Universal Decimal
Classification 342.9

Khakhaleva E. V.

TO THE QUESTION OF PUBLIC-LAW DISPUTES (ADMINISTRATIVE AND LAW ASPECT)

Khakhaleva Elena Vladimirovna,
Doctor of law, Associate professor of the Department of state and legal disciplines, North Caucasus branch of the Federal State Budgetary Institution of Higher Professional Education "Russian Academy of Justice", Chairman of the panel of judges of the Krasnodar Regional Court, Krasnodar.

In the article are examined signs public-law disputes, their difference from administrative cases considered before the court. Here is proposed to separate, through combining by a single term "public court proceedings", independent court proceedings: "administrative cases considered in a judicial procedure" (cases of bringing to administrative responsibility) and "public-law disputes" (for example, disputes about the legality of administrative acts or disputes about the appeal of a decision on bringing to administrative responsibility).

Keywords: public-law dispute; cases arising from administrative and legal relations; executive body.

For a long time the science had not been recognizing the category of public-law disputes, as the very possibility of their existence was not accepted. Meanwhile, all the disagreements, which make entities to apply to court, become disputes, because prior to the court these disagreements have not been resolved. Whether it is a civil law dispute on the division of property, on the ownership of a land plot, or labor dispute for reinstatement of employment – all these unresolved disagreements, when reference to the court, acquire the status of a legal dispute. Depending on the type each dispute has its own name. So, along with civil-law, family, labor, housing, land and other disputes that are covered by the term "private-law disputes", there

is a special category of public-law disputes, the presence of which takes place in the resolution of disputes arising from public legal relations. The last category of disputes is recognized not only by scientists, but also by jurisprudence in 2003.

N. G. Salishcheva, N. Yu. Hamaneva identify the following features of public-law disputes: easier access to justice (reduced terms, features of procedure of preparing a case for court proceedings); assistance for a citizen in the preparation of a petition to court; determination of the active role of court; assigning burden of proof on a public authority; ensuring a fair resolution of a dispute and operational execution of a judgment.

This raises the question of the correlation between the concepts of "administrative case", "public-law dispute" and "administrative-law dispute". It must be said that legal scholars give a different meaning to the term "administrative-law dispute". Generally, administrative-law dispute (broad sense) is considered as a dispute between the parties of managerial legal relations that promotes the identification of administrative cases in executive bodies and administrative cases in courts, such as bringing to administrative responsibility by the court.

From these positions, in order to exclude scientific "confusion", in the literature instead a broad understanding of administrative dispute is suggested to use the terms of "administrative case", "administrative-law conflict", thus, distinguish administrative cases and administrative disputes.

Both representatives of the science of administrative law and representatives of the science of civil procedural law determine administrative-law dispute through legal conflict. In the first case by administrative-law dispute understand a special type of administrative legal relations in the presence of the controversies caused by the conflict of interests in the field of public administration. In the second case by administrative court dispute understand a legal conflict arising between the subjects of public-law and other administrative legal relations on the legality of acts, actions and decisions of public authorities in relation to a citizen or another subject of administrative legal relations.

It seems that in this situation it is not entirely correct to use the word "conflict" (juridical conflict), as the term is used to denote an irreconcilable collision, serious disagreements. Under this interpretation of an administrative dispute settled by the court, it appears that it is such a "collision" of an executive body and, for example, a citizen, that it is impossible to resolve it.

Meanwhile, dispute – this is a mutual bickering, verbal contest, in which each party defends its opinion. That is why we believe that a term of "disagreement" is more appropriate for defining this type of dispute. In connection with this

conclusion, the most successful should be recognized the definition of administrative-law dispute proposed by A. B. Zelentsov. He believes that administrative-law dispute is a disagreement between "the subjects of administrative-law relations in respect of variously understood mutual rights and obligations, and (or) the legality of administrative acts arising in connection with the exercising, applying, violation or establishing of legal norms in the field of public administration and resolved within a certain legal procedure". As signs, the scholar has highlighted such signs as subjects of a dispute, the essence of a dispute – disagreement, the subject-matter in a dispute – public rights and obligations of the participants of a disputable administrative-law relation and legality of administrative acts, a certain legal procedure of resolution of disputes. Types of administrative-law disputes dependent on the subject-matter in a dispute: disputes over an objective right (on the legality of an administrative acts) and disputes over legal rights (for example, a dispute on the legality of administrative-law actions). The main sign and feature of an administrative-law dispute is its subject.

