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Scientific and Theoretical Foundations of the Powers of a Court of First Instance to Administer Justice in Administrative Proceedings

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Abstract
This article examines the views and opinions of scholars and practitioners regarding the scientific and theoretical foundations of the first instance court's authority to administer justice in administrative proceedings. Additionally, it provides a comprehensive discussion of foreign practices in this field.

Keywords: Administrative court, first instance, administrative proceedings, public law disputes, justice, authority

Introduction

The most important element of the legal status of any state authority is its list of powers. According to the generally accepted doctrinal view, powers belong to specific subjects of legal relations — primarily to particular state authorities and their officials — as they constitute an integral component and an inalienable attribute of the concept of 'authority'.[1]

The powers of a state authority comprise:

1) a subjective right consisting of the ability to choose a particular method and course of action;[2]
2) an obligation to discharge the duties imposed by law.

Accordingly, the substance of the powers of a court of first instance in administrative proceedings is determined by its functions as established in legislation. Such functions include the examination and resolution of disputes and the supervision of the exercise of powers by administrative authorities.

[1]Белоусова Е.В. О соотношении категорий «компетенция», «полномочия» и «предметы ведения» в системе местного самоуправления. 129-р.

[2]Козлов А.Ф. Суд первой инстанции как субъект советского гражданского гражданского процессуального права: monography. 82-р.

The powers of a court of first instance in administrative proceedings may be defined on the basis of the subject matter of the legal case to be examined,[3] as it is precisely this subject matter that necessitates the classification of the court of first instance's powers. A.F. Kozlov reached the same conclusion in his study of the powers of the court of first instance in Soviet civil procedure.[4] This is further confirmed by the fact that the subject-matter powers of a court of first instance in a specific case arise after the judge has verified the legal facts necessary to initiate proceedings.[5]

The adoption of the Code of Administrative Procedure of Uzbekistan and the subsequent formation of the legal framework for administrative proceedings gave rise to scholarly interest in this field, particularly in relation to:

3) disputes and cases arising from public law relations for the purpose of clarifying the list of cases that may be examined and resolved by a court of first instance in administrative proceedings, including the legal nature of cases arising from administrative and legal acts;

4) the criteria for distinguishing disputes arising from administrative and other public law relations from civil law disputes;

5) the grounds and substance of the subject-matter powers of a court of first instance in admitting various administrative cases to examination in administrative proceedings, and the scope of powers exercised in initiating proceedings.[6]

In Soviet procedural literature, the court of first instance was regarded as the sole body competent to examine and resolve certain categories of cases, classified according to the sphere of legal relations from which disputes arose.[7] One such sphere was that of disputed relations between the state and citizens. These legal disputes were referred to as cases arising from administrative legal relations. The RSFSR Code of Civil Procedure of 1964 provided a limited list of such cases subject to examination and resolution by a court of first instance: complaints against the incorrectness of electoral rolls; complaints against administrative acts and administrative sanctions imposed by administrative authorities and officials; and applications for the recovery of debts.

Today, in connection with the change in the subject matter of statutory regulation of administrative proceedings, such cases are designated as disputes arising from administrative legal relations and other public law relations, as well as cases related to judicial supervision of the rights of natural persons. This has intensified the debate regarding the correlation between the concepts of administrative legal disputes and public law disputes.

[3]See: Васьковский Е.В. Курс гражданского процесса. Т. 1. М., 2013. 485-б.; Осипов Ю.К. Подведомственность юридических дел. 14-р.

[4]Козлов А.Ф. Суд первой инстанции как субъект советского гражданского гражданского процессуального права: monography. P. 114.

[5]Ярков В.В. Юридические факты в цивилистическом процессе. М., 2012. 235-р.

[6]Виноградова П.А. Осуществление органами публичной власти полномочий как предмет судебного административного контроля // Административное право и процесс. 2017. № 8.41-р.

