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SUBJECTS OF ADMINISTRATIVE JURISDICTION: STRUCTURE AND CONTENT

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An analysis of the concepts of subject of law and subject of administrative jurisdiction in Russian legal science is given in the article. Stresses the lack in a common law theory of a single criterion of differentiation subjects of law, what conditioned a variety of their classifications. The author alleges the need for science-based definition of the concept of "status of a subject of administrative jurisdiction", which the author proposes to understand as a legal status of the subject of administrative jurisdiction, characterized by a set of rights and duties to consider and resolve cases on administrative offenses. Disclosure of a competence of a subject of administrative jurisdiction reflects the essence of its status.

Keywords: subjects of law, subjects of legal relations, subjects of administrative jurisdiction, the status of a subject of administrative jurisdiction, the competences of a subject of administrative jurisdiction.

The common term of "administrative jurisdiction" can be formulated as follows: "this is a consideration of cases on administrative offences and timely making decisions on them" [29, 7].

The notion of "subject of administrative jurisdiction" should be derived from the generic notion of "subject of administrative and tort law" and the most general

notion of "subject of law". For all branches of law the notion of "the status of subject of law" is one of the key ones that disclose principal juridical institutes. Thus, we need to turn to the analysis of these terms, respectively disclosed in the theory of administrative law and general theory of law.

In domestic legal literature, generally, there is no fundamental difference between the notions of "subject of law" and "subject of legal relations". So, S. F. Kechek'yan, noted that under "the subject of law should be understood: a) a person participating or b) one that may participate in legal relation" [11, 84].

Similar provisions are contained in works of R. O. Halfina, who concludes that the notion of "subject of a legal relation" is narrower than the notion of "subject of law", because the carrier of rights and duties may also be not a participant of a particular real legal relation [22, 31, 114-115]. In fact, other authors, such as D. M. Chechot, support her vision [24, 16].

The result is that, specific bodies, organizations, and individuals, which act as carriers of subjective rights and duties, are understood as the subjects of law and subjects of a legal relation. Hence, in fact we are talking about the same persons [29, 8].

D. N. Bakhrakh emphasizes that by "the subjects of administrative law should by recognized the members of managerial relations, to which administrative and legal norms have given the rights and duties, ability to enter into administrative and legal relations. Legal relations are the main channel of exercising law norms, so the carrier of rights and duties, as a rule, becomes the subject of legal relations and coincides in the general range of both" [8, 41].

According to A. B. Agapova, participants (subjects) of administrative legal relations are persons possessing administrative legal capacity [1, 47-48].

A similar view is also expressed in recent works on the theory of State and law. So, N. I. Matuzov argues that the concepts of "subjects of law" and "subjects of legal relations" in principle are equivalent [17, 263], and M. N. Marchenko says that in modern legal literature, these concepts are often used as synonyms [15, 138].

Thus, in domestic juridical science prevails a view that the notion of "subject of law" should be interpreted as follows: this is a real (and not abstract) carrier of subjective right (equally as responsibility).

However, to address this issue there is a fundamentally different approach.

In this regard, it is appropriate to cite the judgment of L. S. Yavich that Soviet juridical science is characterized by an approach, under which the subjects of law are quite real participants of public relations – individuals or relevant groups (communities, systems, organizations), while bourgeois jurisprudence generally considers

the concept of a subject of law as a purely legal structure, generated by the very law (K. Savin'i, R. Iering, N. M. Korkunov, E. Dzhenks, G. Kel'zen and others) [28, 214-215].

Modern Russian jurisprudence after the critical period of the 90s, associated with the destruction of the foundations of socialist law theory, is beginning to return to the origins of the Russian legal liberalism and humanism, to the ideas that were formed as part of this course. Based on these ideas, it can be argued that it is not a subject of law is an accessory of legal relations, but on the contrary, legal relations and nexuses are the accessory of a subject of law, its attributes. Subject is an axis, around which legal nexuses and relations are formed [4, 17].

The absence in general theory of law a single criterion for differentiation of subjects of law has led to diversity of their classifications, which, naturally, has not added clarity in this matter. For example, V. M. Syrykh emphasizes "three large groups of subjects of law: individuals, organizations, and social communities. The first group includes citizens, foreigners, and stateless persons. The organizations include public authorities, state institutions and enterprises, local self-governments, as well as public associations and economic organization. The group of social communities consists of such subjects of law as people, nation, nationality, the population of the region and labor collective. Special subject of law is the State itself" [20, 318].

