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**ADMINISTRATIVE COURTS OF THE U.S.A. AND FRANCE IN THE  
CONTEXT OF RECEPTION OF EXPERIENCE OF ADMINISTRATIVE  
JUSTICE CREATION**

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sity named after O. E. Kutafin.*

Based on a study of court systems in the U.S.A. and France, here is approved about the possibility of use the experience of creation and operation of the administrative courts of France in creation of administrative courts in Russia in view of the fact that the institute of administrative courts in France has originated and has been operating in close interrelationship with the bodies of executive branch.

The author gives a positive evaluation of the institute of “governmental commissioners”, whose principal function is to point judges to specific legal norms that must be applied in a case.

**Keywords:** administrative courts, administrative justice, system of administrative courts.

Over the last two decades our country has been facing the problem of establishment of administrative courts. So, it seems very useful to study foreign experience on this matter, borrow some of the institutes and principles of the establishment and operation of these courts, study possible problems associated with the legal mechanisms of coordination their activities, determination of the area of jurisdiction, as well as the place of these courts in the judicial system of the Russian Federation.

Creation of administrative courts for our country is very urgent due to the peculiarities of historical development, the problems associated with bureaucracy and corruption, as well as the optimization of protection of the rights and interests of individuals and legal persons from the wrongful actions of public authorities.

But it is necessary to bear in mind that the creation of administrative courts in different legal systems was implemented in different ways, so the creation of a system of administrative courts should be implemented with taking into account the peculiarities of the Russian legal system, that is, direct adaptation of international standards in the field of administrative justice for our legal system.

So, let's consider administrative courts in foreign countries, and specifically in the United States and France, because it seems that the experience of these countries is particularly useful for Russia, due to the peculiarities of the constitutional system and trends of legal systems development.

There is no single opinion in the legal literature about the history of emergence of administrative justice in the countries of continental legal system. Some scholars are of the view that the institute of administrative courts emerged in France as a result of the revolution and the First Empire. However, the opinion of scientists-theorists (Kovalevskii and Taranovskii) that the history of administrative justice originates from the medieval times is more preferable. Of course, the form of manifestation of administrative justice then was different from the one we see today [3; 5, 19-20].

So, we proceed to analysis of administrative courts in France. Differentiation of France's judicial system is very thought out and is due to the practical need to resolve legal disputes of various kinds. So, the French judicial system consists of two groups of courts: the courts in civil and criminal matters (which in turn are divided into general and specialized) and administrative courts (differentiated by levels: the first, the second – the Court of Appeal, the third – State Council). When conflicts on the issue of competence arise between these groups of courts, the dispute is considered by the Conflict Court, which in the judicial system stays aside of these groups and to resolves such disputes. There is also a Constitutional Council, Supreme Chamber of Justice and Republic Court. It should be noted that having analyzed the judicial system of the Russian Federation and France, peculiarities of the constitutional system, it can be assumed that in conduct of a judicial reform it is necessary to create a kind of Conflict Court of the Russian Federation, since in judicial practice often arise cases when a particular dispute falls within the jurisdiction of two courts. And a problem arises, which of the courts must consider the dispute.

The system of administrative courts that was formed in France consisted of two levels of courts: lower – councils of prefectures and higher – the State Council; it should be noted that administrative courts in France from the beginning had a very wide range of powers, for example, they considered and resolved disputes on the issues of direct taxes, labor disputes (where the employer was the state represented by its management bodies), issues related to the various economic transactions with the state property, disputes concerning elections in municipal and state assemblies, complaints against unlawful decisions of public authorities, etc. In 1950s the councils of prefectures were converted to administrative courts of general jurisdiction, the nature of their activities remained the same, they also remained accountable to the State Council, which then was not only an appeal instance, but they also considered the most important complaints (concerning the decrees of the President of the Republic, the Prime Minister, etc.)

State Council acted as an appeal instance, as well as performed an advisory function, and was accountable to the head of the state and government.

Administrative process in France is based on complaints of a natural or legal person against unlawful actions of authorities that violate their rights and legitimate interests. Court establishes the fact and the actual content of the subjective right of a citizen by an act of public authority. Administrative process in France is investigative, that is direct basis to state about the great role of judge in gathering evidence. An important distinguishing feature of administrative process in this country is participation in the process of “government commissioners” whose main function is to indicate to judges specific legal norms that should be applied in a particular case. That is why commissioners hold a special place in the system of administrative court procedure in France, since they act neither on side of the court, nor the citizens, nor the public authorities, and are representatives of the law that should be applied in a particular dispute. It seems that the presence of this institute promotes the effective application of administrative and administrative-procedural legislation, what directly minimizes judicial errors. When creating the institute of administrative justice in the Russian Federation we should provide a body with such powers, since, given the peculiarities of the Russian legislation (conflict of law norms, legislative gaps, duplication, etc.), it is particularly necessary.