[7]Козлов А.Ф. Суд первой инстанции как субъект советского гражданского гражданского процессуального права: monography. Pp. 55, 80, 83.

At the same time, the absence of clear delineation criteria has fuelled further debate concerning the correlation between the substantive content of the concepts of administrative legal disputes and public law disputes.

It is generally accepted to understand administrative legal relations as social relations regulated by the executive branch in the sphere of public administration on matters of operational management concerning the budget, taxes, finance, construction, ecology, and related fields.[8]

Other public law relations, however, do not involve direct regulation by executive authorities of operational matters: these include the protection of electoral rights, challenges to normative legal acts, challenges to decisions of judicial qualification boards, and claims for compensation for violations of the right to judicial proceedings within a reasonable time or the right to enforcement of a court judgment within a reasonable time.[9] Accordingly, administrative legal relations are a type of public law relation, the purpose of which is the regulation of social relations in various spheres of regulation, resulting in various legal consequences — including those of a civil law character — for private persons.[10]

At the same time, legal literature acknowledges that this approach complicates application in court, as courts of general jurisdiction encounter difficulties in determining their jurisdiction when deciding whether to admit cases to proceedings.

In our view, the criteria in question are evaluative in nature and their application does not resolve the problem of distinguishing between types of proceedings — which requires determining the legal nature of the dispute brought before the court. It should be noted that a substantial portion of the legal relations under analysis is of a mixed character, in which private and public elements are intertwined. It is therefore appropriate to turn to the criteria for distinguishing between types of proceedings as developed in the science of civil procedural law and arbitration procedural law.

A.T. Bonner, for instance, identified the following criteria for delineating administrative from civil proceedings: 1) a quantitative criterion — the number of subjects to the dispute; 2) the type of legal relation. These criteria must be applied in combination. He supported this position as follows: if the subject matter of court deliberation is exclusively the verification of the lawfulness and validity of the actions of a governing body, and the case is complicated by elements of other legal relations, it should be classified among cases arising from administrative legal relations. In this context, the subjective composition of the dispute is limited to the relevant governmental authority that performed or refused to perform the contested actions, with the citizen or legal entity regarding such actions as unlawful. However, if another person (or group of persons) whose property interests are affected is joined to the examination of the dispute based on the circumstances of the case, the dispute must be resolved through civil proceedings. Consequently, disputes arising from public law relations require that such legal relations be strictly regulated

[8]Хаманева Н.Ю. Административная юстиция и административно-правовые отношения: теоретические проблемы. М., 2009. № 1. 47-р.

[9]Треушников М.К. Судебная защита избирательного права // Журнал рос. права. 2000. № 3.

[10]Немцева В.Б. Некоторые проблемы соотношения гражданского и административного судопроизводства в судах общей юрисдикции // Вестник гражданского процесса. 2016. № 1. 190-б.; Лупарев Е.Б. Административные правоотношения как системообразующий элемент публичных правоотношений // Бизнес в законе. 2012. № 6. 53-р.

through administrative procedures binding specific subjects — an administrative authority and an individual citizen or organisation. Such procedures are governed by public law norms and do not include the regulation of property relations with another subject.[11]

Among the subject-matter powers of a court, exclusive subject-matter powers — belonging solely to the court of first instance and to no other authority — are distinguished. The classification of these powers as exclusive was linked to the complexity of the relevant cases and the need to establish facts subject to the least degree of legal regulation.[12]

The exercise of powers by state authorities in this category of cases may adversely affect the rights and legally protected interests of individual citizens, organisations, and society or the state as a whole. In addition, the actual circumstances of such cases are typically associated with the clarification of numerous evaluative categories, the application of which affects the just resolution of the dispute by the court.

Cases concerning challenges to normative legal acts are referred to in the literature as judicial norm control or judicial supervision of the legality of normative legal acts.[13] Judicial norm control is a fundamental component of administrative proceedings.

