PRESSING ISSUES OF MODERN LEGAL BRANCHES

ADMINISTRATIVE PROCEDURE: ITS PROBLEMS AND SOLUTIONS[1]

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Abstract

The paper deals with an array of key problems of administrative procedure and possible ways of solving them. Firstly, for the theme in question the most important problem is the problem of an administration procedure, and an administrative procedure of the executive power implementation. Thus, the conclusion follows that if there is no answer to the question of how to achieve the goal, in what order, what is the logic and sequence of administrative actions, what is the content of procedural activities, the issue

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concerning an administrative goal becomes meaningless. Secondly, the problem amounts to the discussion with regard to the essence and structure of administrative procedure, its wide administrative and procedural meaning and a narrow jurisdictional and law-enforcement meaning, and the balance between administrative procedures and jurisdictional proceedings. Thirdly, the paper dwells on the independence of administrative procedure law in the Russian legal system.

Keywords

Public administration (state governance, executive branch), administrative procedure, legal form of implementation of public administration, administrative procedure law, administrative proceedings, jurisdictional administrative procedure, procedure and proceedings in the administrative process, administrative case

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I. INTRODUCTION

Let us consider a number of key issues and possible solutions.

The first problem. Social relations that are manifested by means of people's behavior, actions, deeds and their interrelations make up our life in all its variety and diversity. Along with that, not to turn our life into chaos, and the time of troubles or tyranny, i.e. a lot of negative coincidences, a modern public administration and a strong executive branch are objectively crucial. In other words, an organizing, purposeful influence on different objects or processes is needed to bring them to an ordered state.

Thereby, the aim and purpose of administration as V.I. Lenin said, is "to organize practically" — to organize law enforcement, achievement of goals and certain positive results.

As can be seen, administration includes three elements: 1) the goal setting, 2) the order, algorithm, i.e. the process of goal achieving, and 3) the result of administrative influence. The absence of at least one of these elements indicates either the loss of control or efficiency, inadequacy of administration.

II. KEY PROBLEMS OF ADMINISTRATIVE PROCEDURE AND HOW TO ACHIEVE THE GOAL?

For the theme in question the process of administration of the executive power implementation is the crucial point. In connection with the above, we would like to remember the words of an ancient Greek philosopher, "not only the truth is important, but the way to it is often more important and interesting, the process of searching for it." To this end, the conclusion follows that the issue concerning the administrative goal, *what should be done* to achieve the result, becomes meaningless if there is no answer to the question of *how to achieve the goal*, in what order, what is the logic and sequence of administrative actions, what is the content of procedural activities. Thus, in our country the precise, clear and perfectly understandable goal to defeat poverty has been set, but its achievement demands enormous efforts on behalf of the State and society and a considerable period of time.

Meanwhile, in the early 90's of the last century, as the result of radical transformations and the change of political system both in the country and in the society at large, the chaos arose, controllability in the State was lost, the "wild" market emerged in the economy, a lot of people lost the life purpose and there was turmoil in the people's minds.

Nonetheless, in the beginning of the XXI century the demand of the society for a strong government became obvious; the function of a strong government, to great extent, is performed by the public administration that is necessary for everyone: for the State, for the society at large, and for a small rural settlement.

In 1993, after the Constitution of the Russian Federation was adopted, on the ground of the theory of separation of powers instead of the concept of public administration that had *organizational and legal sense*, the concept of the executive power that reflects its *political and legal content* as the branch of government representing the trinity of legislative, executive and judicial powers, was introduced. As a result, some authors avoid using the term "public administration."

Meanwhile, it is necessary to clearly understand that the public administration could not disappear anywhere. Without it there are no democracy, freedom, and civilized market relations. *In fact, public administration is the content of the activity of executive authorities*.

At the same time, a fair and effective implementation of administrative activity is impossible without administrative procedure that is a legal form of implementation of the public administration, i.e. the executive power. And what do we see in the theory, legislation and practice?

The legislative power has a rather clear enforcement procedure based on the RF Constitution, the Federal Constitutional Law "On the Constitutional Court of the RF" with its procedural part, and other federal laws.

