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ADMINISTRATIVE COURT PROCEDURE AS A WAY TO IMPROVE THE QUALITY OF THE RUSSIAN STATE[1]

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The author analyzes the arguments in the legal literature and scientific discussions in favor of the need for creation of specialized administrative courts in the context of protection of citizens against negative performance results of executive bodies of state power, administrative errors.

Blending of absolutely different institutes: administrative justice and pre-trial settlement of administrative disputes, as well as ignoring the features of administrative proceedings, is noted in the article.

Here is argued that the administrative court procedure will add new qualitative nuances to the model of the Russian state, the system of state power.

Keywords: administrative court procedure, administrative administration of justice, judicial power, administrative justice.

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The title of this article obliges the author to show the process of the emergence of a new stage in the discussion about administrative court procedure and the need for comprehensive implementation of the norm of the Constitution of the Russian Federation on *administrative administration of justice* as a special form of the exercise of judicial power in the country. By itself the existence in the text of the Constitution of the term of "administrative court procedure" determines not only the need for an appropriate interpretation of this norm, but, first of all, makes political elite, top officials, public authorities form in practice a "suitable" institute designed to monitor the activities of administrative agencies and to ensure the legality of their performance of state functions.

In 2012, in the practice of consideration fundamental matters and, at the same time, modern problems of state-legal construction by the country's top officials and prominent political figures, a new theme was revealed – *quality of the state*, which ensures the democratic development of the country and the regime of legality of functioning of state power institutes.

Quality of the state is associated with many democratic institutes, procedures, regimes and methods, and with democracy as a whole. Quality of the state is directly dependent on the degree of implementation of all constitutional-legal norms. This is all the more important when it comes to techniques and processes to protect the rights and freedoms of citizens, to the guarantees of implementation of the powers of authority by state bodies without violations and without negative consequences for the society, citizens and the very State.

Quality of the modern Russian state is directly connected with the judiciary, with all its attributes, appropriate organizational and functional signs, institutes, substantive and procedural legislation. Change (improve!) the quality of the state – means to raise the activity of state bodies and officials to the next level, which would allow instantly (or "within a reasonable time") spot the difference between the old order of public administration and the newly created one. And do not just see the difference in the practical activity of the state and its bodies, but, most importantly, that the society could see that the administrative life of the state apparatus has become more democratic, more understandable, and more open, that tools of monitoring over the activities of officials really work.

Improving of the quality of the state is improving of organizational and functional indicators and characteristics of the bodies in all branches of state power. Increasing the quality of the organization and functioning of the *judiciary*, of course, should be connected with the need to strengthen the external state (judicial) control over executive power, elimination from administrative practice of

arbitrariness, illegal actions (inaction), administrative errors, prevention of abuses in the exercise of public functions and the provision of public services.

If you recall the purpose of all branches of public administration, it is easy to make sure that *legislative power* (even if to reason quite superficially) in the course of its activity creates a legal ways to ensure the rights, freedoms of citizens and legitimate interests of all the subjects of law. *The judiciary* also serves for protection of law, establishes the legitimacy of practical activities, resolves arising disputes, recognizes the activities of public authorities legal or illegal (and, therefore, recognizes the legal acts of public authorities legal or inactive). In other words, here should be noted that legislative and judicial power always work in favor of rights and freedoms of man and citizen, "good" methods in the system of public administration and *proper* public administration. And only executive power (as soon if it has been planned initially), taking into account its purpose and authoritative potential, in any way sets obstacles for citizens and legal persons, introduces into practice excessive controlling mechanisms; executive power is initially "established" "against" citizens; it suspects them in wrongful conduct. Executive power rarely itself initiate procedures for revealing appropriate arguments that are needed for proving citizens' rightfulness. Executive power, even in conditions of today's state of law, in the presence of a colossal amount of normative legal acts that establish "legal framework" and numerous restrictions on representatives of executive branch, is trying to include a citizen (or other legal entity) in the list of "long wait" in the exercise of public functions or the provision of public services.

Exactly executive power is increasingly requires the improvement of its *quality*, *organization* and *functioning*. In practice, this does not mean at all that we need legislative novelties that can fully eliminate the arbitrariness of the executive branch and establish democratic order in it. They have already been normatively enshrined in a large number. The main thing here is a judicial control that is able to determine violations of executive power, point to them and prohibit them. And this requires new organizational changes in the structure of the judiciary itself, the development of modern procedural rules for resolving administrative-legal disputes and eliminating administrative errors.

Thus, we come to the conclusion that the quality of the Russian state will certainly be increased if, in practice, implemented constitutional and legal norm on administrative court procedure. It is sometimes said that this norm has already been implemented; this position is based on the fact that procedural norms of the Civil Procedure Code and the Arbitration Procedure Code of the RF contain norms on administrative court procedure. In our view, such a position is a misconception:

first, about the theory and practice of separation of powers; secondly, about the structure of judiciary in the modern political and legal conditions; thirdly, about the legal nature of disputes, which are considered in courts. Then, fourthly, to name civil (or arbitration) procedural legislation administrative one – it means actually disparage the theory of public and private law, their separation, private and public interests; and finally, fifthly, developing administrative legislation and administrative law today cannot be imagined without administrative process (administrative court procedure), as the very development of administrative law, its new institutes, administrative procedures and administrative bodies require a corresponding development of the judiciary for a comprehensive and adequate control by the judiciary.

As is known, legitimate activities of executive power bodies, prevention of commission and overcome the consequences of administrative errors, formation of new conditions, procedures and ways of effective public administration, building a system of effective control over the activities of administrative bodies and their officials – all these tasks are real for solution only in conditions of functioning of formed democratic standards and principles of modern constitutional state.

Federal laws and other normative legal acts in the field of formation the system and structure of the executive bodies of state power, public service, procedure for the development and functioning of normative legal acts of the executive authorities, which have been adopted in Russia over the past 15 years, are aimed at ensuring the legality and transparency of public administration, at protection the rights, freedoms and legitimate interests of citizens, legal persons and organizations when they interact with administrative bodies and their officials.

