

Judicial Control Problems Concerning Legal Implementation in Public Administration

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Abstract

The constitutional proclamation of Russia as a legal state with the elements of civil society impose the observance of the constitutional principles of legality on state institutions concerning the activities of state bodies. The judiciary power is called upon to protect these principles. The relevance of this study topic is determined by the reform of political and socio-economic relations in Russia, which are invariably connected with the increased attention to human rights problems, their provision with various state funds, among which the judiciary power holds the main place. The judicial control exercised by it ensures not only the recognition of human rights in full, but is also the most effective guarantee of democracy and freedom in Russian society. The adoption of RF Constitution in 1993, the reforming of Russian legislation, shows that Russia has embarked on the path of serious intentions and actions in the field of human rights. In the Address of RF President to RF Federal Assembly "Russia needs to be strong and competitive" HE noted that a significant step was taken in judicial and legal system modernization. Most of the necessary legislative and other normative legal acts have been adopted already. The changes concerned not only the organization and the working conditions of the courts, but also the procedures that protect the rights of an individual and the accessibility of justice. The relevance of the chosen research topic is also confirmed by the fact that the optimization of judicial authority operation is not complete yet.

Keywords: Judicial control; Power; Law; Executive society.



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1. Introduction

Judicial control is one of the types of state control exercising the management function, which ensures the rule of law in managerial activities. Judicial control takes a special place in the system of legality guarantees and the suppression of law abuse in the activities of state management. It should be noted that the judiciary power is independent of the legislative and executive powers. In its turn, it belongs to the state power and interacts with it: it controls the legitimacy of state power, ensures stability and protects its legal foundations. Judicial control as the way of lawfulness provision in public administration allows to eliminate various abuses of law - the violation of legislation and the adoption of illegal legal acts. The activity of the executive power is carried out on the basis and in compliance with the laws and is subordinate by nature. In this regard, there is a need for judicial control over its legality. Nowadays, the legal science has two types of judicial control in the field of public administration: direct and indirect one. Direct (targeted) judicial control is the activity of the judicial authorities on the verification of the legality and the compliance of the adopted normative act with a higher legal act by legal force. In this case the following issue is solved: whether the adopted normative act retains its legal force or loses it partially. Indirect (individual) judicial control is exercised to verify a legal matter not related to the issue of compliance with this legal act. During a case consideration, the court decides on the appropriateness of a legal act application to specific disputable legal relations. If a court decision is adopted on the illegality of a regulatory bylaw to this case, the bylaw loses its legal force in relation to the contested situation. Consequently, judicial control over the legality in public administration is divided into two types: the control over the legality of by-laws and the control over the legality of individual legal acts. These types of control have been consolidated in the constitutional, civil and arbitration proceedings (Osipyan, 2013).

2. Materials and Methods

In this article, they used general scientific, general logic, private scientific methods of process and phenomenon cognition, such as historical, comparative legal, formal-logical, formal-legal, sociological, statistical one, etc. The normative basis of the study was the RF Constitution, generally recognized principles and norms of international law, international treaties, federal constitutional laws and federal laws, normative legal acts of RF President, the Federation Council and the State Duma of RF Federal Assembly, the RF Government, other federal regulatory legal acts, constitutions (statutes), laws and other normative legal acts of Russian Federation subjects, the decisions of RF Constitutional Court, as well as the decisions of the European Court on Human Rights. According to the Art. 4 of the Federal Constitutional Law No. 1-FCL "On the judicial system of Russian Federation" issued on December 31, 1996, the judicial system of Russian Federation includes federal courts (the Constitutional Court of Russian

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Federation, the courts of general jurisdiction headed by the Supreme Court of Russian Federation, arbitration courts), constitutional (statutory) courts and the magistrates of RF subjects. All courts that make the part of this system have the right to review the cases on normative and legal act challenging. In addition, executive bodies are also empowered to review the cases of normative legal act challenging (Krymova, 2012).