The judiciary relies on four procedural Federal Laws: the Civil Procedure Code, the Arbitrazh Procedure Code, the Criminal Procedure Code and the Administrative Procedure Code.

Unfortunately, *the executive power* does not possess any relevant enforcement procedure being the most powerful, large-scale, diversified and numerous due to both the quantity of state tasks, functions, authoritative powers and the number of executive authorities and their officials.

Hence, a very important conclusion can be made. It is impossible to create an effective administration without "processualization" of this branch of state power (the legislative power and the judiciary, as we see, possess such a legal enforcement procedure), without developing a contemporary administrative procedure, including such provisions that, at least, restrict making wrong decisions by public authorities (at state and municipal levels), and, also, guarantee powerless subjects (citizens and non-governmental organization) implementation of their rights

and legitimate interests. Lack of proper administrative procedures for invocation of substantive law rules by public authorities in each administrative case leads, in fact, to their paralysis or *abuse of power by* officials. Until the measures of legal (legislative) processualisation of the substantive administrative law are adopted in the country, there will not be a real progress in the protection of the rights and legitimate interests of citizens and organizations.[3] It is obvious that public administration and the executive power implementation on the basis of "free discretion" of officials and departmental administrative provisions do not meet modern requirements.

The second problem. It amounts to the acutest discussion concerning the essence and structure of administrative procedure, its broad administrative and procedural meaning and narrow jurisdictional, and law enforcement meaning, the balance between administrative procedures and jurisdictional proceedings. Its solution is seen in the following.

The foregoing modern state of administrative procedure in Russia is to some extent can be explained. The case is that administrative procedure almost did not exist in pre-revolutionary, Soviet and post-perestroika periods and there was no legal procedural mechanisms for implementation of the most important rules issued by that the bodies of public administration. Indeed, who and why could limit the absolute power of the Russian monarch, who had legislative, executive, judicial and even religious power in the Empire. In the Soviet period workers, mariners, peasants and political nomenclature, and, as people used to say, through the "narrow crack of law" could not see the surrounding reality and ruled the country on the basis of free discretion. That is why, the concept of administrative procedure was a little-known, and, in essence, not needed phenomenon.

At the same time, through the centuries a legal thought worked hard on the formation of scientific ideas with regard to the essence of procedure as a fundamental legal category on the basis of then-existing civil and criminal procedures. To this end, the main distinctive feature

[3] Ref.: Renov E. N. The introductory article to Panov I. V. Administrative procedural law of Russia. M.: Norma. 2007.

of these procedures emerged — their judicial and jurisdictional nature: the matter of law was decided within the framework of civil proceedings and the matter of criminal sanctions imposition was decided within the framework of criminal procedure.

And only in the beginning of the 60's of the last century domestic scholars began to show interest in administrative procedure. In 1964 N.G. Salishcheva published the first monograph "Administrative procedure in the USSR" where the author constructed a narrow jurisdictional concept of administrative procedure on the basis of civil and criminal procedures because there was neither a theoretical framework nor a legislative one for a different understanding of a new procedure at that time. Then, in 1968 V.D. Sorokin defended his doctoral thesis at the Law Faculty of the Leningrad State University, and in 1972 on the basis of that thesis he published a monograph "Administrative procedural law" where , as opposed to N.G. Salishcheva, he stood up for the administrative procedural law, i.e. a broad understanding of administrative procedure.

III. THE ESSENCE AND STRUCTURE OF ADMINISTRATIVE PROCEDURE

Such an understanding of administrative procedure in the theory and in academic literature, including lengthy discussion of broad and narrow concepts of administrative procedure continued for many years. At last, in accordance with part 2 of Art. 118 of the RF Constitution *legislatively* formalized *administrative procedure* appeared in 2015 along with the constitutional, civil and criminal procedures by means of which *the judicial power is exercised*. The named Article of the RF Constitution received the final legislative implementation pursuant to the Federal Law dated March 8, 2015 No. 21-FL "The Code of Administrative Procedure of the Russian Federation". Along with that, since administrative proceedings are within the jurisdiction of the judiciary, and before an integrated independent system of administrative courts is established, *administrative procedure* and administrative procedure law as an independent branch of Russian law are still in

the two-tier configuration that includes both its wide administrative procedural and narrow jurisdictional law-enforcement meanings.