Start (and simultaneously resumption) of the debate on the need to develop the system of administrative court procedure was defined by the opinion of Vladimir Putin, which had been expressed in the article "Democracy and Quality of the State". In the section of this article "On the development of the judicial system" Putin wrote: "We will make justice accessible to citizens. Including, we will introduce the practice of administrative court procedure, not only for business, but also for special consideration of disputes of citizens with officials. The spirit and meaning of administrative court procedure is based on the fact that a citizen is more vulnerable in comparison to an official, with which it argues. That the burden of proof should lie upon administrative body, rather than on a man. And that is why the practice of administrative court procedure is initially focused on the protection of the rights of citizens" [22]. The focus of this statement is, in my view, the desire to *introduce the practice* of administrative court procedure. When people say

so, it means that they stress that up to this point this institute did not exist or it was truncated. On the other hand, in principle, for specialists there have not been represented any new findings on the role of administrative court procedure. But the main thing is the very actualization of the issue of administrative administration of justice; refers to the role of administrative administration of justice in the protection of the rights and freedoms of citizens. And that is why it is possible to hope that the institute of administrative court procedure expects an attractive future, in which it will be carried out by specialized courts under specifically designed administrative and procedural rules. It is from these political and legal positions the opinion expressed by Vladimir Putin represents particular interest. However, one cannot fail to notice how focused on "*spreading the practice of administrative court procedure*" "*for special consideration of disputes of citizens with officials*". If top government officials say that we are just going to enter "the practice of administrative court procedure", it follows that at least there is some doubt in the fact that normative legal acts operating in this field of relations do not correspond to the new quality of the judiciary and the state itself. This, from my point of view, is the main essence of the analyzed words of Vladimir Putin. Thus, opponents of the institution in the country of administrative courts, who state that in Russia has long been established and is effectively functioning the system of administrative court procedure, can argue with the President of the Russian Federation on the issue… At the same time this idea of Vladimir Putin was supported by the country's well-known public figures. For example, the Russian Prosecutor General Yurii Chaika told reporters: "I support this with both hands, because, of course, there should be special courts to deal with disputes between the state and citizens. This issue is long overdue" [35].

Decree of the President of the Russian Federation No. 601 from May 07, 2012 "On the Main Directions of Improving the System of Public Administration" [1] required "up to the 1st of September 2012 to take measures to increase accessibility to justice for citizens, organizations and associations of citizens in consideration of disputes with public authorities of the Russian Federation, through introducing into the legislation of the Russian Federation changes providing for the improvement of administrative court procedure". Thus, administrative court procedure already before September 01, 2012 must somehow be changed and improved with in order to ensure both *accessibility* to justice and its *effectiveness*. It turns out that this order of the President of the country has not been met.

"Concept of the federal targeted program "Development of the Judicial System of Russia for 2013-2020" [2], which was approved by the decree of the Government of the RF No. 1735-r from September 20, 2012 , notes the need to address

(albeit largely already known) problems of the Russian state and society. Among them, the main are: conducting of a *judicial reform* that ensures the efficiency and fairness of decisions taken by court; fight against corruption; significant improvement in access to information about the activities of public authorities. Unfortunately this Concept does not contain specific plans for improving administrative court procedure within the framework of the planned changes under the targeted program "Development of the Judicial System of Russia for 2013-2020". It states that "at the present stage the judicial system operates in an environment of implementation in the state of intensive socio-economic processes and reforms, which poses new tasks and defines the need to move courts to a qualitatively new level of performance. This necessitates serious state support and application of program-oriented approach to attract additional resources in order to enhance the effectiveness of courts". But, unfortunately, there is no space left for the development of administrative court procedure within this program-oriented approach. This document in relation to the research topic has so-called "negative potential" because it does not introduce into the system of reforming judiciary the development of capacity of the institute of administrative court procedure and the formation of special administrative-procedural legislation. However, this concept is also important in the analysis of current trends and building up the vectors of development of new approaches to the reform of the judiciary.

Here, however, it is possible to criticize the authors of the Concept for globalism in the goal setting and for the generality and simplicity of the proposed methods and ways of solving the problems of the judiciary and functioning of courts. Regarding the *globalism* of set goals: the Concept enshrines the idea of necessity for a "qualitative renewal and creation in the Russian Federation the justice system, which is adequate to the requirements of a constitutional state". It is the model of "constitutional state" and legal statehood requires the presence in the judiciary system and structure of a specialized administrative administration of justice, which as an institute corresponds to fundamental principles that form the very judiciary.

The above-mentioned Concept is not planning a *qualitatively new* structuring of justice and creating a new kind of court proceedings. What, then, is the subject of the Concept? Actually, are being planned, for example: the *amount of financing* of this federal targeted program "Development of the Judicial System of Russia for 2013-2020"; computerization of the judicial system and the introduction of modern information technologies in the activity of judicial system; construction, renovation and acquisition of courthouses; technical equipment of courthouses by technical means and security systems; provision of mobile alarm devices to judges

acting outside the court buildings; about providing judges with living quarters. By itself the investment in the judicial system is essential. It is obvious. Therefore, this program will ultimately be beneficial for the development of the judicial system. However, it is more about the technical aspect of the issue, about finances, "constructions", etc. Actually, we need to pay attention to the core issues of the structure of the judiciary in conditions of a constitutional state. The term of "constitutional state" requires state power and governments, at first, to create an adequate system and structure of the judiciary, and only then ensure technical and production conditions of implementation by judges of their powers.

Fall 2012 was full of scientific forums devoted to the themes of "administration justice" and "administrative court procedure". For example, October 21, 2012 the State Duma Committee on Legislation and State Building organized and conducted a "round table" on the development of administrative justice in Russia. At the meeting of "round table" expressed confidence that a draft law on the establishment of administrative courts in the country developed by the Supreme Court of the Russian Federation (after refinement) will be accepted. There were noted already known stages of the draft law, since 2000. Despite many arguments in favor of the establishment of administrative courts, were also made some skeptical judgments on this issue. For example, S. Pashin "doubted that administrative courts, which would be established within the framework of the courts of general jurisdiction, would not perceive the traditional flaws of system – controllability, advertency to the instructions and wishes of government authority" [36]. Chairman of the Higher Arbitration Court of A. Ivanov proposed dividing administrative jurisdiction between arbitration courts and courts of general jurisdiction. In detail, this view is as follows: "cases, which belongs to the sphere of general administrative law, should be retained for the courts of general jurisdiction; and economic aspects should be attributed to the jurisdiction of arbitration courts" [36]. As was stated at the "round table", representatives of the judicial community would be able to more fully discuss the issue of administrative court procedure at the All-Russian Congress of Judges to be held in December 2012 [36].

