

THE RANGE OF ADMINISTRATIVE JUSTICE SPECIALIZATIONS IN RUSSIA AND THE OTHER BRICS COUNTRIES

MIKHAIL KLEANDROV,

Russian Academy of Sciences (Moscow, Russia)

IRINA PLUZHNIK,

Tyumen State University (Tyumen, Russia)

DOI: 10.21684/2412-2343-2018-5-2-24-48

This article deals with the challenges concerning increasing administrative justice efficacy in Russia and other BRICS countries, where the specialized development of jurisdictional bodies is inconsistent and far from effective. The article analyzes the gaps and disputed aspects of administrative justice including the mechanisms for judicial administrative dispute resolution in the BRICS countries. The authors argue that the level of effectiveness of administrative justice vested in judicial procedures depends critically on the specialization of the administrative courts. This involves individual judges, separately operating permanent judges, judicial committees, mono-courts, independent administrative judicial systems incorporated into larger judicial systems within the courts of general jurisdiction, and separate and independent administrative and judicial systems. Even though the BRICS countries do not have a structured administrative judiciary, the retrospective and comparative analysis of their administrative justice jurisdiction and its most effective practices and mechanisms undertaken by the authors enables them to rethink the existing approach to resolving administrative cases via the judiciary. The aim of the article is to initiate the creation of an independent administrative court system organization in order to ensure better justice in the areas of social life including legal relations with executive bodies. Suggestions for the implementation of the specialization of the administrative judiciary in the Russian Federation are given. The authors, for the first time in Russian jurisprudence, propose a theoretical model of an independent, four-tiered specialized legal mechanism of administrative justice, which includes the interrelated factors of court organization, the judiciary and their legal status. The range of the four specialized tiers of the administrative judicial system is proposed. It is argued that they should include a systematic succession represented by lower courts, first instance lower courts, area courts and a Higher Administrative Court of the Russian Federation.

Keywords: BRICS countries; administrative law; administrative justice; specialized administrative judiciary; court specialization.

Recommended citation: Mikhail Kleandrov & Irina Pluzhnik, *The Range of Administrative Justice Specializations in Russia and the Other BRICS Countries*, 5(2) BRICS Law Journal 24–48 (2018).

Table of Contents

Introduction

1. Administrative Justice in Brazil, India, China and South Africa

1.1. Administrative Justice in Brazil

1.2. Administrative Justice in India

1.3. Administrative Justice in China

1.4. Administrative Justice in South Africa

2. History of Administrative Justice Development in Russia

3. Assessment of the Effectiveness of Current Procedural Legislation in Russia

4. Integrity of Existing Terms “Administrative Wrongdoing” and “Crime”

5. Shortcomings of Modern Administrative Procedural Law

Conclusions

Introduction

One of the critical tasks in the area of law of any state is the increase in the effectiveness of jurisdictional bodies provided via the development of scholarly legal tools.

The goal of increasing the efficiency of jurisdictional bodies is correspondingly related to the adequate enhancement of all the tiers of the mechanism of administrative justice to protect the rights and legal interests of citizens and organizations when they are violated or challenged, and the prompt remedy of the infringed justice.

One of the ways to accomplish this is through the analysis of similar institutions in the mechanisms of administrative justice of foreign states, here with reference to the BRICS countries.

At present, BRICS is not a legally registered interstate association, having neither its own coordinating center nor its own headquarters. The consolidating basis of its activity is economic integration and mutual assistance in the modernization of economic systems. At the same time, for each of the BRICS member states there are

a relevant number of specific issues. One of the central common issues for all BRICS countries is the enhancement of administrative justice and specialization of the tiers of its mechanism for protecting the rights, freedoms and legitimate interests of citizens and organizations. As noted by D. Maleshin,

In some countries, such as Russia, China and South Africa, special laws regulate the proceedings, but none of the BRICS countries has adopted the administrative court model.¹

Comparing these mechanisms in different BRICS member states, identifying their specific features and contrasting them with each other can reveal their pros and cons, advantages and disadvantages, and tendencies that increase their effectiveness and tendencies that lead to inhibition in their development and a decrease in their efficacy.

