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THE PROBLEMS OF CONSIDERATION OF DISPUTES ARISING FROM ADMINISTRATIVE CONTRACTS WITHIN THE FRAMEWORK OF ADMINISTRATIVE COURT PROCEDURE[1]

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The author proves that cases on consideration of disputes arising from administrative contracts should be regarded as a separate kind of cases within the framework of administrative court procedure.

Attention is drawn to the fact that in consideration of disputes arising from administrative contracts, the court considers not the issues of the legality of actions or decisions of these or those bodies and their officials, but the issues related to a disagreement concerning the performance or non-performance of an administrative-contractual obligation.

Keywords: administrative contracts, administrative court procedure, disputes arising from administrative contracts.

The issue of administrative contract is currently very topical, because, firstly, the development of managerial relations requires their regulation through dispositive forms and methods, which should also include contract, secondly, the issues of administrative contract are ambiguous and unresolved in administrative-legal science and, finally, thirdly, there is no legal framework that would regulate the procedure for consideration disputes arising from administrative-contractual relations.

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Resolution of emerging conflicts in the course of exercising administrative contracts is a necessary condition to balance the interests of the parties to a concluded administrative contract.

One of the main signs of contract from general-theoretical point of view is the mutual responsibility of parties for failure to comply with or inadequate performance of commitments, as well as the presence of legislative establishment of main principal and obligatory requirements at the conclusion of contract [10, 15].

Controversies arising among parties to administrative contract at various stages of the contractual process acquire the status of administrative-legal disputes. However, the nature of these disputes and the procedure to resolve them are open questions that need to be addressed in the near future. Often the parties to already concluded administrative contracts in case of conflict situations, associated with the implementation of such contracts, refuse execution of commitments because of the absence of a real mechanism for resolving disputable situations. Because of this the goals of concluding administrative contracts are not always achieved.

K. V. Davydov rightly points out that this problem is peculiar not only to the Russian legal system, but also to a number of legal orders competing for a much more complete regulation the issues of administrative court procedure concerning administrative contracts [3, 521].

It appears that to ensure the safety and protection of the rights of the parties to administrative contract, we need to use the potential of administrative justice means, within of which administrative-contractual disputes will be considered. We should agree with the point of view of K. A. Pisenko that administrative-contractual disputes at the doctrinal, as well as legislative and practical levels, have not been adequately reflected in the domestic system of administrative justice [9, 111].

Yu. M. Kozlov notes that disputes between parties to contracts shall be resolved by negotiations and conciliation procedures. If necessary, conciliation commissions can be created. In case of failure to reach agreed solution the dispute may be brought before corresponding court [7, 380].

At the same time the need to develop effective mechanism to resolve disputes arising from administrative contracts is quite timely, because the discussion of the draft Code of Administrative Court Procedure is being actively conducted [1].

Civil-legal regulation of individual disputes has been developed in the absence of administrative-legal regulation of the order and procedure to resolve disputes arising from administrative contracts. Gradually the features and specifics of court proceedings concerning public-law disputes outgrow the borders of civil

court procedure. Today the circumstance, that in civil procedural legislation public-law disputes fall under the general concept of "civil case", cannot be recognized substantiated either from scientific or practical points of view, since it contradicts their substantive-legal nature" [11].

In this connection we should also agree with the point of view of M. R. Megrelidze that the combining of cases of public-law and private-law nature in adversary proceedings is not only inconsistent with the Constitution of the Russian Federation, but it may lead to the situation when the principles and rules of private-law nature, focused on the protection of civil rights and lawful interests of individuals, will be applied to the resolving and consideration of public-law disputes affecting the interests of the State and society as a whole [8].

Cases on consideration of disputes arising from administrative contracts should be considered, in our opinion, as an independent kind of cases through administrative court procedure. Here are the following arguments in favor of justifying this position.

Administrative contract should be considered as a form of managerial activity, as a variety of administrative act, as well as a legal relation. At that, the consensus in Russian and foreign administrative-legal doctrine concerning administrative contract as a form of managerial activity and kind of administrative act de lege ferenda gives rise to analogy of application the mechanisms of administrative justice in order to resolve cases arising from administrative contracts [9, 112-113].

In connection with the above, we note that in essence administrative court procedure is based on the contesting of different forms of managerial activity, which, as we previously indicated, include administrative contract.

As correctly noted by A. B. Zelentsov, public-law requirement for protection of a violated subjective right, submitted to the court in accordance with applicable legislation, should be formed in the form of application that is called administrative claim [4, 112].

It should be recognized that disputes arising from administrative contracts may be considered through adversary justice. And not of civil, but administrative court procedure, because dispute arising from administrative contract is a public-law claim of one of the parties on the protection of public law.

Right of action implies the existence of equality between the parties of corresponding legal relation. Though formally, but there is such equality between the parties to administrative contract. Therefore, cases on administrative-contractual disputes are possible because the parties have reciprocal rights and duties defined by one equally obligatory norm of law.

Private person in public-law sphere – it's not just a carrier of duties, but also a subject of public rights, which he can use, like in private-law sphere, without violating the rights of others and the law. This optionality allows it in administrative disputes not only to change the subject matter of claim, but also to put forward counterclaims [4, 117].

Administrative claim may be stated by one of the parties to administrative contract in order to protect and restore the infringed rights under the contract. Administrative-contractual claim arises out of the contentious administrative- contractual legal relations as a requirement of protection the rights and interests of one of the parties to administrative contract.