This conclusion is based on the opinion of a prominent administrative-law scholar, Professor Yu.M. Kozlov that he expressed in one of his last lifetime works devoted to procedural issues where he combined all the views of theoretic discussants. In his work Professor Kozlov advanced an idea with regard to the possibility of a uniform approach to understanding the essence and purpose of administrative procedure:

"Administrative procedural practice constitutes the basis of "administrative procedure" concept formation both in a wide (administration of the law) and narrow (law-enforcement) senses: a) administrative-procedural; b) administrative-jurisdictional."[4]

These two types of administrative procedure obtain a concentrated manifestation in an individual specific administrative case that is decided either by executive authorities, or by the court.

Hence, the following conclusion can be made: an administrative case in administrative procedure begins and finishes within the boundaries of *administrative procedures*, while an administrative jurisdictional case is handled in *the form of court proceedings*.

This provision concerning the interrelation between administrative procedures and jurisdictional proceedings is not arbitrary, because it is based on a number of noteworthy considerations. Along with that, it is necessary to note that there is no uniformity of the views of administrative-law scholars regarding of the balance between procedures and proceedings in administrative procedure. Some authors hold an opinion that administrative procedure is implemented by means of procedures that, in their turn, are manifested in some proceedings. Other authors share the opposite opinion: administrative procedure is performed by means of proceedings that turn into definite procedures.

[4] Ref.:Administrative law.The textbook. Edited by prof. L. L. Popov. M.: Yurist, 2005. P. 391.

The third group of authors use these terms in view of the focus and contents of their works without putting them into a logical chain.

What are the considerations on which the above-mentioned premise is based?

Public administration, activities of executive authorities are performed within the framework of a procedure, any administrative case is implemented by means of some procedure. Why by means of "procedure"? The Latin word **procedo** means go forward, an order of execution, a series of sequential actions necessary for the performance of something, a separate process.[5] The other variant of interpretation of this term is a specified, adopted sequence of actions for realization or formalization of a court case.[6]

Thus, as we can notice, in practice administrative procedural proceedings is *a positive activity*, in any administrative case the problem (question) of positive focus is solved, *satisfaction of citizens' vital needs and a legitimate interest of an organization are achieved*. This is the content of individual specific cases where a legal assessment (evaluation) of the parties' conduct is not required, but the rights of citizens and legitimate interests of organizations are enforced. And as a result, a positive-for-the-citizen-and-organization decision (*e.g.* obtaining a passport, vehicle registration, issuance of a license (permit) for a particular activity, etc.), as a rule, is made. *As we see, a positive focus of the term "procedure" is rather evident.*

A different "picture" emerges when the term jurisdictional "procedure" is used. It is always *connected with a conflict situation:* a dispute concerning a matter of law administrative or disciplinary offence, an appeal, etc. that is resolved on the basis of procedural rules, for example, the Administrative Offenses Code of the RF, the Administrative Procedure Code of the RF or the Arbitrazh Procedure Code of the RF. The purpose of jurisdictional proceedings is protection of rights, freedoms and legitimate interests of proceedings participants. It is no coincidence that the terminology of Big Brother — criminal

[5] Ref.: The explanatory dictionary of the Russian language. Ed. by D. N. Ushakov. Volume III. 1939. P. 1042.

[6] Ref.: Russian Language Dictionary. Volume III. Moscow, 1983. P. 543.

procedure — e. g. an inquiry, preliminary investigation, was used in the first Administrative Offenses Code of the RF (1985) and the effective Administrative Offenses Code of the RF.

And one more consideration of methodical character that is useful for students and young lawyers who need a clear, lucid, comprehensive explanation: administration procedure is implemented through procedures, and jurisdictional procedure is implemented through court proceedings. Everything is clear and lucid, isn't it?

