

## Problems of Judicial Control of Legal Implementation in Public Administration

Ekaterina A. Khuzina\*<sup>1</sup>, Gabdrakhman H. Valiev<sup>2</sup>

<sup>1, 2</sup> Kazan Federal University, Naberezhnye Chelny Institute

Email: [eka5551@rambler.ru](mailto:eka5551@rambler.ru), Contact: 89631239610

Received: 21st October 2017 Accepted: 16th November 2017, Published: 31st December 2017

### Abstract

Constitutional proclamation of Russia as a legal state with elements of civil society imposes on state institutions the obligation to observe the constitutional principles of legality in the activities of state bodies. Judicial power is called upon to protect these principles.

The relevance of the topic of this study is conditioned by the reform of political and socio-economic relations in Russia, which are invariably related to the increased attention to human rights problems, their provision with various means of state power, among which the judicial power is the main one. 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 in 1993 of the Constitution of the Russian Federation, the reform of Russian legislation that is being made, shows that Russia has settled down to a course of serious intentions and actions in the field of human rights.

In the Address of the President of the Russian Federation to the Federal Assembly of the Russian Federation "Russia needs to be strong and competitive", it was noted that a significant step was taken in modernizing the judicial and legal system. Most of the necessary legislative and other normative legal acts have already been adopted. The changes concerned not only the organization and working conditions of courts, but also procedures that protect the rights of an individual and the accessibility of justice.

The relevance of the research topic chosen is also confirmed by the fact that the optimization of the functioning of judicial authorities is not yet complete.

**Keywords:** Judicial Control, Judicial Power, Law, Executive Power, Society, State.

### Introduction

Judicial control is one of the types of state control exercising the management function, which ensures the rule of law in administrative activities. Judicial control takes a special place in the system of guarantees of legality and suppression of abuse of law in the activities of state administration bodies.

It should be noted that the judicial power is discretionary and independent of the legislative and executive powers. In turn, it belongs to the government power and interacts with it: it controls the legitimacy of state power, ensures stability and protects its legal foundations.

Judicial control as a way to ensure lawfulness in public administration allows eliminating various abuses of law: breach of legislation and adoption of illegal enactments. The activity of the executive power is carried out on the basis and in compliance with the laws and is subordinate in nature; in this connection, there is a need for judicial control over its legality.

To date, in the legal science devoted to public administration problems, there are two types of judicial control: direct and indirect. Direct (targeted) judicial control is the activity of the judicial authorities in verifying the legality and compliance of the adopted normative act with a legal act higher by its legal force. In this case the question is solved: whether the adopted normative act retains its legal force or is partially lost it. Indirect (individual) judicial control is exercised in the verification of a legal file not related to the issue of compliance with this legal act. When considering a case, a court decides on the appropriateness of applying the legal act to specific disputable legal relations. In the event that a court decision is adopted on the illegality of a regulatory subordinate act to this case and the act loses its legal force in relation to the contested situation.

Consequently, judicial control over legality in public administration is divided into two types: control over the legality of subordinate acts and control over the legality of individual legal acts. These types of control have been consolidated in the constitutional, civil and arbitration proceedings.

### Materials and Methods

This paper used general scientific, general logical, particular scientific methods of cognition of processes and phenomena, such as historical, comparative legal, formal-logical, formal-legal, sociological, statistical methods, etc.

The normative basis of the study was the Constitution of the Russian Federation, generally recognized principles and norms of international law, international treaties, federal constitutional laws and federal laws, normative legal acts of the President of the Russian Federation, the Federation Council and the State Duma of the Federal Assembly of the Russian Federation, the Government of the Russian Federation, and other federal normative legal acts, constitutions (statutes), laws and other normative legal acts of the subjects of the Russian Federation, decisions of the Constitutional Court of the Russian Federation, as well as decisions of the European Court on Human Rights.

According to Art. 4 of the Federal Constitutional Law of December 31, 1996 No. 1-FKZ "On the judicial

system of the Russian Federation", the judicial system of the Russian Federation includes federal courts (the Constitutional Court of the Russian Federation, courts of general jurisdiction headed by the Supreme Court of the Russian Federation, and arbitration courts), constitutional (statutory) courts and magistrates of the constituent entities of the Russian Federation.

All courts that are part of this system have the right to review cases on challenging normative and legal acts. In addition, state executive bodies are also empowered to review cases of challenging normative legal acts.

