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**MECHANISMS TO IMPROVE THE ACCESSIBILITY OF ADMINISTRATIVE COURT
PROCEEDINGS IN RUSSIA AND UKRAINE**

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Abstract

Comparative analysis of the current law, in particular, the Code of Administrative Judicial Procedure of the Russian Federation and the Code of Administrative Proceedings of Ukraine, is of great interest. Rationale. The relevance of the study is determined, first, by the scientific discussions and the absence of common opinion on the accessibility of administrative legal proceedings in Russia and Ukraine. The practice of administrative legal proceedings in Ukraine indicates that the absence of such provisions during the administration of justice causes judges to follow case law, clarifications from courts of higher jurisdiction, etc. rather than the provision of law. Moreover, the prospect of creation and operation of administrative courts in Russia is currently under debate. Purpose of the article. The purpose of this article is to elaborate the functional-legal approach that would determine the efficiency of the mechanisms that improve access to administrative court proceedings in Russia and Ukraine. Given the positive experience of the European Union countries, including Ukraine, in the field of administrative court operations, it is necessary to consider the feasibility of creating similar courts in Russia. Methods. The chief method that is the key to solving the problem is the inductive approach to examining the legal basis of the realization of the mechanisms that improve access to administrative court proceedings in Russia and Ukraine. Results. To sum up the conducted comparative legal analysis, it is worth noting, that the adopted Code of Administrative Judicial Procedure of the Russian Federation regulates administrative proceedings in a more clear and detailed way than the Code of Administrative Proceedings of Ukraine. The elaboration of the procedure for certain categories of cases in the Code of Administrative Judicial Procedure of the Russian Federation makes enforcement activities sufficiently easier.

Keywords

Administrative court proceedings – Administrative court – Specialized court – Case law

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LIC. LILIA ALEKSANDROVNA TREMPOLETS

Introduction

Comparative analysis of the current law, in particular, the Code of Administrative Judicial Procedure of the Russian Federation and the Code of Administrative Proceedings of Ukraine, is of great interest. This issue is relevant for the following reasons:

– first, the Code of Administrative Judicial Procedure of the RF came into effect in 2015;

– second, there is no widespread practice of application of the Russian Code of Administrative Judicial Procedure provisions in law enforcement practice;

– third, due to the existing positive law enforcement practice of administrative court proceedings in Crimea while it was part of Ukraine, in particular – the operation of administrative courts, the implementation of the provisions the Code of Administrative Proceedings of Ukraine, and the experience of application of the Code by judges¹.

Administrative court proceedings are implemented by administrative courts. There, one can appeal any decisions, actions, or failure to act by authorities except for cases when the court procedures for such decisions, actions, or failure to act are otherwise regulated by the Constitution or Ukrainian Law. When it comes to appealing cases for decisions, actions, or failure to act by authorities, administrative courts verify if they were performed 1) in accordance with, within the powers of, and in the way stipulated by the Constitution or Ukrainian Law, 2) using the power for the purpose it was granted, 3) justifiably, that is, considering all the circumstances relevant to making the decision (performing the action), 4) impartially (without bias), 5) in good faith, 6) sensibly, 7) observing the principle of equality before the law, preventing unfair discrimination, 8) proportionally, in particular, while maintaining the necessary balance between any adverse consequences for a person's rights, freedoms, and interests and the goals that the decision (action) is meant to accomplish, 9) providing for a person's right to participate in the decision-making process, 10) timely, that is, within a reasonable time².

Features of administrative process in Ukraine. The first and one of the key principal features of administrative process in Ukraine is the existence of specialized courts, in particular, administrative courts whose work is aimed exclusively at administrative proceedings. The Code of Administrative Judicial Procedure of the RF does not stipulate the creation of such courts which, in our opinion, significantly complicates the enforcement practices of general jurisdiction courts and could make the application of regulations from the Code of Administrative Judicial Procedure of the RF less effective.

European enforcement practices of administrative court proceedings. It is worth noting that European practices of administrative court proceedings indicate that such courts exist in a lot of countries and operate efficiently. Moreover, the absence of specialized courts for administrative cases complicates the enforcement practices as a judge's practical activities now include an additional procedural code and a new type of

¹ V. Konoplev, "Administrative court: past and present (on the example of a comparative legal analysis of the provisions of the Code of administrative procedure in the Russian Federation and Ukraine). Scientific notes of V. I. Vernadsky Crimean Federal University", Juridical science num 2 Vol: 68 (2016): 180–185.

² V. Konoplev, Administrative court: past and present...

proceedings. The aforementioned approach will undoubtedly lead to an increased workload for general jurisdiction courts. In view of the above, as part of a broad academic discussion, we suggest considering the feasibility of creating administrative courts, as well as the implementation of the pilot project for the creation and operation of an administrative court in the Republic of Crimea.