From the said above the problem of the structure of administrative procedure and the place of administrative procedures and proceedings in arises.

The structure of administrative procedure is determined by Article 10 of the RF Constitution that established that the state power in Russia is a trinity of legislative, executive and judicial branches of government. Each of them for its implementation requires a certain activity that is regulated by relevant substantive and procedural rules of law. Each of them needs procedural legislation in order to achieve a particular result. For instance, the legislative power adopts legal acts – the Federal Constitutional Laws and Federal Laws. The judicial power is implemented on the basis of constitutional, civil, arbitrazh, criminal and administrative procedures that embody authoritative nature of justice, in particular, through the Federal Constitutional Law "On the Constitutional Court of the RF" with its procedural part and numerous federal procedural codes. The executive power, as the content of public administration, is exercised by means of numerous procedures and proceedings that constitute administrative procedure. Thus, we see that each type of procedures has and operates "its" branch, and administrative procedure, no matter what approach to take — broad or narrow, in an administrative or jurisdictional aspect, undoubtedly amounts to a procedural form of the executive power.[7]

Meanwhile, in Soviet times the opinion existed that the activity of public administration authorities regarding consideration of diverse individual cases of positive nature does not need any procedural rules

[7] Ref.: Sorokin V. D. The Administrative Process and Administrative Law. St. Petersburg, 2002. P. 14.

at all and, therefore, organizational regulating. And only in 50–60's of the 20th century leading administrative law scientists (S. S. Studenikin, G. I. Petrov, V. M. Manohin, A. E. Lunev, V. D. Sorokin, etc.) began to speak of the existence of administrative procedure that is broader than jurisdictional that was later named executive procedure.

Unfortunately, public administration and the executive power, unlike the legislative and judicial powers, although being the most powerful and diversified power —economics, social and cultural activities, administrative and political sphere *has not gained due legislative administrative and -procedural maintenance yet*.

Along with that, the need for procedural institutionalization of public administration and activities of executive authorities becomes more and more obvious, without which there neither regulating order nor efficiency in their functioning can exist. We have to look for the substitution for not-yet-existing procedural laws (codes). They are substituted by federal laws applied in different branches of law (e.g. antimonopoly activity and protection of competition, on the animal world, on air protection, on environmental protection in general, on weapons, on land, urban development, traffic safety) that contain substantive and procedural administrative rules that regulate administrative (executive) procedures and jurisdictional proceedings.

However, departmental legal acts, departmental procedural rules of administration prevail in the activities of executive authorities. They all can be divided into two groups: first, official regulations of public officers, rules of internal regulations and many other *in-house legal acts* that establish particular administrative procedures, second, *legal acts that govern external executive activities* for which bodies of government administration and executive authorities are actually created. Orders, regulations, directions, organization charters, rules and many other administration acts that are issued by ministries and other executive bodies that regulate their activity refer to them. *Administrative regulations* with regard to the execution of state functions and rendering state services to citizens and organizations have a significant role in external administrative procedural activities. A great number of such administrative regulations have been issued at the federal, regional and

municipal levels.[8]This departmental procedural rulemaking does not replace a comprehensive codified procedural legislation in anyway, but there is no other way out because the specificity of public administration and executive authorities is that here it is necessary to make and execute decisions efficiently, rapidly and often immediately.

Thus, procedural, law enforcement executive administrative procedure provides *a positive activity* of executive authorities that is connected with implementation of rights, freedoms and legitimate interests of citizens and organizations. Since we speak about a positive administrative activity, relevant officials open (initiate) an a certain individual administrative case and accept necessary documents from citizens and organizations, verify their authenticity, veracity, accuracy of drafting and legal capacity of applicants. Then, they consider submitted materials and make a unilateral authoritative decision within the time limits determined in accordance with procedural rules.