Judicial jurisdiction is the delineation of competencies between the various branches of the judicial power. Every court is entitled to consider and to resolve only those cases that are attributed to its jurisdiction by the laws of the Russian Federation [1]. But such a definition is too fuzzy, and it is often not possible to clearly establish on its basis which court is the jurisdiction of a particular case.

Today, a number of legal acts are adopted to improve the judicial system of the Russian Federation. However, it is obvious that the modern domestic judicial system does not meet the realities of the times. This is an important and urgent problem, since the absence of a well-established system of judicial bodies leads to a direct violation of the rights and freedoms of citizens and legal entities.

### **Results and Discussion**

In the legal environment, there are debates on the issue of the boundaries of judicial control, namely, whether a court is entitled to control only the lawfulness or can also verify the appropriateness of an administrative act. There was almost a unanimous opinion that a court has no right to control the reasons and grounds for the appearance of an administrative act. The existence of such a right at a court would mean "intrusion" into the powers of the executive authorities.

For a court, the main value should be that the act has been issued in the proper form and by a competent authority; whether material and procedural norms have been observed; whether the act corresponds to the goal pursued by law; what exactly in the decision of the authority is contrary to the substantive law. Invasion of the court into the scope of expediency of administrative acts would violate the independence of the executive power. Scholars also agree on the extent of the court's control powers, whether the courts are only entitled to cancel an administrative decision or they can change it. It is noted that the powers of a court should include the recognition of a specific act of an administrative body illegal or legal and the decision to cancel it in case of illegality.

However, notwithstanding the importance of judicial control, it is necessary to note the shortcomings it has. First, it concerns the duration and complexity of judicial procedures, conditioned by strict procedural framework.

Secondly, judicial decisions are not always legal and justified, which is often associated with the so-called judicial discretion. Often, laws give judges the choice between particular options based on their internal

belief. Most often it concerns the choice of the type and size of punishment. 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 unity of action of the judicial system in similar situations.

For the same purpose, the representative bodies of the Russian Federation should begin to formally interpret the laws they adopt. Unjustified and incorrect practice is when the law was taken by one branch of power, and was interpreted by another. Now, in fact, the decisions of the Plenums of the highest courts fill the gaps admitted by the legislature. It is necessary that only the constitutional courts have the right of interpretation of laws, since this is their direct task. All other courts should obtain 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 judicial power 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 resolving all offenses and legal disputes. Enforcement of justice is one of the foundations of a legitimate state and disrespect for it is a sign of society's corruption and instability of the state.

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 creating a full-fledged institution of administrative justice in our country is very relevant. In this regard, V.E. Safonov and E.V. Miryasheva correctly noted that the judicial power protects the supreme value: the life of a person, his or her rights and freedoms.

Courts are called upon to ensure the protection not only of the legitimate interests of citizens and public associations, but also of legitimate interests and rights of government bodies in the field of economics, protection of the public order, security, and other areas. Judicial control as a means of ensuring legality in public administration bodies is carried out in the following directions:

- 1) Constitutional control over the compliance of the normative legal acts of the Government of the Russian Federation and executive authorities of the subjects of the Russian Federation with the Constitution of the Russian Federation;
- 2) Control of courts of general jurisdiction over the legality of decisions and actions of government bodies and their officials in relation to citizens, public associations and other non-state organizations on the grounds and in accordance with the procedure provided for by federal legislation;
- 3) 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 1993 Constitution of the Russian Federation established the right of citizens to judicial protection and to appeal to the court concerning the decisions and 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, recognition of the inconsistency of any normative act with a higher-level legal act is expedient to implement within the framework of administrative proceedings.

The main specific features of administrative proceedings should be: 1. Administrative court proceedings are characterized by judicial control over the normative and non-normative acts of government. This feature will differ materially from a civil claim and application for unlawful decisions or actions of the public authority; 2. In administrative proceedings, the burden of proof will be laid not on a complainant party, but on a respondent party, i.e. to the public authority. A citizen or an organization should only bring the facts of violations of their legitimate interests, and the public authority should justify its innocence. Thus, the burden of proof is the responsibility of the respondent party. This feature will ensure equality of the parties in procedural status of a case. 3. In the administrative proceedings, counterclaim, mutual claims of the parties, amicable agreement, absentee proceedings are excluded. In this process, the end result is the cancellation of an individual administrative act or the recognition of a normative legal act inoperative for the protection of human and citizen rights and freedoms [2].

