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**IMPROVEMENT OF THE PROCEDURE OF RECONSIDERATION
DECISIONS AND RULINGS ON CASES OF ADMINISTRATIVE OFFENCES
THAT HAVE ENTERED INTO LEGAL FORCE**

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The article deals with problems of correlation of administrative court procedure in arbitration courts with the procedure of reconsideration of rulings and decisions on cases of administrative offences that have entered into legal force in the Supreme Court of the Russian Federation. In order to ensure the constitutional provision for the protection of human and civil rights and liberties the author offers to enshrine the principle of collegiality in supervision proceedings on cases of administrative offences.

Keywords: administrative court procedure, legislation on administrative offences, supervision proceedings, court of general jurisdiction, arbitration court, appeal, collegiality.

Effective organization of the judiciary is an absolute attribute of a modern constitutional state. The effectiveness of the normative legal framework of the judiciary, clarity and consistency in the choice of procedural mechanisms to protect the rights and legitimate interests of private and public entities, embodiment in practice of democratic principles of court procedure – the ideal components of any judicial system [9, 2-5; 10, 32-39; 13, 2-3].

In the Russian Federation the choice of vector of the judiciary development is determined by basic constitutional provisions which specify that human rights and freedoms are the supreme value. The duty of the state is recognition, observance and protection of human and civil rights and freedoms (article 2 of the Constitution of the Russian Federation [7]). That is why even before the adoption of the Federal Law No. 240-FL from December 3, 2008, “On Amendments to the Code on Administrative Offences of the Russian Federation”, when the order of revision of decisions on cases of administrative offences, protests and decisions based on the results of complaints consideration, which came into legal force, was regulated by only a single article 30.11 of the Code on Administrative Offences of the Russian Federation (hereinafter – CAO RF), the Constitutional Court of the Russian Federation stated the following legal position: “pending the introduction to the Code on Administrative Offences of the Russian Federation corresponding additions the limits and grounds for checking, powers of the judges of the Court of supervisory instance, time limits for appeal (contesting) of a court decision entered into legal force and the order for consideration of complaint (protest) in the Court of supervisory instance can be determined by the courts of general jurisdiction under the norms of chapter 36 of the Arbitration Procedure Code of the Russian Federation (hereinafter – APC RF) that governs proceedings on the revision of judicial acts of arbitration courts by way of supervision, with taking into account the peculiarities of resolved issues and general principles of court procedure” [3].

Thus, the Constitutional Court of the Russian Federation recognized that the arbitration procedural legislation had used a better pattern for consideration of cases on administrative offences by way of supervision, containing elements of collegiality, establishing the possibility of interested persons to be directly involved in the process of case settlement, including optimal procedural mechanisms, which is especially important today when the law enforcement practice proves that there is a need for better ways of supervision proceedings arrangement, while respecting the balance of interests of the State and its citizens.

It should be recalled that the APC RF provided for rules for reconsideration of cases on administrative offences other than those contained in the CAO RF

(currently chapter 36 of the APC RF "Proceedings on the Revision of Judicial Acts by Way of Supervision" has lost its force due to the adoption of the Federal Law of No. 186-FL "On Amendments to the Arbitration Procedure Code of the Russian Federation"). As the sole supervisory instance for all categories of court cases was the Higher Arbitration Court of the Russian Federation, which at the meeting of the Presidium decided on reconsideration judicial decisions that had entered into legal force. "Supervision proceedings, being the last "lever" in solution of an arisen dispute in an arbitration process, has a very meaningful and useful to society and the State function of consideration cases by way of supervision through the use of and compliance with the adopted by the legislation of the Russian Federation rules and conditions for the implementation of entrepreneurial and other business activity" [11]. Supervision proceedings in the arbitration process had a single for all categories of court cases normative legal framework. The Presidium of the Higher Arbitration Court of the Russian Federation after a statement by the applicant applying for reconsideration of a judicial act by way of supervision, other persons involved in a case and present in the trial, was taking the decision at a closed session. Resolution of the Presidium of the Higher Arbitration Court of the Russian Federation was taken by a majority of the judges [8].

