po delu o proverke konstitutsionnosti ryada polozhenii statei 24.5, 27.1, 27.3, 27.5 i 30.7 Kodeksa Rossiiskoi Federatsii ob administrativnykh pravonarusheniyakh, punkta 1 stat'i 1070 i abzatsa tret'ego stat'i 1100 Grazhdanskogo kodeksa Rossiiskoi Federatsii i stat'i 60 Grazhdanskogo protsessual'nogo kodeksa Rossiiskoi Federatsii v svyazi s zhalobami grazhdan M. Yu. Karelina, V. K. Rogozhkina i M. V. Filandrova»]. *SZ RF –Collection of Laws of the RF*, 2009, no. 27, article 3382.

6. Ozhegov S. I. *Russian Language Dictionary* [Slovar' russkogo yazyka]. 18th edition, stereotype, Moscow: Rusvskii yazyk, 1986.

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THE IMPORTANCE OF ADMINISTRATIVE PROCESS SHOULD NOT BE DIMINISHED

Review of the scientific monograph of M. A. Lapina "Administrative Jurisdiction in the System of Administrative Process" (Moscow: Financial University, 2013, 140 pages)

Solov'ev Andrei Aleksandrovich, Judge, Presiding judge of the Moscow region Arbitration Court, Doctor of law, Professor at Moscow State Law Academy named after O. E. Kutafin (MSLA).

Keywords: administrative process, administrative jurisdiction, the science of administrative law and process

RF Presidential Decree No. 601 from May 07, 2012 "On the Main Directions of Improving the System of Public Administration" [1], other normative legal acts defining the priority areas for administrative reform, and, above all, happening right in front of our eyes reorganization of the Russian judicial system – all this determines the need for a new scientific view on the realities and the ways of development of domestic administrative law and administrative legislation , determines the need for a profound rethinking of the theoretical standards of administrative-legal regulation and standards of teaching administrative law.

In 2013 was published a scientific monograph of an authoritative Russian lawyer Marina Afanas›evna Lapina, Doctor of Law, Professor, Head of the Department "Administrative and Information Law" at Financial University under the Government of the Russian Federation.

M. A. Lapina rightly notes that the science of administrative law and process is the most demanded area of legal knowledge, but this science contains a poor or insufficient development of the most significant issues that act as research objects of the science of administrative law and process; while, on the background of modernization of management processes taking place in the system of public administration, administrative process goes to the first place (pages 124-125).

Today we need not folios based on continuous quoting or exposition in one›s own words and paraphrase of the norms of administrative legislation. No, now are highly in demand such guides of the new generation, which would allow to give conceptual understanding (and in some ways rethinking) and a fundamental understanding of administrative law and administrative process, would systemically interpret basic concepts of this science at a higher (than in general use) level of scientific quality.

Agreeing with Yu. N. Starilov and A. V. Martynov that "scrappy, unsystematic and fragmentary (as if oriented for training exactly practicians) training and respectively cognition of administrative law actually creates the basis for "cheating" in study of this discipline" [5, 27], we believe that works similar to the considered work of M. A. Lapina will let today to move to a qualitatively new level of training of domestic lawyers and legal scholars. Their study will allow going beyond the vicious circle of students' drilling of primitive understanding (rather memorization) of surface moments in administrative law.

Peer-reviewed publication pleasantly surprises with good combination of its relatively small volume and capacity of represented in it scientific material, saturation of deep understandings and generalizations. At the same time the work of M. A. Lapina represents both a scientific monograph and a valuable guide for students studying administrative law, it is a unique publication, in which has been made a serious attempt to comprehensively consider the most complicated set of topical issues of administrative law and process.

M. A. Lapina's monograph contains very deep reflections about the most important administrative-legal problems, sets reference sample of critical scientific analysis. Essentially, this is a slightly more advanced powerful academic report on the challenges and innovations in science.

At the same time as an undoubted advantage of the work should be recognized not only very deep knowledge of the author of the widest range of specific scientific-theoretical and scientific-practical issues, but also their consideration from very different perspectives, in complex, using the most diverse scientific tools.

We find it important to note that the monograph under review represents another strong pillar in the foundation of the developed and being further developed by M. A. Lapina large integral concept of administrative process system. Other conceptual securing author's ideas of M. A. Lapina for the approval and development of this her integral concept were published in scientific journals "The Issues of Economics and Law" and "Legal World" and sounded on the organized

by this author All-Russian scientific and practical conference "Administrative jurisdiction" in 2012.

The first and second chapters of the monograph seem to us central. Precisely in these chapters of her monograph M. A. Lapina with her usual thoroughness, one might even say – scrupulousness, examines the key features of administrative jurisdiction in the system of administrative process, the essence of administrative process, particularities of its system and structural elements, as well as she studies the concept, content and signs of administrative jurisdiction, characteristic features of administrative-jurisdictional activity, bases, ontology and significant characteristics of the institute of administrative jurisdiction.

In these chapters the author based on her own original scientific concept codifies the existing scientific knowledge, approaches, recent changes in administrative legislation and recent developments of judicial practice, in a new way conceptualizes the studied sphere of knowledge. M. A. Lapina actively involves not only complementary, but even more – opposing points of view of various authors, including of the Soviet period, clearly showing the distribution of scientific points of view on the key points of the studied problem. This is extremely important, because clearly at the cutting edge of scientific discussion allows to catch the finest moments of scientific interpretations of those concepts, without a proper understanding of which a student simply will not be able to become a lawyer and legal scholar, and a legal scholar would not receive impulses to develop its own conceptual approaches, which it gets after reading this remarkable scientific monograph.