Why do we need to slow down the development of special administrative-procedural norms, on the basis of which consider administrative-legal disputes? Who benefits from this? Every modern country is proud that it has an effective judicial control over the activities of administrative bodies and officials. At that, demonstrates an appropriate special administrative-procedural form of exercising such control. Opponents of the formation in the country of administrative courts say that, of course, over time, some bodies will be established to deal with disputes

between the power and citizen, at that, for some reason they call a Chamber to consider such disputes, which should be located somewhere within the judicial system. It is thought that when we talk about the judiciary, it is always necessary to speak about courts and judges, and not about chambers!

October 31, 2012 Committee of the Council of Federation on Constitutional Legislation, Judicial and Legal Affairs and Civil Society Development held a "round table" on the topic "Administrative Justice in Russia: Problems of Theory and Practice" [34]. First Deputy Chairman of the Supreme Court of the Russian Federation, Doctor of Law, P. P. Serkov in his speech very fully and convincingly proved the necessity of a new stage in the development of the Russian model of administrative justice, administrative court procedure and forming in the country of specialized administrative administration of justice. Deputy Chairman of the Higher Arbitration Court of the Russian Federation, Candidate of legal sciences, T. K. Andreeva considered the topical issues of administrative court procedure exercised by the judges of arbitration courts of the Russian Federation. Advisor to the President of the Russian Federation, Doctor of Law, Professor V. F. Yakovlev in the analysis of issues of improvement administrative court procedure in Russia drew attention of the "round table" participants to the need of development of pre-trial resolution of disputes and legal cases arising in the field of public law. The author of this article devoted his speech to the analysis of modern theoretical and applied problems of practical implementation of constitutional-legal norm on the specialized administrative court procedure, pointing out that the establishment of administrative courts in the Russian Federation corresponded to the strategy of *innovative development of the country* [10, 104-107, 18 , 48-57] and the state-legal construction.

Many countries demonstrate attention to the problem of formation and development of administrative justice. For example, the German Society for International Cooperation (Deutsche Gesellschaft für Internationale Zusammenarbeit – GIZ) organized the III-rd International scientific-practical conference on administrative law, as well as Regional Seminar within the framework of "Rule of Law Initiative for Central Asia" of the European Union on the topic "Issues of theory and practice of application administrative justice in the European countries and the countries of Central Asia" (2-3 November 2012, Astana, Republic of Kazakhstan). The main issues discussed by the participants at the scientific-practical conference were: platform, principles and standards of the rule of law; formation of an effective state and assistance in conducting of a judicial reform; search for an optimal model of administrative justice in the legal doctrine of the countries of Central Asia; problem of formation of administrative justice in the countries of Central Asia;

"administrative and economic administration of justice"; regulations of administrative-procedural activities; European model of the Code of Administrative Procedure and the national administrative-procedural legislation; value of administrative justice in a democratic state and the place of administrative justice in the structure of the judiciary; independence and effectiveness of administrative justice; compliance with judicial decisions by administrative authorities. Deputy Minister of Justice of the Republic of Kazakhstan Z. Kh. Baymoldina considered in her speech the current state and prospects for the reform of administrative justice in the Republic of Kazakhstan. An opinion was expressed on the feasibility of developing science-based, practically verified recommendations for further improving of the legislation of Kazakhstan and other countries. Professor of Caspian Public University, Doctor of Law, R. A. Podoprigora pointed out the lack of useful practical actions to improve the norms of the Code of Civil Procedure, which now covers issues of administrative justice. R. A. Podoprigora considered the problems of preparation and issuing of administrative legal acts, as well as the complexities of the judicial procedure of consideration administrative-legal disputes. Associate Professor of Tashkent State Institute of Law, PhD of legal sciences, L. B. Hwan noting that until recently approaches to implementing the norms of administrative legislation were based largely on the models of Western European experience, stressed the importance of taking into account the experience of development of legal systems in such Asian countries as Hong Kong, Thailand, India, Singapore, Japan, Korea, China. In many of these countries, according to L. B. of Hwan, was successfully implemented the concept of a judicial contesting the acts and actions of public authorities. The result of the scientific-practical conference became the development of recommendations for the introduction in a system of state-legal construction of an effective administrative justice for achieving the following purposes: improvement of activity of administrative bodies to increase the credibility of the state and strengthen public confidence in it; increasing of efficiency and strengthening of compliance with the principle of legality of actions (inaction) of administrative bodies; establishing in law and observance in practice the principle of prohibition of arbitrary actions by administrative bodies; establishing guarantees for the operation of the principle of equality before the law and court; improving the predictability and legal certainty of administrative decisions to ensure investors' confidence in their activities in the country; strengthening of protection of the rights and legitimate interests of citizens and legal persons in their interrelations with administrative bodies in the use of pre-trial procedure of appealing administrative decisions and in judicial process; ensuring the transparency of the adoption procedures of managerial acts and anti-corruption;

implementation of international legal standards into national legal systems in order to develop legal statehood.

The experience of legislative regulation of the organization and implementation of administrative court procedure in post-Soviet countries can be traced by the published Codes of Administrative Procedure of Azerbaijan, Armenia, Georgia, Latvia, Lithuania, Ukraine, the Republic of Estonia, and Bulgaria [24].

The role of administrative justice in the mechanism of protection the rights and freedoms of man and citizen is to be considered at the expert-practical conference in the Republic of Kazakhstan (November 29, 2012, Astana). Thus, the issue of development of administrative justice and, therefore, administrative court procedure has been given enough attention in the last time.

Further noteworthy is the fact that unfortunately the task of forming a new model of administrative administration of justice in Russia is not seen in the decisions taken by the judicial community of Russian. For example, the Decision of the VII All-Russian Congress of Judges from December 04, 2008 "On the State of the Judicial System of the Russian Federation and the Priorities of its Development and Improvement" [38] did not include measures to improve the structure of court procedure, creating a system of specialized courts, development of administrative administration of justice and development of an administrative procedural legislation (such as the Code of Administrative Court Procedure). At this congress of judges the Chairman of the Higher Arbitration Court of the Russian Federation A. A. Ivanov again repeated the idea that "an effective system of consideration administrative disputes may be created in a different way – through the development of pre-trial settlement of disputes. This can be achieved through creating, for example, a federal administrative service, which would be a kind of filter for separation of cases brought before the courts, on the one hand, and for facilitation the consideration of these disputes and reducing the time of their consideration for the parties, on the other" [37]. In this case are mixed absolutely different institutes: *administrative administration of justice* (institution of administrative courts) and *pre-trial settlement of administrative disputes*. One should not replace the other. By the way, development of both institutes is relevant in Russia.