Pursuant to the decision of the Constitutional Court of the Russian Federation, but still having deviated from the given by the Constitutional Court of the Russian Federation vector of development of the legislation on administrative offences in part of the revision of orders and decisions on cases of administrative offences that came into force, the legislator has recognized void article 30.11 of the CAO RF and added articles 30.12 - 30.18 to the chapter 30 of the Code [4]. Meanwhile, the issue of consideration cases collectively in the hearing was never resolved in the mentioned norms. Moreover, in the Supreme Court of the Russian Federation by the order of the President of the Supreme Court of the Russian Federation or his deputies a judge of the Supreme Court of the Russian Federation has the powers to review judgments on a case of administrative offence, decision based on the results of consideration of complaints, protests that have entered into legal force [5].

Split-level models of normative legal regulation of administrative court procedure led to the existence of quite different approaches to regulating the procedural rules for the administration of Justice on cases of administrative offences, including within the framework of the supervision proceedings, in the system of arbitration courts and courts of general jurisdiction. E. V. Slepchenko rightly notes: "...the separation of norms concerning administrative court procedure between the Civil Procedural Code of the RF, Arbitration Procedure Code of the RF

and the Code on Administrative Offences of the RF is not justified and creates problems in practice” [12, 51].

Within the framework of development of judicial reform, in order to ensure the unity of approaches to the consideration of cases, both in respect of citizens and legal persons, the Higher Arbitration Court of the Russian Federation and the Supreme Court of the Russian Federation have been merged since August 6, 2014 [6]. The competence of the Higher Arbitration Court of the Russian Federation to review cases under its jurisdiction, including by way of administrative court procedure, went to the Supreme Court of the Russian Federation. Currently, under part 4.1 of article 30.13 of the CAO RF, decisions of arbitration courts on cases of administrative offences, decisions taken by them on the basis of results of consideration of complaints, protests (petitions), which are entered into legal force, are reviewed by the Supreme Court of the Russian Federation if all the means of their appeal in arbitration courts provided for by arbitration-procedural legislation have been exhausted. The mentioned decisions may be considered in the Supreme Court of the Russian Federation by the President of the Supreme Court of the Russian Federation, his deputies or a judge of the Supreme Court of the Russian Federation by the order of the President of the Supreme Court of the Russian Federation or his deputies. The mentioned decisions shall be reviewed in the Supreme Court of the Russian Federation in accordance with the rules established by the CAO RF.

Thus, the revision procedure of entered into legal force orders and decisions on cases of administrative offences considered by arbitration courts has changed radically, and the parties to a case on administrative offense have lost the right to oral proceedings through collegiate court. This is not consistent with the legal position of the Constitutional Court of the Russian Federation and points to the need to find new ways of improving legislation, elaboration new procedural standards, continuing scientific and law-making work on the further development of legislation on the supervision proceedings on cases of administrative offences.

Existing sole taking decisions on complaints and protests against entered into legal force orders and decisions on cases of administrative offences is inconsistent with the objectives of the supervision proceedings, is not conducive to the full implementation of the general functions of case reconsideration [14, 69-80]. In addition, there is the possibility of reflection of subjective opinion of judge on the merits of a considered case on administrative offense.

The implementation of the principle of collegiality allows you to resolve a case on administrative offence by a definite panel of judges, to take into account

their different views and identify the most appropriate legal mechanisms for resolving cases by lower courts. Exactly such approach creates a powerful effect of legality, validity and finality of a judicial act.

It is noteworthy that the branches of criminal-procedural and civil-procedural legislation, if there are grounds for revision judicial acts, refer settlement of supervisory complaints, protests to the competence of the Presidium of the Supreme Court of the Russian Federation, further emphasizing the importance and liability of supervisory instance in correction of fundamental judicial errors [1; 2].

Supervision proceedings on cases of administrative offences also need similar procedural forms of consideration of cases. Establishment of the principle of collegiality in supervision proceedings on cases of administrative offences in the Supreme Court of the Russian Federation will contribute to: 1) formation of an agreed position of the court of supervisory instance when resolving court cases; 2) consideration of the views of different judges on the merits of a case on administrative offense and the order of application of norms of legislation on administrative offenses; 3) rise of the credibility of the judiciary and legal positions formulated by it.

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