

**REVIEW OF THE MONOGRAPH OF THE DOCTOR OF LAW,
PROFESSOR M. A. LAPINA "ADMINISTRATIVE JURISDICTION
IN THE SYSTEM OF ADMINISTRATIVE PROCESS"**

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Today administrative-legal science is the most sought after area of legal knowledge. Against the background of the modernization of managerial processes in public administration, administrative process comes to the forefront. The system of administrative process includes an institute "administrative jurisdiction", which requires a unified conceptual approach to its understanding. Therefore, the subject of scientific studies of M. A. Lapina has theoretical and practical significance.

It seems that the author's monograph will be useful for undergraduate and graduate students studying in the specialty: "Jurisprudence" and "State and Municipal Management". Analysis of the theoretical and practical aspects, as set out in the study, can also be used by lecturers in the preparation for lessons, scientific workers and practitioners.

The monograph under review, in our opinion, is a result of previous studies of the author in regard of administrative and jurisdictional activity of executive authorities, as evidenced by the presence of a sufficient amount of practical material.

The author's concept of the system of administrative process and determination the place of administrative jurisdiction in the administrative process is not original for administrative law. However, one should give due assessment to the skillful synthesis of opposite points of view of famous scientists and legal scholars on the subject of the study, as well as the systematization of scientific knowledge in the studied field.

The author is absolutely right about the lack of a unified conceptual approach to the development and adoption of normative legal acts regulating the administrative-jurisdictional activities of executive bodies regarding not only proceedings on cases of administrative offences but also other administrative procedures and administrative proceedings.

It is no secret that administrative process is designed to systemically regulate public administration – activity of, mainly, executive bodies exercising managerial process with help of administrative and procedural norms. And, in this regard, there should be a systemicity of administrative process, because only if there is a generally accepted system the administrative process will effectively operate as a unified and sophisticated system.

However, as the author notes, and we agree with this, “concepts of administrative process, which are available in Russia, do not allow a comprehensive and holistic covering of the modern system of administrative process, what, in turn, reduces the efficiency in the whole of state power, bodies of public administration”.

The author’s examples of the structural elements of administrative process show that there is no a unified theory of the system of administrative process in the modern science of administrative law and process. Therefore, we believe, the monograph under review can be an incentive element in the formation of a consolidated point of view on the very essence of administrative process and its constituent elements.

We find interesting the logic of the author regarding the passport scientific specialty in “Administrative process”, which is based “on the basis of consistently performed actions in a managerial process: first is lawmaking, then positive enforcement within the framework of the institute of administrative procedures, and in the case of a dispute or in violation of law norms both in out of court (pre-trial) and judicial procedure, including with use judicial control on the part of the judiciary – application of law enforcement forms within the framework of the relevant institutes of administrative jurisdiction and administrative justice”.

We should agree with the fact that administrative process is an activity regulated by administrative and procedural norms that is aimed at the resolution of individual cases in the sphere of public administration by authorized executive authorities of the Russian Federation, and in cases stipulated by law by other authorized subjects of administrative and procedural relations. M. A. Lapina emphasizes that “administrative process is aimed at ensuring the correct implementation of the substantive norms of administrative law and other branches of law, which are inseparable from the administrative and procedural norms in the sense that the process is a form of exercising, implementation of directions contained in the substantive norms of law” (page 20).

The content of the monograph gives reason to think that the author is one of those scientists-legal scholars who define administrative and procedural activity as a kind of “legal shell” of managerial process, at that, the managerial process

itself in the exercising of executive and administrative activity is perceived by M. A. Lapina much broader than the concept of administrative and procedural activity and includes along with the legal also non-legal (organizational, material-technical) forms.

The provided in the monograph reasoning of differences between administrative procedures and administrative proceedings, for example, on the basis of positive orientation of administrative procedures and protective orientation of administrative proceedings, on the basis of the structuring of procedures and proceedings, is commendable.