It is impossible to enumerate the number of administrative procedures, we name only the main ones: procedure of adoption of regulatory enactments of public administration; procedure of considering citizens' proposals and applications, as well as applications on behalf of organizations; licensing and registration procedures; procedure of issuing acts of civil status; procedure of rendering state services; certification and accreditation procedures; patenting procedure; procedures of control and supervision implementation; procedure of pupils/students expulsion (Letter of Instruction of the Federal Service on Supervision in Education and Science dated September 15, 2015 No. AK-2655/05 "On the question of expulsion of pupils/students"); procedure of foreign citizens' identification (Article 10 of the Federal Law dated May 7, 2013 No. 83-FL "On the legal status of foreign citizens in the Russian Federation"), etc.

This implies a certain conclusion: there is no conflict situation in executive administrative procedure, and, therefore, there is no need for a legal assessment of the parties' conduct, because the essence of a

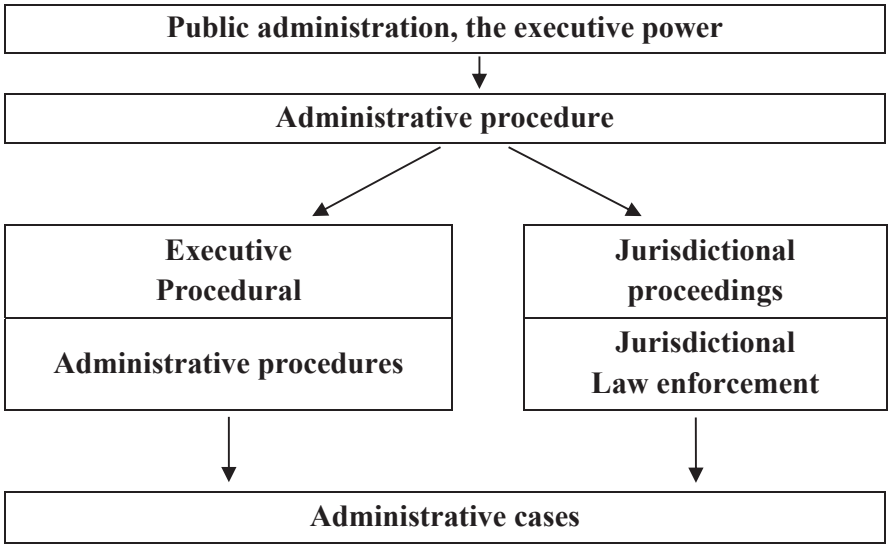
[8] Ref. more detailed: Davydov K. V. The administrative provisions of the federal executive authorities of the Russian Federation: the issues of theory. Monograph. Edited byYu. N. Starilov. M.: NB-Media, 2010.

case is its positive solution and satisfaction of citizens' vital needs, and legitimate interests of organizations.

Now we turn to the administrative jurisdictional law enforcement procedure the purpose of which is to ensure respect for rights, fundamental freedoms and legitimate interests of citizens and organizations, their protection and law enforcement in the sphere that as a rule concerns the executive power and its officials. The need for jurisdictional procedure arises *upon occurrence of a conflict situation*, *a negative legal fact*. There are much fewer conflict situations that are provided for by substantive administrative rules than in positive administrative procedure. They all can be enumerated because they are entrenched in the Administrative Offenses Code of the RF (the RF AOC) and by the Administrative Procedure Code of the RF (the RF APC), as well as by the Arbitrazh Procedure Code (the RF ArPC). In this case, conflict situations and relevant legal include: (a) the issue of law, (b) an appeal and public prosecutor's protest, (c) administrative and disciplinary offenses, d) taking measures of administrative enforcement (except imposing administrative penalties), etc. Each of these conflict situations corresponds to some particular administrative jurisdictional proceedings. Proceedings in dealing with administrative offenses outstand in their most comprehensive procedural elaboration because rules of criminal and civil procedures were applied to the maximum extent. two sections of the Administrative Offenses Code of the RF(the RF AOC) are devoted to the application of civil and criminal procedure rules in administrative proceedings.