Unfortunately, there are no special institutions for the BRICS countries that would provide the solution to the above issues. However, there is the Inter-departmental Coordination Council at the Lomonosov Moscow State University (Moscow), based at the Department of Public Administration since 2012, which explores BRICS issues. The purpose of the council is research and educational work devoted to the study of the problems of the BRICS countries. At the same time, though, there are no research outputs or other results produced by the council that contain comparative legal studies of the administrative justice problems in the BRICS countries. Consequently, the absence of such outputs and research results concerning BRICS has resulted in the legal situation that international standards in this field concerning the existing international legal standards of administrative procedure are mostly covered (with minor exceptions) by the states of the European continent exploring a specialized judiciary.²

It is common practice that traditional research on comparative jurisprudence is limited to its geographical dimension and compares the norms and institutions of law and law enforcement practices in different states. If a federal state is concerned, then only in the subjects of the federation.

Identifying specific features of the institutions of administrative justice in Brazil, Russia, India, China and the Republic of South Africa and their comparison is an important task of the legal field, is of considerable research interest and contributes much to the solution of purely pragmatic issues.

¹ Dmitry Maleshin, *Chief Editor's Note on Administrative Justice in BRICS Countries*, 3(2) BRICS Law Journal 5 (2016).

² See, e.g., Stefaan Voet, *Belgium's New Specialized Judiciary*, 2(4) Russian Law Journal 129 (2014); Alan Uzelac, *Mixed Blessing of Judicial Specialization: The Devil Is in the Detail*, 2(4) Russian Law Journal 146 (2014); Elisabetta Silvestri, *Judicial Specialization: In Search of the "Right" Judge for Each Case?*, 2(4) Russian Law Journal 169 (2014); Ricardo Perlingeiro, *Contemporary Challenges in Latin American Administrative Justice*, 3(2) BRICS Law Journal 21 (2016).

However, from the point of view of the methodology of legal research it is no less important and promising to implement the so-called “fourth” dimension, which, as in physics, makes reference to the temporal dimension. We contend that the comparison of the same norms, institutions and practices in one and the same state (and here the focus will be on Russia) at different stages of its development within this Russian perspective is to be done within the temporal dimension so as to examine more effectively the legal experience, the dynamics of the development of administrative justice, which, to some extent, may allow us to determine its future course.

The methodological rationale of this article is based on divergent qualitative methods, such as: cause-and-effect methods for shaping the stages and actual trends in the development of administrative justice; synthesis, formal and logical induction, deduction and comparison for a comprehensive approach to examine the main tracks of administrative justice development in the BRICS countries. Dialectical research methods included historical, retrospective and the legal method of comparative law, which enabled the authors to objectively and comprehensively analyze interrelations and the integrity of administrative justice in the BRICS countries and to study the system of domestic administrative justice development both diachronically and synchronically. Structural and functional methods were implemented to create a theoretical legal basis to work out a four-tiered model of administrative justice, its operational mechanism and constituents.

1. Administrative Justice in Brazil, India, China and South Africa

Being a complex institution of public law, administrative justice is a complex institution, which is based on various organizational forms. In Russian scholarly literature, administrative justice is considered to be a special judicial procedure for trying the cases that deal with public administration issues. This relates to the protection of subjective public rights and the provision of the rule of law in the area of public administration. A judicial form of conflict resolution arises in connection with the assessment of the legality of the acts and actions of a public authority within its main task. The maintenance of the rule of law over abuse of power in public administration is the protection of the rights and legitimate interests of citizens against unlawful acts and decisions of executive bodies and law enforcement bodies in the area of public administration. An administrative form of justice is a special branch of justice that provides judicial control over public authority for dispute resolution of a public and legal nature under special procedural rules.³

³ Хаманева Н.Ю. Административная юстиция и административно-правовые отношения: теоретические проблемы // Труды Института государства и права Российской академии наук. 2009. № 1. С. 49 [Natalya Yu. Khamaneva, *Administrative Justice and Administrative Legal Relations: Theoretical Issues*, 1 Proceedings of the Institute of State and Law of the Russian Academy of Sciences 41, 49 (2009)].