Supporting the position of A. B. Zelentsov, we find controversial the restriction of administrative-law disputes only by disagreements in respect of the legality of administrative acts. Such restriction actually narrows the subject of judicial control up to the check of the legality of only administrative acts, while the subject-matter also includes the conclusion of administrative agreements, the check of the legality of administrative-law actions, etc. Moreover, a dispute shall be recognized administrative-law, even if it has property claims, but they arise from administrative-law relations. Thus, a contesting the legality of an administrative act and claim for damages; a dispute on the legality of an administrative act and return of illegally exacted money – are administrative-law disputes.

We note that for administrative justice is typical attributing to its competence administrative-law disputes related to the protection of the rights and legitimate interests of both individuals and legal entities. In other words, administrative justice is a form of considering an administrative-law dispute.

Based on the definition of A. B. Zelentsov in respect to administrative-law dispute and its types, we delimit the concepts of "administrative case" and "administrative-law dispute", besides, the first covers the second. Administrative case is a case considered by an administrative body, including on a complaint on illegality of a decree on bringing to administrative responsibility. In this regard, we agree with the opinion of scientists, who notes that this is a part of managerial activity. However, in this situation, there is no an administrative dispute; and there is only an administrative-law disagreement, which is settled through an administrative

appeal procedure (by superior body or official). And if this administrative case, in procedure of resolving of which are implemented intraorganizational relations of "power-subordination", is resolved in the pretrial order, then an administrative-law dispute does not arise. These disagreements will be resolved before going to court. In other words, administrative-law dispute arises only in case of appeal to the court with a complaint on unlawfulness of management actions (or inaction) of administrative authorities.

Thus, an administrative-law dispute – is a not settled out prior to court disagreement between an individual or legal entity, on the one hand, and an administrative body or person to whom have been given powers of authority, on the other hand, regarding the implementation by the last one of management actions (or inaction), which is transferred to consideration and resolving in court. Resolving of an administrative-law dispute is implemented in court in the event of public-law relations. Features of this procedure are formed on the basis of the subject-matter of an administrative-law dispute, i.e., on the grounds of the nature of the rights and obligations of its parties or the legality of an administrative act. Subject-matter of a dispute must come from the powers of authority of an administrative body or person to who have been delegated such powers. Otherwise is excluded not only the presence of an administrative-law dispute, but accordingly there is also no subject of judicial control.

Administrative-law dispute is not just of a public-law nature, it is one of the forms of public-law disputes. Other types of public-law disputes include disagreements, for example, between an individual and body of legislative power over the contesting of normative legal act or a disagreement between a person and a local self-government body in connection with the appeal of actions of an municipal employee, etc. From these positions we cannot agree with the opinion of the scientists that administrative-law disputes are disputes arising from administrative-law and other public-law relations. Vice Versa, public-law disputes include administrative-law and other types of disputes arising from public-law relations.

It means that there is an administrative-law dispute in the case of judicial consideration of, for example, applications about contesting administrative acts, decisions and actions (inaction) of administrative bodies, implementation of an administrative contract. It turns out, that public-law disputes correlate with administrative-law disputes as a general and particular, and the concept of "administrative-law dispute" is covered by administrative case, which also includes the cases on administrative offenses that are considered by both administrative bodies and courts.

Terminological difference between the words "cases" and "disputes", which consists in the presence of an unsettled, contentious beginning in the latter term, causes the difference in the concepts of "administrative cases considered before a court" and "public-law disputes". The content of the first phenomenon covers the second one in the part of administrative disputes. If to present the narrow content of the first phenomenon, it includes court cases on bringing to administrative responsibility by courts. If you examine the content of public-law disputes, it lies in considering applications on contesting administrative acts, decisions and actions (inaction) of public authorities, local self-government bodies, officials, state and municipal employees, persons to whom are given the powers of authority, on compensating damage caused by execution of an unlawful normative legal act. In other words, not all court cases are disputes.

Code of Civil Procedure of the RF does not distinguish independent meaning between administrative cases considered in court and public-law disputes, and covers them with a single term – "cases arising from public-law relations". Arbitration Procedure Code of the RF occupies almost the same position, calling them cases arising from administrative and other public relations.

Here, slightly digressing from the logic of exposition, we call attention to the fact that in the APC RF, in contrast to the CAO RF and CCP RF, cases on bringing to administrative responsibility are considered in the manner of action proceedings. However, this kind of court proceedings assumes considering and resolving of disputes. Moreover, considering and resolving of disputes is carried out both in the procedure of action proceedings exercised in arbitration courts and in the procedure of action proceedings implemented in the courts of general jurisdiction. In other words, the essence of action proceedings does not depend on the court, which deals with and resolves a dispute. It turns out that, at bringing to administrative responsibility an arbitration court considers not a case on bringing to administrative responsibility, but legally settles an administrative-law dispute on bringing administrative responsibility. In this case the dispute about the guilt of a person brought to administrative responsibility.