Defining administrative jurisdiction as the activity of competent public authorities authorized to consider administrative and jurisdictional cases in out of court or pre-trial order and to make on them legally binding decisions, the author makes a significant reservation, that only the court, which administers justice on administrative cases, is a subject of administrative justice, otherwise the principle of "separation of powers" will be violated (page 47).

The statement that "... administrative jurisdiction is an activity of public authorities in out of court or pre-trial order", and "administrative justice is an administration of justice, mainly, in cases of administrative offenses and exercising of judicial control over the legality of normative and non-normative legal acts adopted by public authorities and their officials" (page 48) does not raise an objection.

We agree with the author that there are several points of view regarding the semantic meaning of the term of "jurisdiction", but understanding of jurisdiction as "a statutory totality of powers of relevant state bodies to resolve legal disputes and cases of offences, to evaluate the actions of a person or another subject of law from the terms of their legality, to apply legal sanctions to offenders" (page 49) is popular among legal scholars.

It seems to us, that not by accident the author has focused on the administrative jurisdiction in tax area. Indeed, the administrative jurisdiction in tax field has signs not only inherent to administrative jurisdiction in general but also distinguishing it from other areas, and control and administrative-jurisdictional activity of the FTS of Russia are closely linked, but remain independent, sequential kinds of activity. We should agree with M. A. Lapina that fulfillment the functions of tax control is primary and mandatory for the tax authorities, and jurisdictional activity has optional (secondary) nature, which can take place only when there is a legal dispute on the results of a tax audit. However, namely this situation leads, in our view, to a multitude faults in the administrative-jurisdictional activity of the FTS.

The position of M. A. Lapina on the content of the Special part of the Code on Administrative Offences of the RF causes a sensation of satisfaction. Author of the monograph like we believes that the Code on Administrative Offences of the RF shall include every single one compositions of administrative offenses, including in the area of taxes and fees, "otherwise its existence makes no sense and cannot be justified because it is designed to provide uniform regulation of all issues of the most common type of legal responsibility, regardless of the field of public relations – tax, customs, banking, sanitary-epidemiological, etc." (page 120).

Assessing the monograph, we should not forget that the science of administrative law and process is the most sought after area of legal knowledge. However, itself the branch of administrative law and process has been contradictory developing (including with the help of public authorities taking normative legal acts, which become the sources of law). The practice of administrative and jurisdictional activity of executive authorities is also not perfect.

We should agree with author in the fact that "administrative-jurisdictional legislation contains gaps and contradictions, prompt removal of which is not possible for objective reasons, in particular, because of the long duration of the rule-making process" (page128). Therefore, the author's consideration of case-law as a liaison between the law-making and law-enforcement is fully justified. Precedents, according to M. A. Lapina, performing law securing function, in the process of its implementation "can perform so-called "sublegislative" normative regulation of public relations (in other words – the means of legal regulation) that can, depending on specific political and social conditions, either enrich the law or deform it".

It seems to us that in the author's monograph has been voiced a call to the scientific community in order to ensure application of unified approaches to the forming of substantive and procedural-legal norms that will increasingly exercise the most important general legal principle – the principle of legality.

We believe that the complexity and scope of the norms of administrative-tort legislation, the difficulties in their application by judges and other authorized bodies (officials) necessitate substantial changes in the programs of higher legal education. And, in this regard, the monograph of M. A. Lapina may have a positive impact.

It should be noted that the monograph has fully disclosed the concept, content, signs and principles of administrative jurisdiction, has analyzed the system of subjects of administrative-jurisdictional legal relations and represented the main kinds of administrative-jurisdictional proceedings. On the base of the analysis of legal regulation have been identified peculiarities of administrative-jurisdictional

activity of a number of executive power bodies. Have been formulated the suggestions for improvement the theoretical foundations of the institute of administrative jurisdiction in the system of administrative process.

The visual expression and accessibility to understanding the author's viewpoint, which are achieved through the use of graphic material in the monograph, are of particular note.

In our opinion, the monograph of M. A. Lapina "Administrative jurisdiction in the system of administrative process" is an original, independent and completed scientific study, and can be attributed to a scientific work that makes contribution to the domestic administrative-legal science.