In related literature, it is also noted that *administrative justice* includes hearings of administrative disputes in a special order by both judicial and extrajudicial (quasi-judicial) administrative-jurisdictional bodies.⁴

Unfortunately, there is practically no comprehensive comparative research on administrative justice in the BRICS countries, except for that undertaken by Ricardo Perlingeiro, and some segments of this mechanism in the BRICS countries in its judicial and out-of-court forms.

The analysis of legislation in Brazil, India, China and South Africa conducted and concerning the mandatory or non-mandatory pre-trial procedure before applying to court for the resolution of various public disputes (mainly those relating to taxation and customs) is of great theoretical and practical interest.

1.1. Administrative Justice in Brazil

The topic of administrative justice in Brazil is actively researched in the works by Ricardo Perlingeiro,⁵ a federal judge in Rio de Janeiro and professor at the Fluminense Federal University, who noted that:

The time has come for starting a new stage in cooperation on experience exchange between the administrative law systems and the administrative procedure of Brazil and Russia. Both countries are closely cooperating within the BRICS and the exchange of legal experience and expertise between these countries can be no less useful than economic cooperation. Since the legal systems of both countries use continental law, the systems of their administrative law and administrative justice are comparable.⁶

From the point of view of legal practice, specifically, comparison of the procedural rules and legal terms is of great interest for Russian administrative justice. First, from the point of view of legal rights, it is not unlawful in Brazil to file a complaint on an administrative matter with the public office that is charged with the relevant responsibility and power (in Russia it may be the office of the human rights ombudsman or an office for the rights of entrepreneurs); second, nor is it unlawful to file a suit in court asking for interim measures, such as, *inter alia*, a preliminary

⁴ Панова И.В. Проблемы административной юстиции // Актуальные проблемы административного судопроизводства: Материалы Всероссийской научно-практической конференции (г. Омск, 28 ноября 2014 г.) [Inna V. Panova, *Challenges of Administrative Justice in Challenges of Administrative Judiciary: All-Russian Conference Proceedings (Omsk, 28 November 2014)*] 140 (Omsk: Omsk Law Academy, 2015).

⁵ Перлингейру Р. Система административной юстиции Бразилии: сравнительно-правовой анализ // Государство и право. 2015. № 7. С. 75–90 [Ricardo Perlingeiro, *The System of Administrative Justice in Brazil: A Comparative Legal Analysis*, 7 State and Law 75 (2015)].

⁶ *Id.* at 75.

injunction. In addition, Brazil has highly specialized courts of administrative justice, in particular the system of electoral courts, which are inferior to a higher court – the Supreme Electoral Court. Nevertheless, there are examples in Brazilian legal practice, which we consider unacceptable, not only for Russian administrative justice, but also for the entire judicial power in Russia. They refer to the right of disciplinary power of Brazilian judges of the courts of the second instance who are endowed with disciplinary powers over judges of the courts of first instance, and have powers to participate in the appointment of judges to certain positions.⁷

However, we cannot agree with Perlingeiro's opinion and assurance that the judicial power should not interfere with the internal affairs of the public body and must respect its internal rules and regulations. For example, the author claims that the judiciary should interfere neither with the internal criteria nor with the election of the president of a public university, or in the criteria compilation for selecting members of a university arbitration body.⁸ This point of view explains the fact that such kinds of elections entail exclusively internal consequences and, of course, there are no vested individual rights to be protected by the courts. The same applies to the administrative structure of the legislature (election to the commission, etc.).

Nevertheless, if a civil servant claims a violation of his or her personal rights, even if the alleged violation is directly related to his or her involvement in some administrative body, this dispute should not be excluded from the scope of fundamental human rights.