Thus, administrative proceedings are not a type of judicial activity limited to the pure examination and resolution of disputes under administrative law. They encompass proceedings for challenges to normative and quasi-normative instruments and thereby cover the exclusive subject-matter powers of the court to exercise supervision over legislation (which indicates a degree of similarity with constitutional proceedings).

Administrative proceedings and constitutional proceedings are distinguished by the specific organisation and jurisdiction of the court and the jurisdiction of legal cases. Administrative proceedings are conducted by courts of general jurisdiction, whereas constitutional proceedings are conducted by the Constitutional Court of the Republic of Uzbekistan. Accordingly, in the view of scholars, administrative proceedings constitute not administrative but public law proceedings — they do not constitute a form of administrative activity.

The substance of the supplementary subject-matter powers of a court consists in its entitlement to exercise such powers only (and again) in cases where other jurisdictional bodies have been unable to definitively resolve the legal dispute or have issued a decision unsatisfactory to one or both parties.[14]

Accordingly, the moment at which the supplementary subject-matter powers of the competent court of first instance arise is determined by the mandatory preliminary examination and resolution of a particular legal dispute by the jurisdictional body vested with the relevant powers by law.[15]

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[11]Боннер А.Т. Производство по делам, возникающим из административно-правовых отношений: автореф. дис. ... канд. юрид. наук. М., 1966. 7-8-р.

[12]Козлов А.Ф. Суд инстанции как субъект советского гражданского процессуального права: автореф. Дис. … д-ра юрид. наук. 29-р.

[13]Никитин С.В. Судебный нормоконтроль в гражданском процессе и арбитражном процессе: вопросы теории и практики: дис. ... д-ра юрид. наук. М., 2010; Судебный контроль за законностью нормативных правовых актов: Textbook for Master's and Bachelor's Students.

[14]Osipov Yu.K. Jurisdiction of Legal Cases. P. 49.

[15]Kozlov A.F. The Court of First Instance as a Subject of Soviet Civil Procedural Law. P. 101.

In our view, it is necessary to take into account that the powers of a court in certain categories of cases may differ and require different mechanisms of legal regulation. For this reason, when a court admits an administrative petition filed out of time, it is appropriate, in the ruling on admission of the petition and preparation of the case for judicial examination, to explain to the petitioner his or her right to file an application for the restoration of the time limit.[16]

Thus, the supplementary subject-matter powers of a court are expressed in verifying compliance with the mandatory preliminary procedure for examining a case by the competent authority and other actual circumstances, and in verifying the application of legal norms to specific public law relations. These legal relations, which previously arose in the sphere of public administration, are directed at the exercise of powers by administrative authorities in the area of mandatory compliance with prohibitive norms.

For the purpose of improving the mechanism for verifying the existence of a genuine interest in persons applying to the court for protection of their violated or contested rights, it is proposed that the court be granted the power to convene a special hearing on the admissibility of the petition alone, summoning the parties, if the petitioner appeals against the refusal to accept the petition on the ground that there is no legal interest.

However, the possibility that the court may err in determining the proper standing of the parties in the initiation of proceedings should not be excluded. In our view, the court should have the power to correct such an error at the stage of preparing the case for judicial examination, since at this stage the court has the power to question persons on the substance of the claims made and the objections received, enabling it to satisfy itself as to the absence of violated rights and interests of the petitioner. This may serve as grounds for scheduling a preliminary hearing at which the court is entitled to terminate proceedings without scheduling a substantive hearing.

It should also be borne in mind that, depending on the nature of the legal interest of the persons participating in the case — that is, their material and procedural interest — the substance and scope of the powers of a court of first instance in administrative proceedings vary, since the persons participating in the case possess varying volumes of material and procedural rights exercised in administrative proceedings. These rights are referred to as the dispositive actions of the persons participating in the case.[17]

In our view, taking into account the purpose of administrative proceedings in ensuring the protection of the weaker party to the proceedings, the law should provide that where the court establishes a violation of a citizen's rights by an administrative authority due to the citizen's insufficient legal knowledge or difficult life circumstances, the court may, on its own initiative —

[16]Тетюев С.В. Особенности производства по административным делам о взыскании обязательных платежей и санкций // Рос. юстиция. 2016. № 3. 37-р.