Thus, reflecting the objectives and functions of public administration, powers of executive authorities and their officials, administrative procedure, as we have seen, has its structure that is formed by a set of executive procedures and jurisdictional proceedings. *A specific pyramid* comes out: the apex is formed by public administration and the executive power; administrative procedure of two types ensuring its implementation form its sides —administrative procedural and jurisdictional law enforcement — and then, beneath, administrative procedures and jurisdictional proceedings emerge in the relations between participants; and ,finally, within the frames of administrative procedural activity, "on the land", many millions of individual

administrative cases arise by means of which citizens, organizations and, on the whole, the State obtain the legal result. The essence and structure of administrative procedure can be shown in the following chart.



Thereby, the foregoing allows us to make a final conclusion: legislative entrenchment of procedural mechanisms of public administration, the executive authorities activity, a well-defined institutionalization of administrative procedure *on the substantive basis*; implementation of positive executive activities, procedural process, conflict resolution — the jurisdictional process — will give an opportunity to improve public administration efficiency (state governance), to give the process modern parameters.

The third problem.

In his monograph "Administrative procedural law" V. D. Sorokin was the first scholar who identified and explained the idea of the necessity to recognize administrative procedural law as an independent branch of the legal system of our country, along with such branches as civil procedure law and criminal procedure law. To this end, a

positive solution of the named problem (in theory and in practice) could facilitate creation of a procedural legislative framework in the sphere of an executive (state governance) activity, including drafting and adopting the Code of Administrative Procedure of the Russian Federation, that is not available yet, to improve efficiency of public administration, implementation of the executive power, reliability of protection of rights and freedoms of citizens and legitimate interests of organizations.

At the same time, a long-term discussion is being held with regard to the concept and place of administrative procedural law in the legal system of Russia. Some administrative law scholars hold an opinion that administrative procedure is not needed for a positive executive (state governance) activity at all, usually everything is lucid here, administrative free discretion of officials of executive authorities is considered to be enough; moreover, the presumption of correctness of their solutions prevails in practice. It is certainly a misconception. Indeed, it is quite obvious that without procedural rules the activity of an administrative apparatus inevitably leads to arbitrariness, corruption, gross violations of rights, freedoms and legitimate interests of citizens and organizations.

Other administrative law scholars consider administrative procedural law as an institution or, at best, as a sub-branch of administrative law.[9] And only at the end of XX century an outstanding administrative law scholar, Professor V. D. Sorokin expressed and asserted his idea of an objective necessity to establish administrative procedural law as *an independent branch of law*.

IV. THE INDEPENDENCE OF ADMINISTRATIVE PROCEDURE LAW IN THE RUSSIAN LEGAL SYSTEM

What grounds do we see for such a decision?

First, two of the three branches of government have a thorough legislative procedural maintenance: the legislative power in the form of procedural rules of the RF Constitution itself and a set of federal

[9] Ref.: Mahina S. N. The administrative process. The Publishing House of Voronezh State University. 1999. P. 32.

laws; the judicial power is equipped with four Procedural Codes — the Code of Civil Procedure (the RF CCP), the Arbitrazh Procedure Code (the RF ArPC), the Administrative Procedure Code (the RF APC) and the Criminal Procedure Code (the RF CPC). And only the most powerful branch that has the biggest number of state bodies and officials — the executive branch — does not have any legislative procedural basis for its implementation (the RF Code of Administrative Procedure mainly regulates judiciary work).

Secondly, we can suppose that the idea of existence of an independent administrative-procedural branch of Russian law is enshrined in the Constitution of the Russian Federation in paragraph "k" of Article 72. The Article asserted that administrative law and administrative procedural law, among other branches, are in the joint jurisdiction of the Russian Federation and its subjects. Admittedly, a branch of legislation does not amount to a branch of the Russian legal system, but the constitutional wording — *aadministrative procedural legislation* — gives serious grounds for establishing an independent administrative procedural branch of Russian law that would take a decent place among main branches of Russian law —civil and criminal procedures. Furthermore, all the named types of legislative procedure, all procedural branches of Russian law have their authoritative source — a relative branch of government.[10]

