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**THE ESSENCE OF SUPERVISORY RECONSIDERATION OF JUDGMENTS  
ON CASES OF ADMINISTRATIVE OFFENCES<sup>1</sup>**

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The author proposes a definition of supervisory proceedings on cases of administrative offences, which would reflect its isolation from other supervisory proceedings taking place in the Russian judicial system.

Classification of types of supervisory proceedings on cases of administrative offences is given in the article.

**Keywords:** administrative offences, proceedings on cases of administrative offences, reconsideration of judgments, supervisory proceedings on cases of administrative offences.

In accordance with paragraph 1 article 46 of the RF Constitution, everyone is guaranteed judicial protection of its rights and freedoms. At that, the content of this constitutional right is not limited solely to the right of citizens on initial judicial recourse for the protection of violated rights and legitimate interests. The Constitutional Court of the Russian Federation has been repeatedly formulating legal positions disclosing the essence of the constitutional right of citizen to judicial protection, which lay in necessity to provide legal possibility for appeal against a court decision to a higher court. Thus, according to the Constitutional Court of the Russian Federation, a decision cannot be considered fair and true in the lack of

<sup>1</sup>Published on materials of VIII All-Russian scientific-practical conference «Theory and practice of administrative law and process» (Krasnodar – Nebug – 2013)

possibility of judicial error correction, [5], and the effective guarantee of protection is itself the possibility of reconsideration by a higher court, which in one form or another should be guaranteed by the state [4].

It is obvious that the correction of judicial errors should be carried out in the forms and with respecting standards of a particular type of court procedure: civil, administrative, criminal, arbitration. If reconsideration of a court judgment, which has not entered into force, on appeal (cassation) is a logical and valid continuation of proceedings within the framework of yet unfinished case, then supervisory review of a court judgment, which has entered into force, shall be recognized an extraordinary event aimed at elimination of a serious legal error, which has served as the basis for taking an unjust decision [12, 5-10; 11, 30-34; 7, 38-41; 8, 23-26; 6, 45-47]. Failure to eliminate judicial error in such cases may lead not only to the violation of the rights and legitimate interests of private subjects (civil and arbitration process), but also to the devaluation of public management in case of unfair and non-correlating application of punishment to the guilty person in criminal and administrative court procedures. Search for an exact balance between public and private interests in the implementation of mechanisms for review of entered into legal force court decisions in field of criminal and administrative court procedures is the cornerstone of the corresponding branches of law designed to offer to law-enforcement practice a model, in which a person guilty of offense will be justly punished with mandatory compliance with its rights and freedoms in the course of proceedings.

Most modern researches actively distinguish the sign of extraordinariness as one of the most important components of supervisory proceedings of the Russian judicial system. For example, K. I. Komissarov considers judicial supervision an extreme way of judicial control, precisely because the objects of reconsideration are court decisions entered into legal force. And at the same time he notes that judicial supervision (along with cassation control) acts as a form of judicial guidance: through their decisions taken in individual cases, courts of supervisory instance have a general preventive effect on judicial practice, orienting it towards a way strictly conforming to the law. In general he determines judicial supervision as a specific function of court aimed at the check of legality and validity of lower courts' decisions entered into legal force, correction of their errors and implementation on this basis of judicial practice management [10, 367-368].

Also, substantiating exceptional nature of supervisory proceedings, T. V. Sakhnova underlines that supervisory proceedings undermine, question the legal force of court decision as an act of Justice. The mere fact of possibility of abolishing

a court decision, which has entered into legal force, says of extraordinariness (extra ordinem) of check [14, 653-654].

However, the mentioned sign of supervisory proceedings is not the only one. In General, analysis of the procedural legislation and legal literature allows us to formulate a general legal, interdisciplinary approach to determination of the essential features and tasks of supervisory instance in judicial process. Among the main signs of proceedings in supervisory instance are:

- 1) limited range of subjects with the right to commence proceeding in supervisory instance (article 376 of the Code of Civil Procedure of the Russian Federation [2], article 402 of the Criminal Procedure Code of the Russian Federation [3], article 292 of the Arbitration Procedural Code of the Russian Federation [1]);
- 2) mandatory compliance with the normative procedure (time terms, form of documents, etc.) during the consideration of a case;
- 3) exclusivity (closed qualified list of grounds for cancellation of court decisions that have entered into legal force (article 387 of the Code of Civil Procedure of the Russian Federation, article 409 of the Criminal Procedure Code of the Russian Federation, article 304 of the Arbitration Procedural Code of the Russian Federation));
- 4) finality of an ordinary judicial process.

