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SUPERVISION PROCEEDINGS AS A KIND OF FEEDBACK IN THE PROCESS OF LEGAL REGULATION

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The article contains the theoretical study of control and supervisory powers, an attempt to delimit them. The conducted analysis of supervision proceedings revealed the signs of feedback that allowed the conclusion about the importance of the supervision proceedings in the process of legal regulation.

Keywords: control function, res judicata, supervision proceedings, feed-back, legal regulation.

Problems associated with upgrading the system of public administration are at the heart of both social-political sphere and administrative-legal regulation of administrative relations. As a result of their resolving there is supposed the establishment of such administrative legal norms, institutes, sub-branches, which guarantee: openness and accessibility of public administration; bringing public administration into proper form, giving it the form in response to new requirements and standards; respect for and protection of the rights and freedoms of a man and citizen, legitimate interests of organizations and legal entities; public awareness on managerial activity; substantiation of every measure and administrative act adopted by public administration and its bodies; legality of public management and elimination of excessive administrative management; public confidence in the administrative authority; creation of a reliable and friendly public administration turned to citizens [26, 87].

The science of administrative law is involved in the modernization of public administration. It covers some non-legal forms of public relations, with a view to resolving the existing problems (certain principles, management techniques, structure of administrative apparatus, etc.) through their regulation by administrative-legal means and methods.

Legal scholars pay special attention to the issues related to the formation of theoretical bases of state control and supervision in accordance with modern political, economic and social realities. They are aimed at ensuring the sustainable development of the national economy, the definition of the powers of control and supervisory authorities, the establishment of modern forms of coordination of control and supervisory activity in order to use the abilities of control and supervisory function to improve public administration [22, 27-28]. The practical implementation of these provisions will bring the process of public administration from the "manual" mode to self-regulation; will make it more transparent, reliable, and less expensive.

Before starting to review the issues relating to the powers of the control and supervisory authorities, it should be noted that the term of "control" is derived from the French word "controle", which was used to designate a counter, repeated record in order to validate the first one [24, 72]. Over time the content of this concept has undergone substantial changes.

S. I. Kotyurgin defined control as implementation of a specific function in the activity of authorities and management bodies. He believed that under the control function in the activity of police we need to understand the determination of the degree of compliance of a real situation in a police apparatus with a predetermined direction and adoption in connection with this measures aimed at the elimination of detected and recorded flaws [18, 44].

V. V. Kardashevskii also defines control as a way of getting information on the implementation of a taken decision by comparing really achieved intermediate or final results and tasks that are provided for by a managerial decision [20, 536].

Thus, the control is an activity related to the getting of information and its subsequent analysis in order to obtain a conclusion on the conformity of taken decisions, which have managerial nature in administrative law, to the results obtained in the course of their implementation.

It should be noted that, at present, administrative-procedural formalization of managerial relations is actively being carried out at the legislative level [17, 3].

As an example of such regulation may be considered the established by the Disciplinary Statute of the Internal Affairs Bodies of the Russian Federation

procedure for giving orders and their monitoring. An order may be given in writing or verbally, including by the use of technical means of communication, to a subordinate or a group of subordinates. An order, given in writing, is the main administrative internal document (legal act) issued by a director (head) on the rights of one-man management. In accordance with the requirements of this normative legal act the director (head) is obliged to check the accuracy and timeliness of execution by subordinates of the received from him orders and instructions [2].

As stated by the Constitutional Court of the Russian Federation in the decision No. 18-P from December 1, 1997, control function is inherent to all public authorities within their competence, which implies their autonomy when implementation this function and forms of implementation specific to each of them. However, the freedom of discretion in determination specific types of state control (supervision), reason, forms, methods, techniques, procedures, dates is limited to the general constitutional principles of organization of the system of public authorities, the provisions of federal laws [5].

Implementation of the control function is not a sole prerogative of state power. It is implemented by local self-government bodies, as well as by other management structures within the limits of their competence in the performance of their tasks.

On this basis, in the framework of held administrative reform, it was proposed to consider control as an exercised in tests, measurements, examinations function that can be implemented by market actors, who are credentialed in executive authorities in accordance with the established procedure [9].

The control function is of universal nature. In its implementation there are conclusions on the compliance of exercised activity with set parameters of both legal and non-legal (technical) nature. Depending on subjects implementing control function, taken decisions can be informative, suggestive or overbearing – binding.

The jurisdictional activity of executive authorities exercised in the process of legal qualification of offences can, in our view, be considered as a particular case of exercising control function for the implementation activities of legal nature. At that, the object of legal qualification of illegal actions (inaction), as stated by P. P. Serkov, is the comparison of conduct provided for in a legal norm with actions (inaction) really carried out by the subject [25, 81]. Exercising of control function allows the law to serve as a criterion for evaluating the legality of deeds.