Thirdly, it is quite evident that administrative procedure is an independent legal category. Here we can draw a logically caused conclusion: a set of administrative procedural rules that provide the implementation of substantive rules of administrative law that is undoubtedly the key basic branch of Russian law, should also have *a status of an independent branch of Russian law*. This conclusion is also proved by the stance of the general theory of law that propounds *three juridical descriptors* that characterize any branch in the system of Russian law. These descriptors include: (a) own subject of regulation, i.e. a separate group of public (legal) relations, (b) the method of legal regulation and a relevant level of internal structure of this group of legal rules that act as an element of the system of law at large, (c) ability of

[10] Ref.: SorokinV. D. The administrative process and administrative law. P.14.

this group of rules to interact with other branches of Russian law. And in his monograph Professor V.D. Sorokin brilliantly proved that the administrative procedural branch of law possesses these descriptors.

Decades have passed, but his stance was not supported by a number of representatives of the general theory of law, who refer to the fact that this branch of law does not have its own eponymous Code. After the Federal Law "The Code of the administrative procedure of the Russian Federation" was adopted, a new, rather original interpretation of the concept of administrative procedural branch of law appeared. The author of this conception, Professor A. I. Stakhov, who wrote an article "Administrative procedural law as the branch of the legal system of the Russian Federation,"[11] offered including administrative procedural rules that regulate the activity of executive authorities that deal with administrative cases and procedural rules that regulate the activity of judicial bodies in administrative proceedings into the concept of administrative procedural law. In other words, he offered t he conception of a uniform procedural branch of law (administrative procedural law) that would regulate the work of the bodies of the executive branch of government and the activity of the judicial branch of government. Along with that, this doctrine seems not only interesting, but also enticing because of its simplicity. However, this conception requires a thorough examination and discussion by representatives of various legal sciences and branches of law.

Meanwhile, administrative procedural law as a set of procedural rules, institutions and sub-branches has existed and provided public administration and implementation of the executive power for a long time. Nevertheless, the Administrative Procedural Code of the RF is obviously necessary, because its drafting and adoption would facilitate dynamic development of the administrative procedure theory, accelerate improvement of federal and regional procedural legislation and departmental procedural rulemaking, and, thereby, enhance the

[11] Stakhov A. I. Administrative procedural law as a branch of the legal system of the Russian Federation, in II Moscow Legal Forum (Kutafin readings). Modern problems of administrative procedure in state administration. Moscow: Publishing Center of the Kutafin Moscow State Law University (MSAL). 2015. P. 175.

public administration efficiency, respect and protection of rights and freedoms of citizens, legitimate interests of organizations.

In fact, in 2002 ProfessorV.D. Sorokin constructed and published the project of the Administrative Procedural Code (the framework of administrative procedural legislation) that encompasses administrative (procedural) and jurisdictional (law-enforcement) sections.[12] Then other authors' projects appeared. Unfortunately, all those projects remain only at the doctrinal level and they have not been practically developed so far.

However, more than ten years ago the draft law "On administrative procedures" was elaborated and discussed in the State Duma, i.e. the executive part of the administrative procedure that, nonetheless, did not go further and up until now has been stored somewhere in the archive. At the same time, there are some grounds to speak about an intention of the RF State Duma deputies to get round to this project and expand the active work on it. Along with that, it should be recognized that the jurisdictional part of the administrative procedure, which is connected with the examination of cases of administrative offences, is put into the current RF Code of Administrative Offences, (the Administrative Procedure Code has excluded such a category of cases from its jurisdiction).

The absence of legislative executive (procedural) procedure, including the Code of Administrative Procedure (law), originates from old Russia and the Soviet period when there was a dominating point of view that it is possible to run the state without legal rules, and that political party directives are ample and sufficient. In modern conditions it means that all the ministries and other executive authorities have to create their own departmental procedural legal basis to decide administrative cases. As this legal basis is departmental, it mainly reflects the interests of government departments and bureaucracy. Creation of administrative regulations at the federal, regional and local levels for execution of state functions and provision of public services is a replacement, though a least-evil replacement, of legislative regulation.