For the last fifteen years by the scientists have been expressed many opinions, arguments and justifications both in support of the establishment of administrative courts in Russia and against this idea [27, 416-428]. If we analyze some of the published during 2012 scientific papers on the issue of administrative justice or administrative process, you will need to note an interesting, from a theoretical point of view, analysis of the mentioned issues, but without a noticeable advance *towards*

a new quality of ongoing discussions. For example, M. Ya. Maslennikov, referring to the already long established approaches to the structure of procedural activity (that is, the existence of three procedural branches: civil procedural law, criminal procedural law, administrative procedural law) determines administrative process in the structure of the subject of administrative law [14, 26-27]. M. Ya. Maslennikov defines administrative process as a branch of the Russian law through "a totality of procedural-legal norms and institutes that regulate the activity of subjects of law enforcement and other participants of administrative-procedural legal relations, in a sphere not related to managerial (service) subordination" [14, 31]. All the previous reasonings of M. Ya. Maslennikov about the content of administrative-procedural activity were limited to indication of: the order of application the "administrative coercion measures in performance of executive authorities (administrative-legal sanctions)"; "administrative-procedural (managerial) activity"; "procedural actions of the participants of administrative process for exercising of substantive administrative norms and procedural-legal norms governing the order of application of the first ones" [14, 27-28]. Thus, by M. Ya. Maslennikov, there is no place at all for *administrative administration of justice* in the structure of the modern administrative-procedural law. In other paper M. Ya. Maslennikov enters into a debate with Professor D. N. Bakhrakh about the content of the project of the *Russian Code of Administrative Procedure*, which he has proposed for discussion [9]. According to M. Ya. Maslennikov, "uncertain "broadness" of administrative process" leads to the need for a "conceptual delimitation of administrative process from administrative procedures, administrative-procedural norms from administrative-technical regulations", "to the confusion in the debates about the usefulness/uselessness of the Executive Code of the RF"[16, 27-28]. From my point of view, the two authors because of the already overdue secondary debate forgot to discuss the main in theme of "Administrative process" issues about administrative court procedure, since D. N. Bakhrakh pointed out that "in the present time administrative-procedural law is just a big group of norms that regulate procedures of authoritative activity and are in the system of administrative law" [6, 5]. D. N. Bakhrakh defines administrative-procedural law "as a large group of procedural norms that are systematized within individual institutes of administrative law. Many of them have their own procedural part" [6, 5]. Moreover, in such statements, in fact, both M. Ya. Maslennikov and D. N. Bakhrakh occupy absolutely the same position. M. Ya. Maslennikov finishes his article with the words: "At different times, codification of administrative-procedural norms has been hampered by a lack of convincing arguments. But time, circumstances, objectives and tasks of socio-political transformations are changing"

[16, 28; 15, 22-40]. Unfortunately, despite these changes there is *no* change in the understanding of administrative process and justification of its new requirements that correspond to modern ideas about the essence of a constitutional state.

In the administrative-legal special literature is once again clearly seen the devotion of legal scholars to the idea of adoption the Code of Administrative Court Procedure of the RF [20, 19]. However, as is well known, the repetition of expressed and long discussed idea does not introduce new arguments to discussion, thus weakening the capacity to implement this idea. N. N. Tsukanov, reasoning about the possible directions of systematization of administrative-procedural legislation, considers it appropriate to develop and adopt the Foundations of the administrative-procedural legislation to establish specific standards for different types of administrative proceedings [30, 103]. However, this proposal is, in essence, a repetition of old idea on the multiplicity of administrative processes in Russia. Some sort of Russian specifics – the multiplicity of administrative processes! In other countries with a developed legal system administrative process is always one. In his article M. V. Solovov considers *administrative procedures* as *part of administrative process*. It is possible understand the author of the article, because he tries to point out the close intertwining of administrative procedures and administrative justice. However, the aims and tasks of the mentioned institutes are different [26, 117]. In addition, M. V. Solovov writes about "possibility to implement an especial administrative-procedural process"; however, he does not explain: what is *"administrative-procedural process"*?!

Administrative-procedural relations are being explored by modern writers also with regard to the issue about the *subject of administrative-legal regulation*. For example, A. I. Stakhov depending on the nature of the relations of participants in the structure of the subject of administrative law distinguishes a group of homogeneous relations, which he calls "relations developing with the participation of judicial bodies" (here the author indicates, including, "relations arising in consideration by the courts of general jurisdiction and arbitration courts of complaints (applications) of individuals and legal entities on actions (inaction) and decisions (normative legal acts) of administrative-public bodies") [28, 13]. Certainly, the structure of the subject of administrative law can be reviewed from different perspectives and different names, but, in fact, from that nothing changes: since in the subject of administrative law from the mid 90-s of the last century have been entering the relations in the sphere of activities of courts for resolving administrative-legal disputes.

Separate authors, speaking about the role of administrative law in ensuring the rights and freedoms of man and citizen, repeat the thesis on the need for

establishing administrative courts in Russia, without adding any new arguments. For example, S. S. Kupreev notes that "to date we are very far from establishing administrative courts. And first of all it is connected with the financial problems, because in the conditions of overcoming the consequences of the global financial crisis, the State does not have the necessary level of financial resources to create them". In practice, quite the contrary; First, even "in the conditions of overcoming the consequences of the financial crisis" huge funds for the development of the judicial system are allocated in Russia. Here you need to once again recall "the Concept of the federal targeted program "Development of the Judicial System of Russia in 2013-2020" and its financial support. And, second, at this time we do not know even the general outlines of the financial support of the process of establishment administrative courts in Russia.