1.2. Administrative Justice in India

In India, as well as in the legal family of the United Kingdom, the United States, Australia and Canada, there are no specialized administrative courts, and administrative disputes are resolved by the courts of general jurisdiction. Based on Amendment No. 42 to Part XIV-A of the Constitution of India, the jurisdiction of the general courts and administrative tribunals has been delineated. Administrative tribunals are created to try taxation, electoral and customs cases and for the recovery of damages in respect of a number of types of administrative violations. These cases are excluded from the jurisdiction of the general courts, where administrative disputes can be tried only after they have passed the jurisdiction of the quasi-judicial (i.e. tribunals) litigation. As noted by Rehan Abeyratne, India has long suffered from an overburdened judiciary in which a staggering four million cases are pending before the high courts. Leaving these courts understaffed only exacerbates the pendency crisis. Institutional bickering has blocked many qualified nominees from

⁷ Eugenio Raúl Zaffaroni, *Poder Judiciario: Crise, Acertos e Destkertos [Judicial Branch: Crisis, Blows, Mistakes]* (São Paulo: RT, 1995).

⁸ Perlingeiro 2015, at 87.

assuming judgeships.⁹ Even though, at present, the judicial system of India possesses extrajudicial and specialized administrative justice within the judicial body, there is a broad judicial neglect of administrative law principles and procedural rules.

1.3. Administrative Justice in China

In China, a separate specialized administrative justice in the form of administrative courts does not exist. In the Chinese system of courts of general jurisdiction there are no special committees of judges for administrative cases, though these committees had been formed before 1989 in the Supreme People's Court and many local people's courts. In 1989, the Administrative Procedure Code was adopted by the National People's Congress. The most recent enactment by this body was the Administrative Procedure Law, which was adopted by the National People's Congress on 4 April 1989, and came into force on 1 October 1990. There was strong support for administrative litigation law, and this field has expanded dramatically since the promulgation of the Administrative Litigation Law in 1989.¹⁰ This legally formalized and vested the jurisdiction of administrative cases to the people's courts. These courts have the right to hear administrative cases including complaints against administrative bodies and their officials for violating the legitimate rights and interests of citizens and legal entities.

At the same time, the Administrative Procedure Code of China put some limitations on the liability for administrative case hearings, including certain categories of administrative cases permitted for court trials in the other BRICS countries. In particular, in China these include administrative cases related to state acts in the fields of defense and foreign relations, mandatory normative acts and specific administrative acts, which have been legally adopted as a final text by certain institutions.¹¹

Thus, unlike in Russia, administrative justice in China is somewhat limited, leaving no possibility for judicial review. It is necessary to point out that administrative justice in China does not replace the administrative authorities in assessing the appropriateness of the decisions made by the latter, within the limits of their statutory competence and responsibility.

⁹ Rehan Abeyratne, *Judicial Appointments and Administrative Law in India*, Admin Law Blog, 16 May 2017 (Jun. 9, 2018), available at <https://adminlawblog.org/2017/05/16/judicial-appointments-and-administrative-law-in-india/>.

¹⁰ Jyh-Pin Fa & Shao-chuan Leng, *Judicial Review of Administration in the People's Republic of China*, 23(3) Case Western Reserve Journal of International Law 447 (1991). See officials' reports before the National People's Congress in *Fazhi Ribao* (Legal System Daily), 29 March 1990, at 1; Wu Naitao, *The Origin of the Chinese Legal System*, 33 Beijing Review 23 (1990) (promulgated on the order of the Chairman of the People's Republic of China on 4 April 1989).

¹¹ Хаоцай Л. Очерки современного административного права Китая [Lo Haotsai, *Essays on Modern Administrative Law of China*] (Moscow: Knigodel, 2010).