Another classification is proposed by M. N. Marchenko. The author believes that "the subjects of the law can be physical (private) persons and legal entities. Natural persons include all citizens (when the monarchy – subjects), foreigners and stateless persons. State and public organizations and institutions act as legal entities – subjects of law, participants of civil relations" [15, 592]. It is obvious that civil-legal aspect prevails in the author's position, and therefore the State, its bodies as participants of administrative-legal relations in this classification simply do not participate.

A great company of legal scholars, such as A. P. Alekhin, A. A. Karmolitskii, Yu. M. Kozlov, A. P. Korenev, N. Yu. Khamaneva, emphasizes the following subjects of administrative law: bodies (officials) of executive power, bodies (officials) of local self-government, state and municipal employees, commercial and non-profit organizations, including public and religious associations, citizens [2, 58; 13, 67-146; 3, 67].

A. B. Agapov divides subjects of administrative law into individual and corporate ones. Under this classification to corporate entities the author refers "public-legal participants of administrative-legal relations" and "private participants".

By public-legal participants the scholar considers public authorities and municipal bodies, organizations and institutions. This group also includes the so-called non-governmental bodies, organizations, which include public associations (political parties, religious and other public associations operating in the field of public-legal relations) [1, 47-50].

Using the legal tenet of "subject of law – an abstract participant of abstract legal relation" and taking into account the peculiarities of administrative-legal regulation, as the basis for classification of subjects of administrative law would be more correct to consider their legal position in the mechanism of state administration. Therefore, in the science of administrative law it would be more useful to talk about the subjects endowed with state-authoritative powers, and subjects, which are not vested with, i.e., the first group of subjects – this are subjects of power (subjects of administrative jurisdiction), and the second group – are powerless ones.

Thus, it seems possible to formulate the following definition of a subject of administrative jurisdiction: "Subject of administrative jurisdiction it is a person defined by a normative legal act, endowed with powers to hear cases on administrative violations and take decision on them in the prescribed procedure and form" [30, 11].

In order to properly define the criteria for the assignment of a certain body to the subjects of administrative jurisdiction, it is necessary to give a science-based definition of the concept of "status of the subject of administrative jurisdiction".

The Latin word "status" means a state, legal position (the totality of the rights and duties stipulated by law) of a citizen or legal person [27, 285].

In the scientific community has been developed the practice of isolating different types of legal status in relation to an individual. At that, N. V. Vitruk proposes introduction of the notion of "general legal status of an individual" and "special legal statuses of an individual". The latter represent totalities of rights and duties, which specify and complement the general rights and duties in relation to different people, characterized by specific features of employment, family and other status [10, 186-187].

Similar views are also expressed by legal scholars. So, I. I. Veremeenko notes that administrative-legal status of an individual in the field of public order protection is a part of the administrative-legal status as a whole, and the latter is a part of the legal status of an individual [9, 35]. D. N. Bakhrakh, in turn, emphasizes that there is a huge variety of special administrative-legal statuses, for example, the status of subjects of authorization system, subjects of administrative guardianship [7, 19].

Thus, with respect to administrative jurisdiction, the general status of a subject of administrative jurisdiction determines the place of the subject in the mechanism of law enforcement. It is a legal status of a subject of administrative jurisdiction characterized by the totality of rights and duties to review and resolve cases on administrative offence s.

Along with common it also makes sense to select a special status of a subject of administrative jurisdiction, which determines the place of a relevant type in the system of mentioned subjects and specifies its legal status in respect to the participants of proceedings on administrative offences.

General status of a subject of administrative jurisdiction is defined by its cross functional rights and duties to consider administrative cases and make appropriate decisions, and special status, in turn, by the fact that it is authorized to hear and resolve certain categories of administrative cases through exercising actions defined by law.

Obviously, that the concept of general status covers all the subjects of this kind, the concept of special status may be used for certain types of subjects, the concept of legal status is applicable to a particular personally individualized person (body, representative of authority) engaged in administrative and jurisdictional activity and is defined as by potential rights and duties as well as by real ones [29, 103-104].

These elements of legal status are considered in juridical literature, including for determination basic criteria of assignment state bodies and positions, which are the elementary organizational and structural unit of a public authority [14, 72; 6, 10], to the subjects of administrative jurisdiction.

D. D. Tsabriya, rightly pointing out that the status of a public authority, being a legal phenomenon, can consist only of legal elements, highlights such elements as the name of a body, the procedure and method of its formation, the area of activity, goals, objectives and functions, the scope and nature of powers of authority, responsibility, etc. [23, 126-127].

At that, D. N. Bakhrakh finds it appropriate to group the elements of a legal status through combining them into blocks. With regard to the administrative-legal status of collective subjects he suggested to highlight the following major blocks of elements:

- targeted;
- structural-organizational;
- competence oriented [5, 25].