Methods

The principle method of the study was the deductive method that made it possible to examine the nature. The chief method that is the key to solving the problem is the inductive approach to examining the legal basis of the realization of the mechanisms that improve access to administrative court proceedings in Russia and Ukraine.

Purpose and objectives. The purpose of the article is as follows: to increase efficiency and to elaborate the functional-legal approach that would determine the efficiency of the mechanisms that improve access to administrative court proceedings in Russia and Ukraine. Given the positive experience of the European Union countries, including Ukraine, in the field of administrative court operations, it is necessary to consider the feasibility of creating similar courts in Russia. The objectives of the study are the comparative-legal study of Russian and Ukrainian law in the field of the work of administrative courts, operation of administrative court proceedings, and potential for experience sharing between the two countries in terms of legal system improvement in Russia and Ukraine. The goal of administrative court proceedings is protection of the rights, freedoms, and interests of individuals, as well as the rights and interests of legal entities, in the field of public-legal relations from infringement by public authorities, local authorities, their officials or employees, or other entities as part of the power management functions on the basis of legislation, including the exercise of delegated authority.

Results

The adopted Code of Administrative Judicial Procedure of the RF regulates administrative proceedings in a more clear and detailed way than the Code of Administrative Proceedings of Ukraine. The elaboration of the procedure for certain categories of cases in the Code of Administrative Judicial Procedure of the RF makes enforcement activities sufficiently easier.

The practice of administrative legal proceedings in Ukraine indicates that the absence of such provisions during the administration of justice causes judges to follow case law, clarifications from courts of higher jurisdiction, etc. rather than the provision of law. Moreover, the prospect of creation and operation of administrative courts in Russia is currently under debate. Given the positive experience of the European Union countries, including Ukraine, in the field of administrative court operations, it is necessary to consider the feasibility of creating similar courts in Russia. It is worth noting that the practice of administrative court proceedings on the peninsula, the accumulated positive experience of administrative court proceedings and organization of administrative court operations, and the staffing (availability of people (judges) who have previously heard similar cases) could be taken as a basis for the implementation of the earlier suggested pilot project³.

³ V. Konoplev, Administrative court: past and present...

The powers of the administrative court to hear cases of administrative jurisdiction, the procedure for administrative court applications, and the procedure for administrative court proceedings are defined by the Code of Administrative Proceedings of Ukraine.

Discussion

Some scholars believe that in fact, there are two main reasons that gave rise to the Code of Administrative Judicial Procedure of the RF: the first is that administrative court proceedings were directly enshrined in the RF Constitution; the second is that it is necessary to standardize procedural rules that regulate the procedure for certain cases that arise from administrative and other public legal relationships⁴.

In fact, the Code of Administrative Judicial Procedure of the RF revolutionized Russian procedural law. It genuinely raised the status of the administrative-procedural form to the level of the civil, criminal, and constitutional forms. At the same time, it not only legalized administrative justice as an element of the Russian state but also captured the change in the understanding of its mission and functions. In this capacity, it comes across as the symbol for the administrative justice paradigm change in Russian procedural, administrative, and legal science.

From a conceptual perspective, the Code of Administrative Judicial Procedure of the RF in its historic mission signals a future change in material administrative law and a shift in the paradigm that is dominant in its theory. The application of the new provisions within it will inevitably contribute to “tectonic shifts” in statutory regulations of the relations in public administration.

The judicial system of Ukraine consists of the Constitutional Court and the system of general courts, which in turn are divided into three subsystems of specialized courts – administrative courts, economic courts, and criminal civil courts – headed by higher specialized courts. The entire system of general courts is headed by the Supreme Court of Ukraine, which performs the function of monitoring the unity of judicial practice in the three subsystems. There should not be any discrepancies between the interpretations of the same regulations when judges apply them⁵. There are good law enforcement practice and staffing – judges. Undoubtedly, this suggestion is up for discussion and requires further scientific research.

The key difference between the Code of Administrative Proceedings of Ukraine and the Code of Administrative Judicial Procedure of the RF is the subject of regulation of the codes. Thus, Article 1 of the Code of Administrative Judicial Procedure of the RF stipulates that courts, under the procedure provided for by the Code, consider and adjudicate administrative cases within their jurisdiction on the protection of violated or disputed rights, freedoms, or lawful interests of individuals and rights and lawful interests of organizations, arising from administrative and other public legal relationships, including administrative cases:

⁴ Sh. U. Stepanyan, *Osobennosti administrativnogo sudoproizvodstva kak samostoyatelnoi formy osushchestvleniya sudebnoi vlasti*. Available at: <http://xn----7sbbaj7auwnffhk.xn--p1ai/article/17797>