Modern problems of consideration of disputes arising from administrative contracts require a balance between private autonomy and public interests, what constitutes the core of discussion on the attributing this category of disputes to an independent kind within the framework of administrative court procedure.

Public-law relations are an expression of public interest. Powers of authority of a public authority, local self-government body and their official reveal inequality of parties to legal relation and possibility of enforced execution of public rights in pre-trial procedure. The duty of a subject of public administration to use it powers of authority only for the attainment of goals set by law, and only in the framework of law, reflects the principle of imperative nature – the basic principle of public law branches. In connection with this legal means of protection of legal relation are primarily tools of supervision and control over the legality of activities of public authorities [8].

It should be noted that also there may be some legal inequality of parties that is due to the legal nature of the administrative contract, as well as the public purpose of this contract. Parties to administrative-contractual relations in most cases have different administrative-legal status, namely, their rights and duties in the field of public administration are different. This fact suggests that, there is no possibility to negotiate specific terms of administrative contracts in some cases. That is, one of the parties determines the terms of administrative contract, and the other takes the decision on acceptance or rejection of these terms. Concerning this sign administrative contracts are similar to contracts of adhesion implemented within the framework of civil law. The above shows the possibility of consideration disputes arising from administrative contracts within the framework of civil court procedure. However, this is not quite justified.

In our view, disputes arising from administrative contract must be a model of administrative cases, the consideration of which must be based on specific priorities

of public interests. Disputes arising from administrative contracts emerge, as a rule, between the parties to the very contract, but, in general, they affect public interests, for the ensuring of which they have been concluded. Exactly this feature allows us to attribute cases arising from administrative contracts to cases considered within the framework of administrative court procedure.

It should be recognized that the disputes arising from administrative contracts must be attributed to disputes arising from public-law relations. Such disputes, in accordance with paragraph 1 article 2 of the draft Code of Administrative Court Procedure, shall be considered in administrative court procedure.

Thus, following the logic of the legislator, the main cause of attributing disputes arising from administrative contracts to consideration in administrative court procedure is that administrative-contractual relation in its nature refers to public-law relation.

In general, dispute arising from administrative contract should be recognized as an especial kind of administrative legal relation, which is characterized by the contradictions of the parties that are caused by non-performance or improper fulfillment of the relevant administrative contract.

There is no doubt that the cases arising from administrative contracts are public-law, administrative, and because of that there is a real opportunity to settle their jurisdiction at the stage of creation of administrative courts through allocating an entire chapter in the Code of Administrative Court Procedure regulating peculiarities of proceedings on such cases.

At that, the attribution of such disputes to the competence of administrative courts can become an additional argument for the early adoption of a corresponding substantive act on administrative contracts.

It appears that disputes on cases arising from administrative contracts, within the framework of administrative court procedure, may be resolved by conclusion of a settlement agreement.

However, the Supreme Court of the Russian Federation in the Decision No. 2 from February 10, 2009 [2] indicates, that in cases on contesting decisions, actions (inaction) of public authorities, local self-government bodies, officials, state and municipal employees the court does not have the right to approve a settlement agreement between the applicant and person concerned, since in this case the court examines the legality of the contested decisions, committed actions (inaction) of public authorities, local self-government bodies, officials, state and municipal employees and the resolving of this issue may not be affected by these or those agreements between the applicant and person concerned.

However, in contrast to the opinion of the Supreme Court of the Russian Federation in the legal literature suggest that although in many public cases (through an example of cases on administrative offences) the conclusion of agreements is not possible in principle, in individual cases such possibility exists (through an example of tax agreement) [6]. K. V. Davydov also confirms that, in principle, administrative contract is a more flexible legal form of management, rather than an administrative act, so under general rule a settlement agreement is acceptable (after all, it itself, in this case, by the way, is an example of a public agreement). However, it is necessary to establish a general rule: the conclusion of a settlement agreement is not allowed if it is contrary to legislation and/or violates the rights of third parties and legal order in general [3, 522].

Based on the above, a question arises: is it possible to attribute disputes arising from administrative contracts to cases on contesting decisions of relevant bodies within the framework of civil or arbitration court procedure?

In the context of development the theory of administrative process, the resolving of the issue of possibility to consider disputes arising from administrative contracts within the framework of administrative court procedure raises an undoubted interest. The need to identify the place of both administrative-contractual process in general and the procedure of consideration of disputes arising within its framework is due to the need for forming a conceptual approach to the essence and structure of administrative process. However, the positive solution of the question posed will generate two sets of norms: substantive and procedural. Accordingly, this fact will result in new prospect for the development of the institute of administrative contract.

Legal literature actively discusses the issue of formation the following institutes in the structure of administrative-procedural law: 1) institute of judicial administrative and punitive jurisdiction; 2) institute of administrative and disputed jurisdiction [5, 14]. The proposed structure should be recognized rational. At that, it should also be noted that also the issue of consideration disputes arising from administrative contracts should be developed exactly within the framework of the institute of administrative and disputed jurisdiction.

Fundamental resolving of the issue on the possibility of consideration disputes arising from administrative contracts within the framework of administrative court procedure is of methodological significance for subsequent deeper researches. Application of the principles of administrative, rather than civil court procedure, should be the basis of decisions on individual-specific administrative contracts.

Taking into account the current realities of the development of administrative court procedure the visions of the procedure for consideration disputes arising from administrative contracts need some adjustment. We need still to answer some fundamental questions about the limits of application the norms of administrative court procedure to such kind of category of cases. In this case, the emergence of special norms on the procedure for consideration of cases arising from administrative contracts, perhaps, will allow us to look at the analyzed problem from a different angle.

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