A genuine interest is caused by chapter three, which is devoted to the systematization of knowledge about the main types of administrative-jurisdictional proceedings. It seems that it objectifies in a practical way those theoretical and conceptual approaches, those formulated by the author conceptual constructions that have filled the first two chapters.

The author›s reflections on the problems of teaching administrative law and process are undoubtedly valuable, in particular, regarding the shortcomings of the existing study guides in this part, as well as author's thoughts about training of scientific staff in this field, including about the shortcomings of the passport of a new profession-oriented scientific specialty (pages 9-16, and so on).

Comprehensive consideration of the thoroughly researched by us monograph of M. A. Lapina, which is literally filled with theoretical innovations, would take dozens of pages. And in the present review we have to give it up just for the sake of not ruining the foretaste of potential readers, whose range is quite large, the expectation and the impression of reading this objectively very nice book.

It should be noted that the language of the author is both academic and available for understanding. Rationally designed illustrations (pages 17, 39, 45, etc.) provide the necessary understanding of the key substantive points, and it shows understanding of M. A. Lapina that her book will be read not only by great scientists, but also by those who have yet to become someone, to achieve something in the science and practice of administrative law and process.

Obviously, that a monograph of this scientific level of a recognized legal scholar is not conceivable without any judgments that may and even just should initiate a scientific discussion. A number of provisions of the author can incline the reader to discussion, and it attaches to the work of M. A. Lapina extra points.

Hardly we have any radical, polar incompatible differences in basic positions with the author of the monograph, but also we can hardly agree with all of her judgments, moreover – with a number of her judgments we can agree only conditionally.

In particular, it is difficult to fully take a broad interpretation of the author, according to which administrative process is an adjusted by administrative and procedural norms activity aimed at the resolution of individual cases in public administration by authorized bodies of executive authority of the Russian Federation, and in the cases provided by law also by other authorized entities of administrative and procedural relations (pages 19-20).

Still, it seems that using the term of "process" one should talk only about the activities of courts, directly related to the administration of justice applicable to the considered area of public relations.

However, most likely, this disagreement is due primarily to the professional legal consciousness of the author of this review, who for more than eight years as a judge of arbitration court has been considering cases arising from administrative and other public legal relations.

I admit that many hours were conducted in scientific discussions with M. A. Lapina, and all the discussed issues just cannot be put in here. However, Professor M. A. Lapin hardly demanded such a "compromising".

"If I am not able to convince my opponents of the correctness of the principles protected by me, I would at least give them the necessary information in order to object to me. Only one this result is sufficient to justify my undertaken work" – wrote the Great Russian scientist and physician I. I. Mechnikov in his book "Insusceptibility in Infectious Diseases" [4].

Today, unfortunately, legal science for the most part is turned back into the past, or it follows hard after the state policy, achievements within the legislative

process, in the best case – something is criticized. But there are very, very few, deplorably little number of scientific papers challenging too long already entrenched and ossified dogmas. Works such as the monograph of M. A. Lapina are frankly rarely found.

But, as Roland Levinsky wrote, "higher schools should challenge conventional ideas and encourage debates in society" [3].

Perspective analysis is essential for any serious research in administrative law. At least, only because, as Charles Kettering used to say, "I›m interested in the future because I›m going to spend there the rest of my life" [2] ... The book of M. A. Lapina allows you to look "beyond the horizon".

Scientific monograph of M. A. Lapina "Administrative Jurisdiction in the System of Administrative Process" has been prepared with a great creative inspiration and scientific enthusiasm, is a conceptually solid, completed fundamental work, which presents a comprehensive approach to the study of the claimed range of problems. The work is characterized by a great theoretical and practical significance, contains new for the science of administrative law and process conceptual structures, which provide substantial increment of scientific knowledge, systemization of ideas on the directions and priorities of development of the Russian administrative legislation.

The foregoing gives us not so much a hope, but more the firm belief that the book will take its rightful place in the treasury of the Russian administrative-legal scientific thought and will be demanded not only by already skilled lawyers and legal scholars. And for students, undergraduates and graduate students, who are just mastering this science, the monograph under review will be just a master class – both in part of what they should know in administrative law and administrative process, and in part of how exemplarily to write research papers within the framework of this science.

References:

1. Decree of the President of the Russian Federation No. 601 from May 07, 2012 "On the Main Directions of Improving of Public Administration System" [Ukaz Prezidenta Rossiiskoi Federatsii ot 7 maya 2012 g. № 601 «Ob osnovnykh napravleniyakh sovershenstvovaniya sistemy gosudarstvennogo upravleniya»]. *System GARANT* [Electronic resource], Moscow: 2013.

2. Charles Kettering. *Aphorisms* [Aforizmy]. Available at: http://www.aphorism.ru/author/a799.shtml (accessed: 23.04.2013).

3. Latypov R. A. *Internationalization of a Provincial Higher Education Institution* [Internatsionalizatsiya provintsial'nogo vuza]. Available at: http://www.jeducation.ru/2_2004/32.html (accessed: 23.04.2013).

4. Mechnikov I. I. *Insusceptibility in Infectious Diseases* [Nevospriimchivost' v infektsionnykh boleznyakh]. Available at: http://www.x-books.com.ua/catalogue.php?gen=46&aut=15499&id=50291 (accessed: 23.04.2013).

5. Starilov Yu. N., Martynov A. V. Modernization of Administrative Law as an Academic Discipline in Conditions of Reforming the System of Higher Vocational Education [Modernizatsiya administrativnogo prava kak uchebnoi distsipliny v usloviyakh reformirovaniya sistemy vysshego professional'nogo obrazovaniya]. *Vestnik VGU – Bulletin of VSU*, serials "Pravo", 2011, no. 2.