Meanwhile, the courts of general jurisdiction, when bringing to administrative responsibility, under the CAO RF consider namely cases (!) on bringing to administrative responsibility in the manner provided for in the CAO RF, but not through the procedure of action proceedings under the norms of the Code of Civil Procedure of the RF. This means that the courts of general jurisdiction, when bringing to administrative responsibility, by virtue of the CAO RF, cannot to consider and resolve disputes on bringing to administrative responsibility. Thus, one and

the same category of cases (cases on bringing to administrative responsibility) is considered and resolved in the courts of general jurisdiction and arbitration courts not only with the peculiarities, the presence of which can be justified, but in general in different procedural proceedings significantly different from each other!

Absolutely clear that this position of the legislator needs to be reviewed and reduced to a common denominator. Cases on bringing to administrative responsibility should be considered in a unified order either in the order of action proceedings or in the order of administrative legal proceedings. But there is a question about what kind of proceedings (action proceedings or administrative ones) must be regarded as the most appropriate to deal with cases of this category. This procedural problem, of course, needs to be studied, but nevertheless we would like to express the author's point of view on this issue, because the procedural problems are closely connected with the substantive features of the resolution of such kind of cases, and sometimes it is exactly the latter ones cause the existence of the first ones. We see three options, two of which are obvious. If we accept that cases of bringing to administrative responsibility are only cases of state coercion, it is necessary to come from the administrative legal proceedings exercised in the manner stipulated by the CAO RF. If we dwell on the fact that cases of bringing to administrative responsibility are administrative-law disputes, the best variant to resolve them is action proceedings.

However, it is possible to offer a third option, the essence of which lies in the legal nature of cases of bringing to administrative responsibility. The essence of this category of cases allows insisting on the recognition them disputes on the guilt of persons brought to administrative responsibility. However, due to the specifics these cases should not be regulated by the rules of action proceedings, as is the case in the Arbitration Procedure Code of the RF. It seems right to consider cases on bringing to administrative responsibility exactly in the order of administrative legal proceedings under the norms of the CAO RF, but by changing these rules in such a way as to reflect in them the features of resolving disputes on the guilt of persons held administratively liable. The fact is that the presence or absence of a dispute should not affect the form of legal proceedings, in which it is considered. Thus, an administrative-law dispute should be solved through administrative legal proceedings, civil-law dispute – through action proceedings, a dispute about the fault of a person subject to criminal responsibility – through criminal legal proceedings. Accordingly, if there is a dispute about the guilt of a person brought to administrative responsibility, then, obviously, it should be considered in the order of administrative legal proceedings.

However, our position requires amendments to the CAO RF, meanwhile, in accordance with the current legislation the cases on bringing by the courts of general jurisdiction to administrative responsibility cannot be recognized as administrative-law disputes. It is administrative cases considered in court, there is government coercion and the term of "case arising out of public relations" is appropriate. Therefore, having highlighted the specificity of administrative legal proceedings (a combination of applying state coercion while bringing to administrative responsibility and resolution of disputes), we find it incorrect to merge into a single entity these essentially different means of protection of rights, freedoms and legitimate interests through exalting the "case" and at the same time ignoring "disputes". Perhaps, it is more correct to separate them by allocating them to independent legal proceedings: "administrative cases considered in court" and "public-law disputes". It is in this situation, these legal proceedings may be well merged by a unified term of "public legal proceedings".

References:

1. Arbitration Procedural Code of the Russian Federation from July 24, 2002, No. 95-FL [Arbitrazhnyi protsessual'nyi kodeks Rossiiskoi Federatsii ot 24 iyulya 2002 g. № 95-FZ]. *System GARANT* [Electronic resource], Moscow: 2012.
2. Civil Procedural Code of the Russian Federation, No. 138-FL of November 14, 2002 [Grazhdanskij processual'nyj kodeks Rossijskoj Federacii ot 14 nojabrja 2002 g. N 138-FZ]. *System GARANT* [Electronic resource], Moscow: 2012.
3. The Code on Administrative Offences of the Russian Federation, No 195-FL of December 30, 2001 [Kodeks Rossijskoj Federatsii ob administrativnyh pravonarushenijah ot 30 dekabrja 2001 g. № 195-FZ]. *System GARANT* [Electronic resource], Moscow: 2012.