⁵ V. Konoplev, *Administrative court: past and present...*

a) on challenges to decisions and actions (failure to act) of public authorities, other state bodies, military administration bodies, local authorities, officials, state and municipal servants;

b) on challenges to decisions and actions (failure to act) of non-profit organizations vested with certain state or other public powers, including self-regulating organizations;

c) on challenges to decisions and actions (failure to act) of qualification boards of judges;

d) on challenges to decisions and actions (failure to act) of High Examination Commission, tasked with conducting judicial qualification examination, and of examination commissions of constituent entities of the RF, tasked with conducting judicial qualification examinations;

e) on the award of compensation for the violation of the right to trial within a reasonable time in cases considered by courts of general jurisdiction or of the right to execution of a judicial act of a court of general jurisdiction within a reasonable time⁶.

Courts consider and adjudicate administrative cases within their court jurisdiction, pertaining to the exercise of obligatory judicial control over the observance of human and civil rights and freedoms and of rights of organizations during the implementation of certain administrative authoritative demands addressed to natural persons and organizations, including administrative cases 1) on the suspension of activities or liquidation of a political party, its regional office, or another structural division, of another public association, religious or another non-profit organization, as well as cases regarding the prohibition of activities of a public association or a religious organization that are not legal entities, cases regarding the expungement of records about a non-profit organization from the state registry, 2) on the termination of activities of mass media, 3) on the recovery of monetary sums on account of compulsory payments and penalties, stipulated in law, from natural persons, 4) on the placement of a foreign citizen or a stateless person, subject to deportation or transfer by the RF to a foreign state in accordance with an international treaty of the RF on readmission into a designated special institution, on the prolongation of stay of a foreign citizen in a special institution, 5) on the implementation, prolongation, or early termination of administrative supervision, as well as on partial removal or supplementation of administrative limitations, earlier stipulated for a person under supervision, 6) the involuntary hospitalization of a citizen to a medical organization rendering inpatient psychiatric care, prolongation of a citizen's involuntary hospitalization, or involuntary psychiatric examination of a citizen, 7) on the involuntary hospitalization of a citizen to a medical antituberculosis organization, 8) other administrative cases regarding the involuntary hospitalization of a citizen to a non-psychiatric medical organization⁷.

In turn, the Code of Administrative Proceedings of Ukraine stipulates the jurisdiction of administrative courts that is applicable to public legal disputes, in particular:

a) disputes related to hiring citizens for the public service, carrying out the public service, and dismissing from the public service;

⁶ Kodeks administratyvnogo sudoproizvodstva Rossii. Available at: http://www.consultant.ru/document/cons_doc_LAW_176147/

⁷ Kodeks administratyvnogo sudoproizvodstva Rossii...

b) disputes between subjects of authoritative powers regarding the implementation of their competence in the area of governance, including delegated powers;

c) disputes that arise because of the conclusion, fulfillment, abrogation, or invalidation of administrative contracts;

d) disputes on the basis of an address of a subject of authoritative powers in the instances established by the Constitution and Ukrainian law;

e) disputes of individuals or legal entities with a public information administrator regarding an appeal against his decisions, actions, or failure to act with respect to access to public information⁸.

Second, the Code of Administrative Proceedings of Ukraine⁹ has a chapter with legal definitions of the conceptual framework, in particular, administrative court proceedings – the activity of the administrative courts for the consideration and resolution of administrative affairs in the manner provided for in this Code. Administrative process denotes legal relationships established during the administrative court proceedings. Administrative action is an appeal to the Administrative Court for the protection of rights, freedoms, and interests, or for the execution of powers in public law relationships. Subjects of authoritative powers are public authorities, local authorities, their officials or employees, as well as other entities as part of the power management functions on the basis of legislation, including the exercise of delegated authority.

Third, the differences in the definition of the tasks of administrative proceedings are of considerable importance.

The analysis of part 1 Article 1 of the Code of Administrative Judicial Procedure of the RF suggests that Russian administrative court proceedings are the work of the Supreme Court of the RF, general jurisdiction courts that consider and adjudicate administrative cases on the protection of violated or disputed rights, freedoms, and lawful interests of citizens and rights and lawful interest of organizations, arising from administrative and other public legal relations, pertaining to the exercise of judicial control over legality and validity of the exercise of state or other public powers. For instance, Yu.N. Starilov notes that due to the approval of the Code of Administrative Judicial Procedure of the RF a long and difficult period has ended. It was a period filled with irreconcilable disputes, “contention” between various scientific schools and scientists – representatives from different fields of substantive and procedural law, opposing scientific positions, and, at the same time, productive discussions. It was a period of discussion of the idea of establishing administrative courts in the country and the creation of a full-fledged system of administrative court proceedings, which was required since 1993 by the constitutional legal norm on the forms of the implementation of judicial power in Russia (Article 118 of the RF Constitution)¹⁰.