In new administrative-legal studies appear some new shades of research ideas about the need and usefulness of administrative courts for the state and all kinds of state activities. For example, scientists link the formation of administrative courts with the ability to prevent and overcome (remove from administrative practices) *administrative errors* [8, 3-4]. N. A. Bocharnikova, in developing the problem of administrative errors, actualizes the theme of her research by the processes of the undertaken in the country multifaceted modernization of state-legal construction. In the opinion of this author, it is impossible to achieve the planned results of modernization policy and the real practical reformatory state activity without significant reducing of the level of corruption in the country and eradication from practice the cases of erroneous administrative activities. From the point of view of N. A. Bocharnikova "administrative errors of executive authorities, officials and public servants today have turned into a serious political and socio-legal problem. They show legal insecurity of man and citizen, because as a result of administrative errors the rights, freedoms and interests of citizens are violated. Creating an efficient mechanism to detect, prevent and correct administrative errors could be of paramount importance for reforming the system of public administration" [8, 3-4]. The author presents new arguments in favor of the need for specialized administrative courts to protect citizens from the negative performance of executive bodies of state power, from administrative errors. In this regard, substantiates the expediency of adoption a Federal constitutional law "On the Federal Administrative Courts in the Russian Federation", as well as the need to determine the features of administrative court procedure in the draft Code on Administrative Court Procedure of the RF that is being developed. According to N. A. Bocharnikova, "legal mechanism to combat and overcome administrative errors must be based on the idea and practice

of modern administrative court procedure. Consideration of administrative-legal disputes in administrative court procedure shall provide accounting of the peculiarities of administrative activities of executive bodies, officials and public servants, the principal characteristics of both rule-making and administrative enforcement process, the principles of administrative procedures" [8, 14-15].

In the dissertation research have begun to pay more attention to the administrative-procedural terminology, with emphasis on the formation of administrative courts. For example, N. A. Tunina in her master's thesis examined the legal nature and theoretical problems of administrative claim as a means of protecting an infringed public law [29]. N. A. Tunina comes from the fact that article 118 of the RF Constitution obliges to create in the country administrative court procedure, which should be of *claim nature*. At that the author emphasizes *competitiveness, equality of the parties* and *the principle of the free exercise of material and procedural rights by the parties to legal proceedings* as the most important principles of action proceedings in cases on public legal relations [29, 8]. A more detailed list of the principles of administrative court procedure is presented in the master's thesis of E. A. Shilova: principle of priority of rights and legal interests of citizens; burden of proof on an entity endowed with powers of authority; active role of the court; completeness of judicial protection; procedural economy; equality of the parties and the principle of the free exercise of material and procedural rights by the parties to legal proceedings; immediacy of trial proceedings; and others [31].

A brief analysis of scientific statements regarding the issue of civil proceedings, in which as a gold thread runs the idea of the so-called its *differentiation*, is very important. Several scientific papers on this subject have been prepared in the recent time [11; 21; 25]. Through such terms as "differentiation", "unification", "simplification", "optimization" [19] of civil and arbitral proceedings, can be explained many of the problems of the current Russian court proceedings, as well as affect on the nature of the discussion on the topic of "administrative court procedure". It is especially difficult to understand the reasonings of authors about the belonging of proceedings on the cases arising from public legal relations to civil process of the cases arising from public relations, who write about the "differentiation of civil process" [12, 150-182]. *Administrative process* inherently should not be included in the structure of *civil* process! Most importantly – because of such terminology details we forget the most important thing – are there peculiarities of administrative court procedure? [12, 159-163]. If not, then in science appears an opportunity to argue for the need to change the RF Constitution, which has established a special kind of court proceedings – administrative court procedure.

At some turn of legal assumptions a desire may appear to change the constitutional-legal provision on the ways of exercising of the judiciary in Russia: "*The judicial power is exercised in the Russian Federation through a unified and differentiated civil proceedings*". Sounds, as one of my senior colleagues says, *wildly*! However, if carefully study the recent works on civil proceedings, and even there we will find a correct view about the need for legislation on administrative court procedure. For example, E. V. Slepchenko concludes, that "there is every reason for the conclusion on the need for unification of the considered procedural rules, removing them from the Arbitration Procedural Code of the Russian Federation and placement in a single Code on Administrative Court Procedure of the Russian Federation" [25, 141]. One of the most important findings in the work of E. V. Slepchenko can be regarded the statement that "separation of the norms of administrative-procedural law between the three codes – Code of Civil Procedure of the Russian Federation, Arbitration Procedural Code of the Russian Federation and Code on Administrative Offences of the Russian Federation – does not provide, in our opinion, the necessary level of protection of the rights of citizens and organizations from the arbitrariness of authorities" [25, 143]. However, despite the positive and correct reasonings of the author on these issues, the final conclusion is very unjustified and, therefore, controversial. E. V. Slepchenko says that neither formalization of administrative court procedure as an independent type of proceedings, nor implementation of the proposal for the adoption of the Code on Administrative Court Procedure "indicates the need for creation of special administrative courts" [25, 145]. The author suggests to leave the problem unresolved; "all cases arising out of administrative and other public legal relations should be dealt with by the courts of general jurisdiction, specialized structures and panels of these courts. Arbitration courts herewith should be combined by the courts of general jurisdiction in a unified judicial system. All of this will eliminate quite an acute problem of determining the jurisdiction of these cases, which are now being considered both by courts of general jurisdiction and arbitration courts" [25, 145].

The reasonings of E. V. Slepchenko about merging arbitration courts with the courts of general jurisdiction in a "unified judicial system" at first seemed highly innovative and assumed for a long term. But as it turned out, it is only at first glance. At the end of October 2012 it was reported about the plans to join (merge) the Supreme Court of the Russian Federation and the Higher Arbitration Court of the Russian Federation [39], and just after it – a new idea of moving the joint court in St. Petersburg [42]. Perhaps it will be so in the future. And only then there will be

just one step to the transfer of the capital of Russia from Moscow to St. Petersburg! As you might expect, in this case "will not stand" part 2 article 70 of the Constitution of the Russian Federation, which says: "The capital of the Russian Federation is the city of Moscow". And hardly at that will be remembered the talking about "not touching" to the text of the Constitution and not offering any amendments to it. By the way, such introducing of novelties to constitutional and legal norms, obviously, does not fit the ideology of the "implementation" of the Constitution of the Russian Federation. While all of this is in the spirit of Peter's time!