The results of control activity are exercised by executive authorities in implementation of managerial actions, including by issuing administrative acts. It should be noted that along with the term of "administrative act" different concepts are

used, for example, "legal act of management", "administrative-legal act", "administrative-legal act of public administration", "act of state administration". Each of them describes a particular facet of this legal phenomenon, but the most popular are the terms "legal act of management" and "administrative-legal act". Looking at the content of these concepts, it is important to note that the administrative law of Russia implements a vast concept of a legal act of management. Here we are talking about an administrative decision issued by a state body relating to the structure of the Federal Executive Branch within its powers, or by local self-government body that establishes a unilateral act of binding nature; at that, it refers to an act of general application, and to a specific, individual act [27, 6].

Legal acts of management are subject to the principle of legal certainty (res judicata). In law enforcement practice and doctrine this term refers to a final nature of an act, its irrefutability and enforceability. So, "presumption of legality of normative legal acts" should be applied in respect of normative legal acts of management adopted in accordance with the Decree of the Government of the RF No. 1009 from August 13, 1997 [3]. Its provisions suggest that a normative legal act is a lawful and valid, therefore is subject to mandatory application, until its illegality and invalidity is proven in court and the act is declared inoperative [13, 15].

In the Russian Federation normative acts of any state or other body are subject to assessment by way of supervision for compliance with the law (normative decrees of the President, decisions of the Chambers of the Federal Assembly of the Russian Federation, decisions and orders of the Government of the Russian Federation, local government acts, orders and regulations of ministries and agencies, heads of institutions, enterprises, organizations, etc.). An example of such an assessment is the decision of the Plenum of the Supreme Court of the Russian Federation No. 8 from October 31, 1995. In accordance with paragraph 7 of this decision, if during consideration a specific case the court finds that an act of a state or other body, which is subject to application, does not comply with the law, it, by virtue of part 2 article 120 of the Constitution of the Russian Federation has to take a decision in accordance with a law governing these legal relations. In the application of a law instead of a corresponding act of a state or other body, the court may issue a private ruling (decision) and to draw the attention of the bodies or its official, who adopted the act, to the need to bring it into conformity with the law or cancel [4, 6].

Along with the oversight activity to verify the legality of normative legal acts in the Russian legal system there is an institute of judicial appeal of specific (individual) acts. The legality of particular individual acts is ensured, by generally accepted rules, through two stages of review of a taken decision.

Accordingly, this institute is the most important guarantee of state protection for human and civil rights and freedoms. For example, the legal basis of appeal sentences for administrative offences is provisions of chapter 30 of the Code on Administrative Offences of the Russian Federation (hereinafter – CAO RF). At that, it should be noted that the provisions of this chapter have been repeatedly examined by the European Court of Human Rights. As the result of analysis the concern of the High Court was raised by the impact of the review procedure by way of supervision of entered into legal force decisions on a case of an administrative offence and decisions based on the results of consideration of complaints and protests on the conventional rights of applicants [8].

M. V. Kurpas, reviewing the decisions of the European Court of Human Rights related to the reconsideration of court decisions by way of supervision, said that the cancellation of a final and binding decision, which had entered into legal force, having the property of res judicata, was contrary to the principle of legal certainty, which was one of the fundamental elements of the rule of law. According to the legal position formulated by the European Court of Human Rights, supervision proceedings are an emergency procedure, application of which is justified only in "exceptional circumstances". In addition, this procedure is not an effective means of legal protection of human rights because of providing to an official the ability, without time limits, to initiate it and directly participate in it [19, 7].

Thus, the legal positions formulated in the decisions of the European Court of Human Rights demonstrate the shortcomings of the domestic system for the protection of human rights and freedoms in the Russian Federation and necessitate amendments and additions to the legal regulation of reconsideration by way of supervision of entered into legal force court decisions.

Decisions of the European Court of Human Rights were taken into account in the work of the Constitutional Court of the Russian Federation. In the ruling No. 113-O from April 4, 2006 on the complaint of the citizen V. V. Ovchinnikov, the Court emphasized that the consideration of the case, in respect of which the decision came into force, should be exercised in order to correct a miscarriage of Justice, and not on the merits, i.e. not in full. Therefore, supervision proceedings must be significantly different from prior stages of revision in terms of limits [4, 90].

It should be noted that the Federal Law No. 143-FL from June 4, 2014 introduced amendments to CAO RF that excluded review by way of supervision entered into legal force decisions on a case of administrative offence [10]. Nowadays it is implemented on the basis of the Federal Constitution Law No. 3-FCL from February 5, 2014 "On the Supreme Court of the Russian Federation" [1].