Judicial jurisdiction is the delineation of competencies between the various branches of the judiciary power. Each court has the right to consider and resolve only those cases that are attributed to its jurisdiction by RF laws. But such a definition is too vague, and on its basis it is often not possible to establish clearly which court is in charge of a particular case. Today, a number of legal acts is adopted to improve the judicial system of Russian Federation. However, it is obvious that the modern domestic judicial system does not meet the realities of time. This is an important and an urgent problem, since the absence of a well-established system of judicial bodies leads to a direct violation of citizen and legal entity rights and freedoms (Lez'er *et al.*, 2018; Safonov and Miryasheva, 2011).

3. Results and Discussion

There are the debates on the issue of judicial control boundaries in the legal environment, namely - whether the court is entitled to control only the legality or can it also verify the appropriateness of an administration act. There was almost a unanimous opinion that the court has no right to control the reasons and the grounds of an administrative act appearance. The existence of such a right at the court would mean "the intrusion" into the powers of the executive authorities. The main value for the court should be the following one: if an act is issued in a proper form and by a competent authority; if material and procedural norms are observed; whether an act corresponds to the goal pursued by law; what exactly is contrary to the substantive law in the decision of the authority. The court invasion into the sphere of administrative act expediency would violate the independence of the executive power. Scholars agree on the extent of the court control powers - whether the courts are entitled to cancel the management decision or they can change it. It is noted that the powers of the court must include the recognition of a specific act of a management body as illegal or legal and the decision to cancel it in case of illegality. However, in spite of judicial control importance, it is necessary to note its shortcomings. First, it concerns the length and the complexity of judicial procedures, conditioned by strict procedural framework. Secondly, judgments are not always legal and justified, which is often associated with so-called judicial discretion. Often, laws give judges the choice between a particular option based on internal belief. Most often it concerns the choice of punishment type and volume. In this regard, it seems necessary to narrow the limits of judicial discretion as much as possible within the framework of the law. This will ensure the unity of the judicial system action in similar situations (Shmaly, 2011).

For the same purpose, the representative of RF bodies should begin to interpret the laws they adopt formally. The practice is unjustified and incorrect, when the law is adopted by one branch of power, but is interpreted by another one. Now, in fact, the decisions of the highest court Plenums fill the gaps permitted by the legislature. It is necessary that the right of law interpretation remains only with the constitutional courts, since this is their direct task. All other courts should receive official explanations from the legislature in the case of legal uncertainty. The judicial system is called upon to perform the most important functions in the society, the main of which is the function of justice. According to some researchers, the judiciary is called upon to monitor the legitimacy of laws and acts passed by the parliament that are enforced by the government and administrative bodies, as well as the legitimacy of all offense and legal dispute resolution. The implementation of justice is one of the foundations of a legitimate state and the disrespect for it is a sign of society corruption and state instability. In connection with the foregoing, it should be noted that the protection of the rights and freedoms of citizens is an integral part of the modern judicial system. In this regard, the idea of creation a full-fledged institution of administrative justice in our country is very relevant. In this regard, V.E. Safonov and E.V. Miryasheva noted correctly that the judiciary power protects the supreme value - the life of a person, his rights and freedoms. Courts are called upon to protect not only the legitimate interests of citizens and public associations, but also the legitimate interests and the rights of government bodies in the field of economy, the protection of public order, security and other spheres. Judicial control as the means of legality provision in public administration bodies is carried out in the following fields:

- 1) Constitutional control over the compliance of the RF Constitution with the normative legal acts of RF Government and the executive authorities of RF subjects;
- 2) The control of general jurisdiction courts over the legality of decisions and the actions of government bodies and their officials against citizens, public associations and other non-governmental organizations on the grounds and in accordance with the procedure provided by federal legislation;
- 3) The control of arbitration courts over the legality of normative (individual) acts of government bodies affecting the rights and legitimate interests of organizations and citizens in the field of entrepreneurial activity.