As can be seen, despite of all the serious approaches to the understanding of administrative court procedure in Russia and the presence of attention to the issue of establishment of administrative courts, the formation of administrative court procedure is not included in the plan of *innovative development* of the country, administrative courts also do not fit into a big plan of initialization and implementation of *innovative* ideas. It turns out that the planned transfers of the Supreme Court and Higher Arbitration Court of Russia from Moscow to St. Petersburg – these are the main features of the development of the judiciary; it is "truly innovative way" of reforming the judicial system! It may be that way we are going to improve the quality of justice, and, notably, to ensure access to justice by moving the courts into the West corner of Russia; will the quality and accessibility of justice clearly increase due to its greater distance from the population?!

N. A. Gromoshina, speaking about specialized courts, argues that "separation, splitting up of relatively common today civil court procedure will result in more visible negative consequences" [11, 99]. As can be seen from the scientific analysis of the problem under discussion, the author is against specialized courts, since here is put a direct question: "Is it acceptable at the expense of a beggar state to conduct dubious social experiments?" [11, 98]. About the "beggar" Russian State and numerous experiments we can talk meaningfully in other articles. Now just need to emphasize that again and again the idea of forming administrative court procedure and administrative courts is being denied due to lack of finance, "bad roads in Russia" that do not provide access to justice for "ordinary citizens". Here it is important to add, that in scientific works constantly repeat the same arguments "against" the establishment of administrative courts in Russia. For example, V. S. Anokhin agrees with the opinion of scientists, who offer not creating of administrative courts, but improving of procedural legislation regulating administrative court procedure [5, 12]; establishment of administrative courts, in his opinion, would weaken the accessibility to justice, such principles as "adversary character of a judicial process, equality of parties, etc. would be violated" [5, 12]. In short just

have to note here that exactly administrative process manifests different principles, thanks to which specific objectives are achieved and special tasks are resolved in respect of administrative court procedure intended to address administrative-legal disputes.

In the scientific works on the problems of justice in civil cases this type of court proceedings is defined as "activity of a court of general jurisdiction or arbitration court to hear and resolve cases referred to their jurisdiction by civil procedural or arbitration procedural legislation that sets the very order of proceedings" [12, 27]. Thus, firstly, obviously, civil cases automatically include "cases arising out of public legal relations", and, secondly, only civil and arbitration procedural legislation refers these cases to the jurisdiction of the courts of general jurisdiction and arbitration courts. *Here you can put a question: whether such legal provisions correspond to constitutional and legal norm on the forms of exercising judicial power in Russia and about the purpose of the administrative court procedure itself? Whether create or not such normative findings any preconditions for limiting access to justice and to the protection of violated rights and freedoms of citizens, legitimate interests of legal persons?* Where, then, is the location of administrative procedural legislation, administrative law, administrative practices, and administrative-legal disputes? How can you justify affiliation of negative results of administrative law norms action to the competence of the courts of general jurisdiction and arbitration courts? They say that such norms are established by the CPC RF and APC RF. But these Codes appeared in the process of law-making activity in the conditions of the relevant concept and prevailing in those years legal ideology in the formation of procedural legislation. Times are changing; and procedural legislation should also be modified.

The scientists note that "from the letter" and "spirit" of article 46 of the RF Constitution, as well as from the legal positions, which have been expressed repeatedly by the Constitutional Court of the Russian Federation, it follows that it is possible to apply to court for resolving any dispute affecting the rights and interests of a citizen or other subject of Russian law, including disputes arising from public legal relations" [7, 8]. It immediately raises the question: what, in this case, have the Constitutional Court of Russia asserted? That in our country there are no guarantees of judicial review of legal disputes arising, including between citizens and administrative authorities and their officials? The Constitutional Court of the RF will always note the existence of legal options and legal mechanisms for challenging in court the actions (inaction) of the bodies of executive power and their officials. It is impossible to provide answers to these questions in a different way. However, the question remains: does administrative court procedure in

all its features, purpose, principles of implementation match known standards of civil procedural and arbitration procedural justice? It seems very difficult to respond positively to this question, in view of the constitutional-legal meaning of the norm on administrative administration of justice.

FCL from February 07, 2011 "On the Courts of General Jurisdiction in the Russian Federation" in paragraph 2 article 4 establishes that the courts of general jurisdiction consider all civil and *administrative cases* on protection of violated or disputed rights, freedoms and legal interests except cases, which are, in accordance with the legislation of the Russian Federation, addressed by other courts. Thus, in this formulation the term of "administrative cases" gives rise to other interpretations of this institute. First, the Federal Constitutional Law, establishing in the text this term of "administrative cases", gives rise to assumption about its direct and main interaction with the term of "administrative court procedure". Second, "administrative cases" are directly linked to the need *to protect violated* or *disputed rights, freedoms* and *legitimate interests*. Thus, *administrative-tort* characteristics of "administrative cases" in this case are not acceptable, it is about judicial protection of the rights, freedoms and legitimate interests of natural or legal persons. That is why a case on administrative offence, theoretically, can be classified as "administrative case". However, in terms of its content from the position of both a subject of administrative-legal dispute, participants of a trial, and the features of the procedural rules of a case on administrative offenses – these are not administrative cases in the sense of the considered article of the FCL "On the Courts of General Jurisdiction in the Russian Federation".

As you know, the legislation on administrative offenses (in its substantive and procedural content) has been developed and have being operated in practice since the Soviet era, that is, long before the adoption in1993 of the Constitution of the Russian Federation, which has enshrined the term of "administrative court procedure". As well as other types of justice in Russia – criminal or civil court procedure had a long history of growing and development. However, in the text of the Constitution of the Russian Federation in 1993 appeared the term of "administrative court procedure"; and by this, of course, legal novelty the legislator stressed the new quality of the judiciary and the need for forming a new quality of the very Russian justice. Consequently, no identification of administrative court procedure with proceedings on cases of administrative offences should be taken.