1.4. Administrative Justice in South Africa

Under the Constitution of South Africa, the judicial system of the Republic includes the Constitutional Court, the Supreme Court of Appeal, High Courts and Magistrates' Courts. High Courts have territorial jurisdiction within each province or its parts. They try all civil and criminal cases, and they operate as Courts of Appeal for lower courts. There are neither separate administrative judicial systems nor separate administrative courts in South Africa. This fact is pointed out in an article by D. van Loggerenberg, the title of which speaks for itself: "Specialization of South African Judges and Courts: Multi-Skilled, Multitasked, Multiaccess?"¹²

Moreover, administrative justice in South Africa is of a discrete nature. Specifically, the Law on Tax Administration in South Africa, adopted in 2012, led to the creation of a four-tiered system for settling tax disputes. This very fact is of critical interest both for judicial and for law-making areas of Russian administrative law.¹³

The first instance of conflict resolution between taxpayers and taxation authorities in South Africa is the Taxation Council, the administrative body within the structure of the State Revenue Service. This council consists of a presiding judge appointed from among defense lawyers, a certified accountant and a representative of the business community. Moreover, taxpayers have the right to apply to the tax court only after the decision made by the relevant administrative and public bodies. Decisions of tax courts may be appealed to a third instance – to the branches of the Supreme Court of South Africa in the provinces. These courts can make the following decisions: confirm the assessment of the taxpayer's obligation, annul the decision or reach a new decision; or return the case to the taxation court for a trial with a different bench of judges. Finally, taxpayers have the right to appeal to the fourth instance, which is the Supreme Court of Appeal, whose decision has precedential value.

2. History of Administrative Justice Development in Russia

Russian administrative justice issues and their development are rather thematically broad. For instance, in the reference book by Yu. Starilov published in 2007 the list of the themed literature on administrative law exceeds 1,000 sources.¹⁴ However, even in this profound book there are no studies on the problems of expanding

¹² Danie van Loggerenberg, *Specialization of South African Judges and Courts: Multi-Skilled, Multitasked, Multiaccess?*, 2(4) Russian Law Journal 187 (2014).

¹³ Янкевич С.В. Порядок разрешения налоговых споров в Южно-Африканской Республике // Право. Журнал Высшей школы экономики. 2015. № 4. С. 174–185 [Semyon V. Yankevich, *The Procedure for Resolving Tax Disputes in the Republic of South Africa*, 4 Law. Journal of the Higher School of Economics 174 (2015)].

¹⁴ Старилов Ю.Н. Административное право: Специальная литература: Справочное пособие [Yuriy N. Starilov, *Administrative Law: Special Literature: A Reference Manual*] (Voronezh: Publishing House of the Voronezh State University, 2007).

specialization of the mechanism of administrative and judicial justice and the need to integrate it within an independent administrative and judicial system headed by the Supreme Administrative Court of the Russian Federation.

The evolution of administrative justice in Russia was heavily influenced by France more than 200 years ago. The intensive development of French law projected onto a number of countries in Western Europe and Russia. By the middle of the second half of the 19th century a number of profound monographs¹⁵ and manuals¹⁶ had already been published in Russia. They included the analysis of the legislative foundations and law enforcement practices of the administrative justice bodies of France, Germany, Austria, Italy, Spain and Portugal, as well as theoretical work on the Institute of Administrative Justice of Russia.¹⁷

Therefore, it is evident that the evolution of administrative justice in Russia did not arise all of sudden and from nowhere. Administrative justice was understood as an administrative court for dispute resolution on breaches in managerial cases. Violation of duties and responsibilities were imposed on the governing bodies by laws and orders of the higher authorities.¹⁸ As the recent research reflects, it is pointed out that certain institutions of administrative justice began to emerge in Russia in the 1870s. However, they had many organizational and procedural imperfections.¹⁹

The pinnacle of the development of administrative justice within the process of pre-Soviet Russian state-building should be considered to be the statute titled "Regulations for Courts of Administrative Cases," adopted just over 100 years ago, on 30 May 1917.²⁰ The first point of this statute reads as follow:

¹⁵ See, e.g., Корф С.А. Административная юстиция в России. Кн. 1–3 [Sergey A. Korf, *Administrative Justice in Russia. Books 1, 2 & 3*] (St. Petersburg: Tip. Trenke i Fyusno, 1910).

¹⁶ See, e.g., Гаген В.А. Административная юстиция: Конспект лекций [Vladimir A. Gagen, *Administrative Justice: A Summary of Lectures*] (Rostov: Tip. T-va S.S. Sivozhelezov i Co., 1916).