In accordance with the amendments, in implementation of supervision proceedings the Court, being guided by the standards, principles, legal norms embodied in normative legal acts that have, as a rule, supreme legal force, should investigate the contested limitation of rights and freedoms applied in a case and determine whether it was proportionate to the legitimate aim pursued, whether the motives, on the basis of which the limitation was exercised, were relevant and sufficient.

T. M. Neshataeva believes that entered into legal force court decisions are reconsidered by way of supervision in cases of detection of conflicts of a legislative act of the Russian Federation with the generally recognized principles and norms of international law or the legislation of the Russian Federation contains a lacuna in the legal regulation. The courts, using an analogy, resolve similar disputes in different ways. Lack of uniformity violates the rights and legitimate interests of an indefinite number of persons or other public interests, resulting in amendments to the current legislation [21].

Thus, the supervisory activity is of legal, state and overbearing nature. Final, binding decisions are reconsidered by way of supervision. In the course of supervision activity they identify legal norms, which do not correspond to the current system of legal regulation, i.e. "fundamental breaches" of law, which served as the basis for the adoption of revised decisions, take measures to bring them into line with the legislation. It should be noted that in the course of supervision proceedings, along with the elimination of "defective" law norms, they take measures to identify and punish officials responsible for making a decision knowingly contrary to the law, adopt measures for the compensation of moral damage inflicted to persons as a result of an unlawful decision, etc.

Supervision proceedings regulate public relations, in the course of which a court, body or official shall inform representative bodies or bodies competent to implement the legal regulation in the sphere of their jurisdiction about legal norms that do not meet the requirements of the current legislation. This feature of judicial law enforcement was noted by Soviet scientists. So, A. B. Vengerov in the most general form pointed out that in the process of legal regulation judicial practice played the role of a form of feedback, signaled the social efficiency of legal regulation, and showed the impact of public relations on legal norms [14, 6]. S. S. Alekseev pointed out that exactly the practice through a feedback mechanism determined the further development of legal regulation [12, 88].

For the first time the role of feedbacks in the organization and operation of self-managed systems was examined in the works of N. Winer, who understood it

as property, which allowed one to regulate future conduct by the past performance of orders, defined as a method to control system by inclusion in it the results of the earlier performance by it of its tasks [15, 45; 16, 71].

Among the works of domestic scientists we can distinguish the work of N. T. Abramova, where she identified in feedback the mechanism of accounting the difference between the target of action and its result [11, 116].

L. A. Petrushenko devoted a special work to the principle of the feedback, who saw its essence in the fact that any deviation of management system from the specified state is the source of emergence of a new movement in the system, always designed in such a way as to maintain the system in a specified state [23, 67].

In terms of administrative law the feedback mechanism is a system of legal norms, by means of which they exercise control function (the difference between the target of action and its result), supervision proceedings allowing one to identify and develop proposals to improve the "defective" legal norms, application of which leads to the entropy of legal system (the maintenance of system in a specified state), as well as directions of developed proposals to the representative bodies or bodies competent to implement legal regulation in the sphere of their jurisdiction.

These norms form the legal means of supervision proceedings, which belong to the competence of the Supreme Court of the Russian Federation. Thus, in order to implement the granted powers to implement in procedural forms of judicial supervision over the activity of courts, the Supreme Court of the Russian Federation summarizes the law enforcement practice, develops proposals for improving the legislation of the Russian Federation on issues of its jurisdiction and exercises the belonging to it, in accordance with part 1 article 104 of the Constitution of the Russian Federation, right of legislative initiative on the issues of its jurisdiction [1].

As an example of exercising the supervisory powers of the Supreme Court of the Russian Federation we can take the initiated by the Court and introduced to the State Duma of the Federal Assembly of the Russian Federation draft federal law "On Amendments to Article 30.11 of the Code on Administrative Offences of the Russian Federation". The draft was designed to bring the legislation on administrative offences in line with the Constitution of the Russian Federation, aimed at clarifying the procedure for reconsideration by way of supervision of entered into legal force decisions on a case of administrative offence, decisions based on the results of consideration of complaints and protests [7]. Its adoption has led to exercising the function of feedback, implementation the process of impact of public relations on legal norms.

Thus, supervisory activity allows, on the one hand, to ensure in the course of revision of judicial acts the rights and legitimate interests of persons concerned, on the other, to improve existing legislation by removing fundamental breaches of law identified in the administration of justice. The exercising of legislative initiative by the subjects of supervisory activity allows us at the qualitatively new level to effectively implement the future legal regulation of social relations, allowing the supervision proceedings be a kind of feedback in the mechanism of self-organization of legal system.

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