With the adoption of the Code of Administrative Court Procedure of the Russian Federation in 2015, a long and difficult period full of irreconcilable discussions between representatives of science has ended; it was devoted to the discussion of the idea on establishing administrative courts in our country and creating a full-fledged administrative court system.

### **Summary**

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 on forming a system of specialized administrative courts in Russia did not have enough arguments or consistency in upholding this idea. However, a new administrative and procedural form has 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 some time, codification of procedural legal norms in the field of administrative justice of the Russian Federation was proposed to be carried out within the frameworks of "Code of Administrative Judicial Practice" [3]. Along with this, ideas for the development and adoption of the Federal Constitutional Law "On Administrative Proceedings"

[4] or the Code of Administrative Court Procedure of the Russian Federation were discussed [5]. There were other conceptual proposals for the creation of the Russian administrative procedure code [6].

Despite the various proposals on the name of the administrative procedural law, virtually identical were the ideas about the content and structure of this legislative act.

For the implementation of administrative justice, a judge and a court are needed, which jurisdiction would include consideration and resolution of the relevant cases according to the procedural law. In this case, these are administrative cases, but not cases of administrative offenses.

The system of judicial protection from illegal actions or decisions violating the rights and freedoms of citizens, partially regulated in the Civil Procedure Code of the Russian Federation and the Arbitration Procedure Code of the Russian Federation of the procedures for considering relevant cases, did not constitute an impeccable system ensuring effective protection of rights, legitimate interests of citizens and organizations. Mainly, this system could not be considered as appropriate from the point of view of the unity of the subject, the logic of interaction between material and procedural legal regulation [7].

The emergence of the Code of Administrative Court Procedure is a new stage in the development of procedural legislation that establishes legal procedures for the settlement of administrative disputes (cases arising from administrative and other public legal relations). The Code of Administrative Court Procedure of the Russian Federation will ensure the further development of the administrative procedural form for considering cases by the bodies of the judicial power. The Code of Administrative Court Procedure of the Russian Federation is a system of procedural norms, principles, and rules that enable the formation of new scientific concepts and a theoretical model of the administrative process as an independent litigation [8].

In the course of judicial control of the government, the issue of establishing administrative courts that deal with cases arising from administrative and legal relations is important. The provisions of the Constitution of the Russian Federation allow us to talk about administrative legal proceedings as an independent institution [9].

### **Conclusion**

Thus, the modern judicial system of the Russian Federation requires further development and modernization. At the same time, judicial control in the sphere of administration should become one of its elements. Such judicial control is called upon to carry out administrative justice, the main function of which is to ensure the legality and validity of power actions (or inactions) by the courts and public authorities. Adoption of the Code of Administrative Court Procedure of the Russian Federation 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 the order meeting the standards of ensuring the rights, freedoms, legitimate interests of individuals and organizations [10].

#### **Acknowledgements**

The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University.

#### **References**

- [1]Shmaliy O.V. Problems of judicial control over the exercise of executive power / O.V. Shmaliy // Science and education: economy and economics; entrepreneurship; law and management. - 2011. - No. 3. - P. 39 - 43.
- [2]Krymova E.N. Judicial control as the most important means of overcoming the abuse of law problem in the executive power system / E.N. Krymova // Bulletin of Voronezh State University.Series: The Law. - 2012. - No. 1. - P. 197 - 207.
- [3]World Investment Report 2010.N.Y.: UN, UNCTAD, 2011. - 332 p.1. VI. The Internet.
- [4]Osipyanyan B.A. Judicial power as a special type of executive power / B.A. Osipyanyan // The Russian judge. - 2013. - No. 12. - P. 6-9.
- [5]Journal Officiel de la Republique Francaise. Loia et Decrets. 1993. 16 fevrier.
- [6]International Trade Statistics 2010.WTO, 2011. - 237 P.
- [7]Safonov V. E., MiryashevaE. V. Judicial power in ensuring national security and statehood of the country and society / V.E. Safonov, E.V. Miryasheva // Administrator of the court. - 2011. - No. 1. - P. 2-4.
- [8]Nouveau Code de procedure penal.P.: Edition Dalloz.2009.
- [9]Khakhaleva E.V. Some novels of administrative legal proceedings in the Russian Federation / E.B. Khakhalev // Society and law. - 2015. - No. 2. - P. 273 - 276.
- [10]Herve Regoli .Institutions judiciaires .P.: Edition Dalloz.1999