¹⁷ Стариков Ю.Н. Административная юстиция: Конец XIX – начало XX века: Хрестоматия. Ч. 1 и 2 [Yuriy N. Starilov, *Administrative Justice: The End of the XIX – the Beginning of the Twentieth Century: Reader. Parts 1 & 2*] (Voronezh: Publishing House of the Voronezh State University, 2004).

¹⁸ Тихомиров Ю.А. Конституционные основы формирования и деятельности административных судов // Проблемы защиты публичных и частных интересов в административных судах: Материалы конференции [Yuriy A. Tikhomirov, *The Constitutional Basis for the Development and Operation of Administrative Courts in Problems of Protection of Public and Private Interests in Administrative Courts: Conference Proceedings*] (Moscow: Russian Academy of Justice, 2001).

¹⁹ Зеленцов А.Б. Административная юстиция России: историко-правовой аспект // Проблемы защиты публичных и частных интересов в административных судах: Материалы конференции [Alexander B. Zelentsov, *Administrative Justice of Russia: Legal Background in Problems of Protection of Public and Private Interests, supra note 18*].

²⁰ Положение о судах по административным делам от 30 мая 1917 г., Собрание узаконений и распоряжений правительства, 1917, № 127, ст. 692 [Regulations for Courts of Administrative Cases of 30 May 1917, Legislation Bulletin of the Government, 1917, No. 127, Art. 692].

Judicial power regulating administrative cases shall belong to: administrative judges, district courts and the Governing Senate. [Clause 10 of the statute] provided that the administrative court is entitled to try: 1) cases on the protests of commissars on orders, orders, actions and omissions of institutions and officials of the city, provincial, districts and towns administration; 2) commissars' protesting cases to statutes, orders, actions as well as governmental bodies and officials' omissions at regional, municipal and district levels; 3) cases on municipal dumas (parliaments) complaints, zemstvo and village assemblies and individuals, societies and mandatory institutions, actions and omissions dealing with complaints of municipal dumas (parliaments), local districts, settlements, communities and individuals' to rulings, mandatory orders and omission mentioned in point 1 above as well as to commissars, their assistants and subordinates; 4) special cases legally delegated to the jurisdiction of administrative court.

Also, it was stipulated that the reasons for filing protests and complaints might be as follows: the imperfections dealing either with breach of the law or mandatory order issued by the authorities, or with their abuse of power; digression from execution of the enactments enforced by law or by the authorities' mandatory orders and tardiness with the clients.

The volume of that statute was quite impressive and contains 92 comprehensive provisions. There is no doubt that administrative justice in Russia would have been effective if not upset by the October Socialist Revolution in 1917.

The Soviet period can be characterized by nearly the complete absence of a specialized administrative judiciary. The legal literature of the Soviet period considered the powers of a number of state bodies – the People's Commissariat of State Control, the Workers' and Peasants' Inspection, the Chief Disciplinary Court of the All-Russian Central Executive Committee (1920s) – and some scholarly research on administrative justice was carried out.²¹ However, these bodies should be referred to as pre-judicial, extrajudicial, quasi-judicial and even pseudo-judicial administrative bodies. Even economic disputes at that time were considered to be civil law cases (in the 1980s they were called "horizontal"). But, the economic disputes arising from administrative legal relations were not even mentioned in the Soviet legislation. Only the bodies of state arbitration got the opportunity to consider such "vertical" disputes (between the state enterprise and the Ministry), though in a very limited segment and only at the very end of the 1980s.