[12] Ref.: Sorokin V. D. The administrative process and administrative law. Pp. 423–435.

Thus, the low efficiency of public administration and corruption in the state apparatus appears. It becomes clear from the foregoing that there cannot be effective administration and it is impossible to conquer corruption without legislative executive procedures, without a procedural framework for deciding each administrative case.

Meanwhile, in the world there are many countries where this problem finds its solution, in particular, in Germany, the USA, where the procedural part of the administrative procedure occupies a prominent place. As a result, an official with a "corruptive hand" has no loopholes where he or she could penetrate into, because actions of citizens, legal personalities and public administration are regulated in great detail.

Unfortunately, it should be admitted that our country, our administrative law lawyers have seriously lagged behind other States and some States of the CIS where procedure codes or other laws that regulate the order of considering administrative cases of positive character and the procedure of dealing with administrative offences have been in operation for a long time.

That is exactly why the Code of Administrative Procedure is needed in our country due to very important reasons. *First*, the Message of the President of the Russian Federation, although broadcast fifteen years ago, contains an instruction to adopt an administrative procedural code. The instruction is long standing, but it has not been followed so far. *Second*, a federal code is needed because the order of administrative procedures and jurisdictional proceedings must be uniform for all territorial entities of the Russian Federation, for all sectors and spheres of government. Nevertheless, for example, the Federal Antimonopoly Service and the Federal Tax Service have their own procedural legislation with regard to resolution of antitrust and tax cases that differ from procedural rules of the RF Code of Administrative Offenses, which, often leads to procedural conflicts. *Third*, within the frameworks of procedural procedures and proceedings there is a possibility to ensure protection of personality, protection of rights and freedoms of citizens and organizations, to achieve comprehensive, complete, objective and timely clarification of circumstances of each case and its resolution in accordance with the law, to guarantee enforcement of a decision, identification of causes and conditions that contributed to commission

of offences. *Fourth*, administrative procedural law is needed to regulate the procedure of case hearings in detail and even scrupulously. They say that the Devil is in the detail, a corrupt official, a dishonest employee is in details not regulated by law; to this end, in administrative procedure, as in any other procedure, there must not be such unregulated details. *Fifth*, in detecting an offence a law-enforcement official has a unilateral authority, a citizen, and organization can do nothing but obey a public authority representative. However, as soon as an administrative jurisdictional case is initiated, both participants of the conflict become equal parties in the proceedings on the basis of administrative and procedural rules. Nevertheless, a citizen is a priory a weaker party in comparison with a public authority representative, despite having equal rights and obligations in the proceedings. And in this typical situation the administrative procedure, the administrative procedural rules are aimed at ensuring protection of the rights of a weaker party in a procedural legal relation, guaranteeing competitiveness and equality of the parties, legitimacy and fairness of the decision.

There is no doubt that drafting of the Code of Administrative Procedure is a lengthy, complicated and time-consuming process. What is the essence of such drafting? First of all, it is necessary to revive the work regarding the Draft Law "On administrative procedures", because it is devoted to overall questions of administrative executive procedures, resolution of administrative cases of a positive nature, i.e. if there is no conflict and a necessity of legal assessment of the conduct of parties involved in the case.

In other words, it entails administrative (executive) procedure of law enforcement in any administrative case, for example, the procedure of drafting and enacting legal acts of administration, receiving a passport, registration of citizens, legal entities and means of transport, licensing. And if we manage to combine executive procedures and administrative jurisdictional proceedings (the RF Code of Administrative Procedure does not mention them), the RF Code of Administrative Procedure, which is so needed for administrative practice, combating corruption, enhancing effectiveness of public administration, will come to life.

Thus, an independent administrative procedural branch of Russian law, as it is, in fact, inevitably entails creation of the RF Code of

Administrative Procedure. And not because of the fact that for centuries the Civil Procedure and Criminal Procedure Codes have been in practice, and now the RF Code of Administrative Court Procedure is in force. And, as they say, the decision of this problem is up to the political will and crucial administrative decisions.

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