⁸ Kodeks administratyvnogo sudochynstva Ukrainy [the Code of Administrative Proceedings of Ukraine]. Available at: <http://zakon5.rada.gov.ua/laws/show/2747-15>

⁹ Kodeks administratyvnogo sudochynstva Ukrainy...

¹⁰ Yu.N. Starilov, “Prinyatie Kodeksa administrativnogo sudoproizvodstva Rossiiskoi Federatsii — vazhneishii etap sudebnoi reformy i modernizatsii administrativno-protseessual'nogo zakonodatel'stva”, Vestnik Voronezhskogo gosudarstvennogo un-ta. Seriya: Pravo num 2 (2015): 8-15.

Conclusions

The Code of Administrative Proceedings of Ukraine defines the goal of administrative court proceedings as protection of the rights, freedoms, and interests of individuals and the rights and interests of legal entities in the field of public-legal relations from infringement by public authorities, local authorities, their officials or employees, or other entities as part of the power management functions on the basis of legislation, including the exercise of delegated authority by means of fair, unbiased, and timely consideration of administrative cases.

We believe that the Code of Administrative Proceedings of Ukraine gives a clearer and more structured definition to the goals of administrative court proceedings, which are: 1) ensuring accessibility of justice in the field of administrative and other public legal relations; 2) the protection of violated or disputed rights, freedoms, or lawful interests of individuals and rights and lawful interests of organizations in the field of administrative and other public legal relationships; 3) the correct and timely consideration and adjudication of administrative cases; 4) strengthening the rule of law and preventing violations in the field of administrative and other public legal relations. Therefore, administrative court proceedings in Ukraine are implemented by administrative courts in the cases that require protection of the rights, freedoms, and interests of individuals and the rights and interests of legal entities in the field of public-legal relations from infringement by public authorities, local authorities, their officials or employees, or other entities as part of the power management functions on the basis of legislation, including the exercise of delegated authority. The procedure for administrative cases, the procedure for administrative court applications and the conduction of administrative court proceedings are regulated by the Code of Administrative Proceedings of Ukraine¹¹.

Recommendations

In the ongoing discussions, the administrative court proceedings have always been up for debate in the context of the subject matter of administrative justice. It is clear that the latter require procedural law. In every country, the formation of the corresponding branch of procedural law took place differently, given the traditions of legal life and development, historical features in state and legal construction, as well as the specifics of planning and implementing numerous reforms and transformations.

However, in many countries, some patterns have also developed in establishing judicial control over the administrative powers of officials, one of which includes the development of a special law on administrative court proceedings. Until a certain point, the codification of procedural legal norms in the field of administrative justice of Russia was proposed to be carried out in the administrative-procedural code^{12,13}. Along with this, the ideas for developing and adopting a federal constitutional law were discussed, “On administrative court proceedings”¹⁴ or the RF code on administrative court proceedings^{15,16}.

¹¹ A. V. Staritsyn y D. V. Eremeev, “Perspektivy sovershenstvovaniya administrativnogo sudoproizvodstva v Rossii”, *Lex Russica* num 7 Vol: 128 (2017): 103-104.

¹² A. B. Zelentsov y V. I. Radchenko, *Administrativnaya yustitsiya v Rossii (istoriya i sovremennost’)* (Moscow: 2002).

¹³ Yu. N. Starilov, *Administrativnaya yustitsiya: problemy teorii* (Voronezh: 1998).

¹⁴ N. G. Salishcheva, E. B. Abrosimova, *Federalnyi konstitutsionnyi zakon “Ob administrativnom sudoproizvodstve”* (Moscow: 2001).

The approval the Code of Administrative Judicial Procedure of the RF that contains a range of legal norms regulating administrative court proceedings in general courts and separating it from civil court proceedings leads to the completion of the formation of a new branch of law – judicial administrative law. The set of rules governing administrative proceedings in arbitration courts is an important part of that field (Article 29 of the Arbitration Procedural Code of the RF). The differences in the understanding of the subject of administrative legal proceedings between these two codes are not an insoluble problem for formalizing judicial administrative law in an independent branch and can be removed by means of re-codification.

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¹⁵ V. I. Radchenko (ed.), Problemy zashchity publichnykh i chastnykh interesov v administrativnykh sudakh, conference materials (Moscow, Rossiiskaya akademiya pravosudiya, 15—16 March 2001).

¹⁶ M. Ya. Maslennikov, Rossiiskii administrativnyi protsess: perspektivy legitimatsii, tsentralizatsii i sistematizatsii (Moscow: 2009).

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