Here we can provide data on the structuring of content from monthly published Bulletin of the Supreme Court of the Russian Federation. Of course, this example does not include a capacity of deep scientific argumentation. However, it

demonstrates the instability of even experts' representations about the essence and content of administrative court procedure and the term of "administrative cases". For example, in one of the issues of the Bulletin, in section "Overview of the judicial practice of the Supreme Court of the Russian Federation" highlighted sections: in criminal cases; in civil cases; in *administrative cases*. In the latter category of cases the editorial staff of the Bulletin includes, for example: "Practice of declaring normative legal acts *invalid* in whole or in part" [4]. It should be noted that these sections do not deal with *cases on administrative offences*. In other cases, in the section "In civil cases" appears a subsection "Practice of reviewing cases arising out of public legal relations", which also gives examples of judicial activity for the recognition of contested norms (contested act) inactive or relevant to law. Also, here the editorial staff of the bulletin publishes articles under the heading "Issues of application of the Code on Administrative Offences of the Russian Federation" [3].

Reform of the judicial system (judicial reform) and administrative system are designed to ensure the legality of state activity, that is, of the judicial activities and functioning of the executive branch. However, in contrast to the executive power, which indeed (judging by formal indicators of administrative reform) is being meaningfully reformed, that is, a new administrative legislation establishes new administrative procedures, new orders in all areas of public administration, the judiciary has not undergone internal meaningful and functional changes. More apparent become organizational changes and material-technical supply.

On the other hand, even administrative changes can be evaluated in different ways. Why in the latest studies devoted to the institute of civil service, improvement of discipline in service relationships and strengthening the procedures of passing civil service more often note the need for establishment in fact the principle of "*presumption of guilt*" of state and municipal employees? Exactly in such a way can be evaluated newly passed laws by hard itemization of the order of public service passage. In the last five to seven years, the legislation establishes procedures for combating corruption in the public service, provision of income declarations of a public servant, establishing a mechanism for rotation of personnel in the public service, formation at the executive bodies of state power of numerous commissions for the prevention and resolution of conflicts of interest in public service. However, in practice, the changes in public law that have already taken place, aimed at strengthening the responsibilities of public servants, do not lead to a new quality of activity of professional officials. On the contrary, every day from all of the media the society receives the facts of improper conduct of public servants and committing by them various offences. It turns out that the "strict" service legislation does

not constitute a final barrier for commission offences by public servants. And it is hardly needed to bring here the argument that revealing of such public servants is associated with improvement of relevant units of the police, prosecutors' office or the Investigative Committee of the Russian Federation.

Therefore, while appreciating the useful changes in all areas of state activity, we should not to exaggerate the significance of the changes. Many directions and new institutions, which are born by reforms, do not strengthen the State itself, do not make it more democratic or stronger.

A year ago (mid-December 2011) the author asked in writing (in the framework of the event "A conversation with the country) at the site of the Russian Government at that time the Prime Minister of the Russian Federation the issue on the establishment in our country of a *strong Russian state*. Here this question is:

"Dear Vladimir Vladimirovich!

Ten years ago You in your speeches often and with much attention said about the problem of formation in Russia of a ***strong*** *state, that is, You said about the need to build a* ***strong country*** *and a* ***strong government****. Later, the term of "strong state" gradually began to be replaced in your statements by "****effective state****". And in recent years, in fact, you have stopped (as I can see from Your statements, reports and discussions) to talk about this topic. Does this mean that now the priority directions for development of the country, state and society do not include formation of a strong state? After all, for every citizen, who is trying to think about the future of Russia and who wishes to see its country successful and powerful, it is extremely important to know the view of the country's leaders about what state should be created, in which areas it needs to be reformed, what it should be in the future. Every thoughtful and principled man wants its country to be recognized and respected everywhere, all countries to reckon with Russian policy, including the very reason that the country – strong and democratic.* ***The question is****: what is, in your opinion, a "strong state"? How today do you understand the concept of a "strong State"? What, in your opinion, is the main strength of the modern Russian state? What are the features of a strong state: is it a strong power or modern democracy? Is it a proper public administration or administrative powers of authority of state bodies? I would be very grateful to you for a brief analysis of the question and the answer".*

The answer, unfortunately, did not follow. And it is unlikely that we can hope in the face of such magnitude of the event (i.e. an open conversation with the country) on an individual approach to answering all the questions. It is easy to understand. Probably it cannot be otherwise. But it is not the main thing. The most important is that such questions arise, but the looking for answers to them leads researchers to a very large generalizations and practical conclusions.

Discussion on administrative court procedure, from my point of view, easy "fits" into all discussions about *modernization, reforming, establishing of a constitutional state*, on the most important *projects* in the country, on *legal reform* and *judicial reform*, which are taking place in society, in politics, among various professionals. I believe that all modern public discussions can be joined by the recently topical theme of a "*strong state*" in Russia.

Thoughts on the current state of administrative justice in Russia and the future of administrative court procedure are directly related to the above-mentioned issue of a *strong state*: exactly in a strong state the justice and all its forms, including *administrative one*, are strong and credible. Strong, high-quality, effective state is only then when created and maintained a strong judiciary, accessible and efficient administration of justice. Famous political personalities of the country for several years have been highlighting the problem of modernization of the country as a major. For example, A. Chubais says: "If we seriously put the task of modernization, first of all, this would mean the need to create a completely new quality of the State itself" [23]. Of course, all of the reforms in the country must end with positive results. Therefore, modernization of legal institutions itself should also be aimed at forming of a useful practical activity. Although, as is often the case in Russia, reform's goals are not achieved, and as an outcome – results that are quite opposite to target aspirations of the reform authors. For example, in September 2010 the President of the Russian Federation said, that according to the Ministry of Finance of the Russian Federation "almost 1,500 officials' functions are redundant, more than 260 – duplicated, and 700 need to be clarified" [13]. Thus, the need is "optimization of the number and structure of the state apparatus. This question anyway facing all modern states, and the optimal variant still has not been found simply because officials will anyway find for themself an activity and they will deal with it as long as how many time they have for it" [13]. It turns out that it is not possible to carry out an administrative reform with real, positive result. Why then there was conducted administrative reform in 2003-2008? Because, as is known, about the same issues were being solved in the framework of the administrative reform. Efficient public administration will never appear and form in dismal administrative environment.