Among the main tasks of supervisory instance are: 1) correction of judicial errors and 2) formation of a correct model of law-enforcement practice to achieve a set of goals, including: a) overall exercise of the constitutional right of citizens to judicial protection; b) ensuring the uniformity of legal space on the territory of the Russian Federation, etc.

Identification of the essential properties of proceedings in courts of supervisory instance through the example of already existing models of criminal, civil and arbitration proceedings allows us to analyze supervisory proceedings concerning cases of administrative offences, to present its characteristic based on the principles common for all legal processes.

Isolation of supervisory proceedings concerning cases of administrative offences, reviewing it upon a certain removal from other long-standing forms of court procedure has objective prerequisites that are due to the lack of legal tradition and dynamic development of administrative legislation only in the last decade, which was noted by D. N. Bakhrakh (since July 01, 2002 more than 120 amendments have been introduced to the new Code on Administrative Offences of the RF) [9, 3]. Hence imperfection, legal roughness and existence of legal gaps and conflicts in the procedural part of administrative legislation, which were noted by N. G. Salishcheva

in the following statement: “It is noteworthy that so far the legislator has failed to overcome some controversies in the positions of the two Codes – Code on Administrative Offences of the RF and Arbitration Procedural Code of the RF, concerning the procedure to consider cases on administrative offenses. These controversies were actively discussed in scientific literature, even the Constitutional Court of the RF recommended to bridge the positions of these Codes on the issues of consideration complaints against decisions on cases of administrative offences” [8, 13].

Study of the essence of supervisory proceedings on cases of administrative offences allows one to offer its author’s definition. Supervisory proceedings on cases of administrative offences should be understood as activities of court (judge), which are regulated by procedural legislation, to verify the legality and validity of entered into legal force judicial acts concerning cases of administrative offenses, aimed at the identification and correction of judicial errors and resolution of administrative-legal disputes.

For the purpose of complete scientific reflection of essential features of the proceedings on cases of administrative offences in the court of supervisory instance we introduce a classification of the kinds of supervisory proceedings on cases of administrative offences:

1. Depending on the procedural basis of supervisory proceedings on cases of administrative offences:
  - supervisory proceedings in arbitration courts (chapter 30 of the Code on Administrative Offences of the RF, chapter 36 of the Arbitration Procedural Code of the RF);
  - supervisory proceedings in courts of general jurisdiction (chapter 30 of the Code on Administrative Offences of the RF);
2. Depending on the subject that reviews a case on administrative offence in the court of supervisory instance:
  - reconsideration by the Presidium of the Higher Arbitration Court of the Russian Federation of entered into legal force judicial acts (chapter 36 of the Arbitration Procedural Code of the RF);
  - reconsideration by the Chairman (Deputy Chairman) of the Supreme Court of the Russian Federation of entered into legal force judicial acts (part 2 article 30.13 of the Code on Administrative Offences of the RF);
  - reconsideration by the Chairmen (Deputies Chairman) of the Supreme courts of the republics, territorial, regional courts, the courts of the cities of Moscow and Saint Petersburg, the courts of an autonomous region and autonomous districts of entered into legal force judicial acts;

- reconsideration by district (Naval) military courts and military division of the Supreme Court of the Russian Federation of entered into legal force judicial acts;

3. Depending on the subject that has initiated supervisory proceedings on case of administrative offence:

- supervisory proceedings initiated upon the complaint of a person against whom a proceeding on case of administrative offence is being conducted;
- supervisory proceedings initiated upon the complaint of victim;
- supervisory proceedings initiated upon the complaint of legal representative of a natural person;
- supervisory proceedings initiated upon the complaint of legal representative of a legal person;
- supervisory proceedings initiated upon the complaint of lawyer or representative;
- supervisory proceedings initiated upon the protest of prosecutor.

Another classification is proposed by G. A. Shevchuk [15, 8].

These classifications of the kinds of supervisory proceedings on cases of administrative offences allow one to comprehensively present the supervisory proceedings on cases of administrative offences, to reflect its general and specific features in the context of the contemporary development of procedural legislation of the Russian Federation.

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