[17]The set of dispositive actions performed by the parties in the proceedings was studied in detail in civil procedural literature. See: Gurvich M.A. The Right to File a Claim in Theory and Judicial Practice in Recent Years // Jurisprudence. 1961. No. 2. Pp. 132–138; Gukasyan R.E. The Problem of Interest in Soviet Civil Procedural Law / Ed. M.A. Vikut. Saratov, 1970. This methodology shall be applied in the study of the court's powers to control dispositive actions, taking into account certain problematic issues.

both at the preliminary hearing and during the substantive examination of the case — depart from the subject matter or grounds of the claims filed.

Scholars have observed that the court's power to remove an interpreter from the courtroom is insufficiently regulated, since the mere removal of an interpreter deprives the person who does not know or does not sufficiently know the language of the proceedings of the opportunity to exercise his or her rights and legitimate interests.

For this reason, it is necessary to supplement Articles 56–57 of the Code of Administrative Procedure with the court's power to declare a recess in the hearing and to ensure the replacement of the interpreter upon the removal of an interpreter.

Thus, the court of first instance exercises the powers of involving persons in the proceedings and supervising administrative actions. This demonstrates its active role in relation to the parties and the limited operation of the principles of adversarial proceedings and party disposition in this sphere. These powers ensure the fair examination and resolution of disputes with a view to resolving the dispute between the persons participating in the case. The powers of the court to supervise the administrative actions of the persons participating in the case are broader in administrative proceedings than in civil proceedings, encompassing the verification of the existence or absence of legal interest in the protection of rights and legitimate interests, the departure of the court from the scope of the claims declared, and the correct application of procedural coercive measures. In this connection, a change in approach is required in resolving the question of verifying the existence of legal interest in persons applying for judicial protection — such verification should be carried out not by a judge sitting alone without a hearing, but through resolution in a court hearing.

One of the important components of the procedural activity of the court in administrative proceedings in the examination and resolution of disputes arising from public law relations is the court's power to assist the parties in reaching a settlement. This helps to reduce the costs of the parties and the court in examining public law disputes and strengthens an atmosphere of cooperation between the parties. At the same time, court statistics indicate an increase in the number of cases concerning disputes arising from public law relations.

Among the reasons for applying to a court for the resolution of disputes arising from public law relations, mention should be made of the statutory guarantees of procedural form on the part of the state and the relatively low costs incurred by the parties in conducting the proceedings. Although the body administering justice on behalf of the state definitively resolves the dispute and bears all costs associated with such activity, the parties are unaware of the cost to the public treasury. Conciliation procedures, in which the parties independently resolve disputes — even with full reimbursement of costs — cannot be compared with the costs of administering justice. In legal systems that have adopted the principled position of placing the main burden of costs on the parties wishing to have court proceedings under state auspices, there are far more persons seeking initially to resolve the dispute amicably.

All of the foregoing indicates the need to reconsider the powers of the court of first instance in ensuring the settlement of the parties in administrative proceedings. At present, Chapter 151 of the Code of Administrative Procedure provides the parties with the possibility of resolving the dispute in full or in part at all stages of administrative proceedings and during enforcement of a court judgment by concluding a settlement agreement; that the agreement of the parties is carried

out on the principles of voluntariness, cooperation, and equality of rights; that the agreement of the parties is permitted only where the defendant has administrative discretion (discretionary power); that the agreement of the parties may only relate to the rights and obligations of the parties as subjects of the disputed public law relations; and that mutual concessions by the parties are permitted.

In our view, this approach requires certain adjustments. For administrative proceedings encompass not only disputes in administrative legal relations but also disputes in public law relations that differ from administrative legal relations.