The RF Constitution of 1993 established the right of citizens to judicial protection and to the appeal of court decisions and the actions of public authorities, local governments, public associations and officials. Now the courts consider not only civil and criminal cases, but also exercise control over the executive power, thereby protecting citizens from the abuse of power by state bodies. In the opinion of some authors, the recognition of any normative act inconsistency with a higher-level legal act is expedient to implement in the framework of administrative proceedings. The main specific features of administrative proceedings should be the following ones: 1. Administrative court proceedings are characterized by judicial control over normative and non-normative acts of government. This feature will differ significantly from the civil claim and the application for unlawful decisions or public authority acts; 2. In administrative proceedings, the burden of proof will be laid not on a plaintiff, but on a defendant, i.e. on the public authority. A citizen, an organization should only bring the facts of violations, the violations of their legitimate interests, and the public authority must justify their innocence. Thus, the burden of

proof is on the defendant. This feature will ensure the equality of parties in the procedural status of a case consideration. 3. A counterclaim, the mutual claims of the parties, amicable agreement and absentee proceedings are excluded in administrative proceedings. In this process, the end result is the cancellation of an individual act of management or the recognition of a normative legal act as inoperative for the protection of human and citizen rights and freedoms. With the adoption of RF Administrative Proceedings Code in 2015, they ended a long, difficult discussion, full of irreconcilable discussions between representatives of science, concerning the idea of administrative court establishment in the country and the creation of a full-fledged administrative court system (Herve, 1999).

4. Conclusions

What happened as a result of many years of discussion on the problems of administrative courts and administrative proceedings? Administrative courts have not been established. It is obvious that the supporters of the idea of specialized administrative court development in Russia did not have enough arguments or consistency to uphold this idea. However, a new administrative and procedural form appeared, based on the main elements of the administrative court system as a special procedure for the courts of general jurisdiction to resolve administrative cases (administrative and other public-law disputes). Until a some moment, the codification of procedural legal norms in the field of RF administrative justice was proposed to be carried out in the Administrative Procedure Code. Along with this, they discussed the ideas for the development and the adoption of the Federal Constitutional Law On Administrative Proceedings or RF Code on Administrative Proceedings. There were other conceptual proposals for the creation of Russian administrative procedure code (Villalobos, 2016).

Despite the different proposals on the naming of the administrative procedural law, the ideas about the content and the structure of this legislative act were actually alike. A judge and a court are needed for the implementation of administrative justice, to whose jurisdiction the procedural law would include the consideration and the resolution of the relevant cases. In this case, these are administrative cases, but not the cases of administrative offenses. The system of judicial protection (adopted in 1993) from illegal actions or decisions violating the rights and freedoms of citizens, the partial regulation in the RF Civil Procedure Code and RF Arbitration Procedure Code for the consideration of relevant cases did not constitute an impeccable system ensuring an effective protection of rights, the legitimate interests of citizens and organizations. Mainly, this system could not be considered an appropriate one from the point of view of the subject unity, the logic of material and procedural legal regulation interaction (Khakhaleva, 2015). The emergence of Administrative Proceedings Code is a new stage in the development of procedural legislation that establishes legal procedures in the settlement of administrative disputes (the cases arising from administrative and other public legal relations). The RF APC will ensure the further development of the administrative procedural form of case consideration by the bodies of the judiciary power. The RF Code of Administrative Proceedings is the system of procedural norms, principles and rules that enable the development of new scientific ideas and a theoretical model of the administrative process as an independent litigation. In the course of judicial control over the government, it is important to consider the issue of administrative court establishment that deal with the cases arising from administrative and legal relations. The provisions of RF Constitution allow us to talk about administrative legal proceedings as an independent institution.

5. Summary

Thus, the modern judicial system of Russian Federation requires further development and modernization. At the same time, judicial control in the sphere of administration should become one of the elements. Such judicial control must be carried out by administrative justice, the main function of which is to ensure that the courts provide the legality and the validity of power actions (or inactions) by officials and government bodies. The adoption of RF Administrative Justice Code is a very significant and important event in the development of the judicial system of the country, indicating the improvement of the legal system of Russia, expanding the boundaries of legal statehood, bringing the structure of justice in order, meeting the provision standards of rights, freedoms, legitimate interests of individuals and organizations.

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