Targeted block of elements holds a special place in the legal status of a public authority (and position), because: 1) public authority shall be guided by imposed on it task and not shirk their achievement; 2) this block is a legal basis for determining the scope of authority needed to resolving relevant tasks; 3) the block serves as a legal basis for the establishment responsibility for the failure to perform these tasks [12, 44].

Activity goal of a subject of administrative jurisdiction is the protection of objects (personality, its rights and freedoms, property, environment, etc.) against illegal encroachments in the form of administrative offences.

This goal is achieved by solving such tasks as comprehensive, complete, objective and timely clarification of the circumstances of each case, settlement thereof in compliance with law, ensuring execution of a taken decision, as well as detection of reasons and conditions that lead to the committing of administrative offenses (Code on Administrative Offences of the RF, article 24.1) [19].

Based on the above approach to the legal status of a public authority, it is necessary to analyze the content of the competence of a subject of administrative jurisdiction, which can be defined as a normatively fixed totality of powers to hear cases on certain administrative offenses and to take decisions on them in the prescribed manner and forms. In this connection, it seems possible to group the powers of a subject of administrative jurisdiction, emphasizing four constituent parts (elements) of administrative and jurisdictional competence.

1) "functional competence". Functional competence, which is a part of the special status of a subject of administrative jurisdiction, has significant features that define the place of subjects in their system.

Scientific literature highlights such specific functions of administrative jurisdiction as consideration of cases on an administrative offence (clarification of the circumstances of a case and the identity of a person brought to administrative responsibility, qualification of the offense) and taking decision on the case [26, 12].

Using as a criterion the possibility of application and type of an administrative penalty, N. N. Titov put forward the hypothesis on the existence of an administrative jurisdiction penalty function [21, 6].

In addition to the mentioned functions of a subject of administrative jurisdiction also should be highlighted an additional one – ensuring enforcement of the decision made on a case. The powers of a subject of administrative jurisdiction regarding the organization of execution proceedings include: enforcing execution of a decision with regard to a case concerning an administrative offence, (article 31.3 CAO RF), delay, spreading, suspension and termination of execution of a decision

to impose an administrative penalty (accordingly articles 31.5, 31.6 , 31.7 CAO RF) and settling issues connected with execution of a decision to impose an administrative penalty (article 31.8 CAO RF)

2) "object competence" is powers of a subject of administrative jurisdiction to review the established range of cases on administrative offences [25, 67].

Object competence plays a crucial role in the special status of a subject. Exactly because of it a reasonable allocation of duties for implementation of administrative and jurisdictional activity between different types of subjects happens [29, 37].

Object competence includes the powers to hear cases on specific types of administrative offenses committed by certain categories of persons. So, article 23.5 of the CAO RF enshrines object competence of tax authorities. And in accordance with article 23.2 of the CAO RF commissions for cases of minors and protection of their rights hear almost all cases on administrative offenses of minors.

3) "territorial competence". Territorial competence is conditioned by the presence of powers of an administrative jurisdiction subject, which are related to the territory in which the subject operates. By a general rule, the vast majority of subjects of administrative jurisdiction hear cases on administrative offenses in the place of their commission. However, the administrative commissions and Juvenile Affairs Commissions resolve the cases of this category at the place of residence of offender.

4) "procedural competence". Procedural competence is the content of administrative and jurisdictional activity [16, 73-112]. It includes the powers of a subject of administrative jurisdiction as a party of an administrative process [18, 16]. These powers are conditioned by the procedural peculiarities of administrative jurisdiction implementation. These include the procedure for preparing a case for hearing, the timing of consideration of a case, the form of acts for recording legal proceedings, etc. Procedural competence is the main characteristic of the special status of a subject of administrative jurisdiction.

This is the content of the competence of a subject of administrative jurisdiction, which reflects the essence of its status. Object, territorial and partly functional competences play an important role in the organization the system of subjects of administrative jurisdiction, as well as in establishing the criteria for defining a body as a subject of administrative jurisdiction. As for the procedural competence, it discloses the content of administrative-jurisdictional activity.

Another integral part of the status of a subject of administrative jurisdiction is an organizational block of elements. We mean the provisions determining the formation and composition of a body, the procedure of establishing a post,

the procedure of election (appointment) to a collegial body and the filling of an appropriate post.

Shergin A. P. stresses that responsibility is also an "integral part of the legal status of a subject of administrative jurisdiction, which must bear legal responsibility for violations of the rule of law, the rights of an individual in the performance of its duties" [25, 70].

Thus, the status of a subject of administrative jurisdiction consists of the following components:

- targeted block of elements;
- competence (functional, object, territorial, procedural);
- organizational block of elements;
- responsibility.

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