The citizens’ grounds for appeal to administrative court are incompetence of public authorities, violation of subjective rights of citizens, abuse of power by officials, representatives of the government [1, 47-49; 4, 108-109].

Hence, the institute of administrative courts in France has arisen and has been functioning in close interrelation with the system of executive authority

bodies. During deep analysis we come to conclusion that administrative justice and executive authority interact with each other as part and whole, since administrative courts operate directly within the executive branch. As a result of the widespread development and application of administrative justice in France, administrative courts have also been established in Germany, Spain, Italy, Belgium, the Netherlands and so on.

Let us consider administrative courts in the United States and analyze the main differences from the system of administrative courts in France. The main feature of administrative justice of the United States is the lack of a unified, nationwide judicial system. That is why each state has its own court system and the Federal court system, which operate in parallel. It should be noted that the courts of the states in any way do not subordinate to the federal courts, as well as they are not accountable to them. Each separate state has the right to create its own judicial bodies, regardless of other states and federal agencies.

First administrative institutions in the U.S. were created by the Act of 1855 for considering complaints against financial offences of public authorities. From this moment begins the stable development of administrative institutions in the United States [2, 82-83]. More strict consolidation and formalization in the United States they received in the early 20th century, when specialized administrative bodies began to operate along with the general courts. These bodies had quasi-judicial powers and considered administrative disputes arising between citizens and government, therefore, by virtue of their competence, they were called administrative tribunals. United States Court of Claims, Tax Court and various federal agencies that have quasi-judicial powers are called administrative tribunals.

The basis to start an administrative process in the United States is the complaint of a citizen against unlawful actions of administrative bodies. A decision taken on a case must be justified and ended by issuance of an order. In case of citizen's disagreement with a taken decision, it may appeal to the appeal instance and then to general court. A characteristic feature of an U.S. administrative process is that when courts consider a particular case they express their opinion, mainly, regarding the legal aspect of an issue, that is, directly implement assessment of enforcement and implementation of the law by administrative bodies. As for the factual aspect of the dispute, they either leave it without attention, considering that the experts of administrative tribunal better understand technical issues, or deal with this aspect with caution.

Comparative legal analysis of the system of administrative courts of the U.S. and the Anglo-Saxon legal family indicates that these bodies of administrative

justice operate on the border between the executive and judicial branches of power, since they operate in close connection and close cooperation with administrative bodies, as well as have judicial powers, therefore, it is appropriate to say about the dual legal nature of this institute of administrative justice in the United States.

Comparing the Anglo-Saxon system of administrative justice with the continental one, it is worth noting that, for example, that despite absence system of administrative courts in the United States and England, actually their powers are performed by administrative tribunals. They have certain advantages, among which informality, flexibility of the system of administrative justice bodies, rapidness of resolution of cases due to the high competence of employees of administrative bodies, minor costs of maintenance the apparatus compared to France. Disadvantages: the narrow competence of administrative tribunals.

The main characteristic difference of administrative courts from administrative tribunals is that they are not controlled by the general courts. For example, the administrative courts of Germany and France do not subordinate to general courts and act independently. It seems that it is the closest to our legal system, while the emergence and development of administrative bodies in the United States with their quasi-judicial powers is due to historical factors. Therefore, it seems reasonable to conduct reception of French experience in the field of creation and development of the system of administrative justice bodies on several grounds:

- similarity of legal systems, as well as constitutional system;
- need for multilevel monitoring of administrative courts;
- functioning of administrative courts within the judicial branch in the

conditions of our legal system will be much more effective than giving this body interbranch value (because of the potential possibility of erosion the competence of the body).

Having examined the system of administrative bodies in France and the U.S., we come to conclusion that the creation of this branch of the judiciary power is extremely necessary for the contemporary realities of the Russian Federation, and this is due to the development of the legal system and social relations that require adequate regulation. Law-enforcement practice testifies the high level of violation the rights and legitimate interests of citizens by public authorities, when it is unacceptable for modern democratic states.

As has been noted above, in the establishment of administrative courts in the Russian Federation a particular attention should be paid to the system of bodies of appeal instance, as well as to the staff of these agencies. Special attention shall be

paid to the control and oversight authorities in the field of administrative justice, the creation of which is proposed to do on the model of the control and oversight authorities in France. Should also provide for an authority to settle disputes arising in the case of impossibility of determination the court, to the competence of which a particular dispute has to be assigned, that is, directly semblance of the Conflict Court.

Thus, creating administrative courts in the Russian Federation, we must take into account the features of the historical development of the legal system, the existing problems in sectorial legislation and in the implementation of law norms, as well as provide for the establishment of a system of control and oversight authorities on the pattern of France.

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