Lack of administrative courts in Russia (as, indeed, legislation on administrative procedures), unfortunately, "fits" in the general formula of a very difficult parting with the old ideology and the practice of omnipotence of administrative authority. It is known that the attributes of a *police state* disappear slowly. In the fight against *legal nihilism*, despite some achievements in this sphere, the Russian

Federation is still far from the final overcome and defeat of this phenomenon. We have not come far in the last few years in fight against legal nihilism, and the prevailing administrative ideology "everything is permitted!" (including in public administration). Just one example. Until quite recently, few people paid attention to tinted windows of the official cars of Road Patrol Service -Traffic Police (hereinafter RPS - TP). As a rule, all four windows of these cars were darkened to an extreme. That was not seen what TP officers was doing after inviting drivers into their cars. It is known that traffic police officers have made hundreds of thousands of reports on administrative offenses for driving a vehicle that is equipped with the glass (including coated by transparent color film), light transmission of which does not meet the requirements of technical regulations on safety (i.e., it is due to excessive "toning" of car glass). If today you look closer to traffic police official cars, each can easily make sure that these cars, however, have very perceptible for every man "tinted" glass, though it has remained on the windows of rear doors. Thus, the real "achievement" for the past 5 years has become the removal of "toning" (blackout) only from the windows of the two front doors of RPS cars. But the two windows still have remained "dark"! This is, from my point of view, the triumph of legal nihilism, which allows employees of internal affairs bodies even today to live by the principle "everything is permitted for us". Well, let's wait for a new phase of the spread of democratic regime of *transparency* on the official cars of Traffic Police! Obviously, it is a very slowly undertaken administrative reform; at that, the most basic tasks of reforming are resolved in the country very long, partially and sometimes with a zero result.

Courts and judicial practice can change and improve public administration exactly through administrative court procedure, that is, by its decisions the courts establish a regime of legality in the field of organization and functioning of the executive bodies of state power. However, it is hardly possible that improvement of executive and administrative activity is carried out by civil or arbitration procedural legislation. It is to achieve such a goal create a special system of administrative administration of justice. Such characteristics of the model of administrative justice are most attractive and justified. As is known, Russia is far from establishing a system of "*good*" or "*proper*" public administration. Then, that is why, and it is in these circumstances, a state, which cannot create a well-functioning system of public administration, must direct its efforts to the formation of an effective judicial system and all forms of justice. Administrative court procedure will complement by new qualitative nuances the model of the Russian state, the system of state power; administrative administration of justice also will be changing the legal culture of

society, creating in it the elements that put to the fore in the behavior of people requirements to the authority, a desire to improve the results of its practical activity, to impact in order to improve administrative results; accountability of the authority before the society will be developing in this case.

Here you can go on more qualitative generalizations, namely on the nature of democracy formed in the country. Exactly democratic traditions as an essential corollary lead to the emergence of a judicial branch, which is traditionally called *administrative court procedure*. It is unclearness and underdevelopment of democratic institutes does not allow talking about the need for full implementation of the constitutional-legal norm on administrative administration of justice. Speaking at the second Yaroslavl forum October 14, 2010, Dmitry Medvedev spoke about the 5 standards of democracy; was suggested "to what criteria the state of the XXI century must comply with. In other words, what are the universal *standards of democracy*". In this case, the emphasis was put on the following several directions of democracy development: a) "legal realization of humanistic values and ideals"; b) "state's ability to provide and maintain a high level of technological development; promotion of scientific activity and innovation in the end produces a sufficient number of social benefits"; c) "ability of a democratic state to protect its citizens from encroachments by criminal associations" ("this are terrorism, corruption , drug trafficking and illegal migration"), "democracy must effectively and fully perform a variety of functions, including police function"; d) "high level of culture, education, communication and information exchange", "democracy in general is inseparable from responsibility... Democratic state, which reduces the regulatory and repressive burden on society, conveys to the society itself some of the functions for maintaining order and stability in this society", "democracy – is not only freedom, but also self-restraint"; e) "conviction of citizens in the fact that they live in a democratic state". Summarizing the arguments D. A. Medvedev said: "The question arises: does whether Russia correspond to these standards? I can honestly say that only to a certain extent, not to in full. But I have already said that we are at the beginning of the path" [17]. If top government officials and politicians talk about the lack of prevalence in Russia of general democratic values, then, in this context it can be concluded that the lack of a specialized administrative administration of justice – is a shortcoming of democratic system, of the structure of democracy, the weakness of democratic institutes.

Concerning the issue of establishment of administrative courts in the country, unanimity in the absence of "*political will*" has become observed in this process.

For example, many experts discussing the question of the establishment in the subjects of the Russian Federation of constitutional (charter) courts, also link the lack of politicians' attention to this issue with direct reluctance to form a very important body of the judiciary in the country. As written by A. Tsaliev, "many heads of subjects don't want to establish a body that would monitor the legality of their norm-making activity. As well as they do not want to create at their location the institute of ombudsmen: "Apparently, someone does not want to have such an institute, independent from the regional government and in general not dependent on anyone", – said on this occasion the head of state at the last meeting with the Human Rights Commissioner Vladimir Lukin. Probably we need to encourage subjects to create constitutional (statutory) courts, what is insisted by the majority of scholars and practitioners. According to many, eminent jurists, it is a necessary condition for the existence of a federal constitutional state" [32; 33, 21-22].

Thus, the constitutional norm on administrative court procedure is still on the periphery of legal consciousness, legal policy and legal reforming in the Russian Federation. Almost twenty years scientists spent on argumentation of the need for a specialized administrative administration of justice under special legal procedural rules. New "quality of the state" cannot be achieved without the ensuring of a new quality of all kinds of government activity: legislative, executive and judicial.

The President of the Constitutional Court of the Russian Federation V. D. Zor'kin, speaking in December 2008 at the 7th all-Russian Congress of Judges, said: "the rule of law, human rights and freedoms, justice are inseparable concepts. The Constitution guarantees fair administration of justice. Court is a final instance in resolving disputes about a right – whether it is a dispute between citizens or a dispute between a citizen and the state. For 15 years of life under the new Constitution, our Russia, step by step, overcoming legal nihilism, has been strengthening independent judiciary as an essential element of a constitutional state and fundamentally changing. Our goal is to make these changes irreversible" [37]. These words are extremely relevant today. It is possible, only actualizing their creative potential, to add, that administrative court procedure in Russia requires "increasing" and respectively "advancement" to a new level of legislative regulation, that is, the establishment of all its procedures in the Code of Administrative Court Procedure; and only in this form it can fully ensure the rights and freedoms of man and citizen, guarantee the efficiency of the judicial system itself, as well as the rule of law.

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