²¹ *Стариков Ю.Н. Административная юстиция: проблемы теории // Административное судопроизводство в Российской Федерации: развитие теории и формирование административно-процессуального законодательства. Вып. 7 [Yuriy N. Starilov, Administrative Justice: Theoretical Issues and Development of Administrative Proceeding in Administrative Court Proceedings in the Russian Federation: Development of the Theory and Formation of Administrative Procedural Legislation. Issue 7] 27 (Yu.N. Starilov (ed.), Voronezh: Publishing House of the Voronezh State University, 2013).*

3. Assessment of the Effectiveness of Current Procedural Legislation in Russia

This situation changed in the post-Soviet period of Russia's development. The Judicial Reform Concept of 1991 recognized the need for the creation of specialized courts. The criteria for establishing a specialized court were the specificity of the legal area, the subject of legal regulation and its purposes. It was emphasized that a special criterion for setting up a specialized court should be the specificity of its judicial procedure envisioned by law and including either a separate chapter in the procedural code or an unincorporated provision.

The bill named the Federal constitutional law (Federal law "On Federal Administrative Courts of the Russian Federation") was prepared and sent to the State Duma by the Supreme Court of the Russian Federation; it was adopted by the State Duma on 22 November 2000 in the first reading (under No. 7886-3).²² Judging from the texts of the draft law, the preamble and the conclusions of the Russian government, the State Duma Legal Department and the State Duma Committee on State Construction, the creation of administrative courts would start with 600 to 700 federal inter-district administrative courts integrating the functions of the Court of Appeal for magistrates' courts trying administrative cases. Judicial panels were to hear administrative cases tried by the supreme courts of the republics, district and regional courts, courts in the cities of federal significance, courts of the autonomous areas and autonomous regions. Each panel was to be made up of the "judges presiding on the republics' district and regional court panels" if demanded. Their number should not be more than the number of Russian Federation subjects. Twenty-one federal district administrative courts, whose jurisdiction was extended to several constituent entities of the Russian Federation, would be established. Similar to district appellate arbitration courts, the judicial panel of the Supreme Court and of the general jurisdiction courts of the Russian Federation subjects were to try administrative cases. It is unclear why those lawmakers called the judicial panels "federal administrative courts," while it was stated that the Supreme Court was qualified as the court of higher instance in relation to the federal district administrative courts.

Amendment 1 of Art. 3 of the bill made it binding that the federal administrative courts be included in the courts of general jurisdiction. Thus, it is evident that the configuration of the Russian administrative and judicial system under the bill of 2000 very much resembles the configuration of the current arbitration and judicial system of Russia after 2014. Today it functions autonomously in the system of courts of general jurisdiction (similar to military tribunals).

Article 1 of the bill determined the jurisdiction of the administrative courts. It provided that administrative cases (besides administrative offenses, constitutional,

²² Старилов Ю.Н. Административная юстиция: проблемы теории [Yuriy N. Starilov, *Administrative Justice: Problems of Theory*] (Voronezh: Publishing House of the Voronezh State University, 1998).

civil and criminal law proceedings) shall include the following: cassation on challenging court decisions, actions and their omission by public authorities, local municipal authorities, public associations and official persons, as well as the cases on the breach of electoral and tax legislation; and dispute resolution between state authorities and local government bodies. In addition, administrative jurisdiction was authorized to suspend or terminate the activities of public associations. In spite of all of this, the bill was not sent to the State Duma. No matter how strange it may seem there were neither financial obstacles nor organizational obstacles hindering the development of administrative courts. The proposed implementation of the system of administrative courts in two stages – the first, from 2001 and the second, from 2002 – was considered acceptable. We contend that the main reason why the bill never “reached” the second reading in the State Duma might be explained by the lack of clearly defined procedural legislation regulating the legal work of administrative courts.

In addition, one of the main reasons for the bill’s rejection was the lack of solid legal rationale in the study of this issue.²³ Ten years later, the presiding committee of the Council of Judges of the Russian Federation developed and approved the program for the development of courts of general jurisdiction and improved the organizational support of their activities for the period until 2023 (Decision No. 133 of 26 December 2007). It was considered expedient to establish administrative courts as a necessary condition for the growth and increased efficiency of the judicial system.

The 8th All-Russian Congress of Judges decided in their final decision of 19 December 2012 “On the Judicial System of the Russian Federation and the Main Directions of Its Development” (para. 4 of the substantive provisions) to request the State Duma of the Federal Assembly of the Russian Federation prioritize consideration of the bill of federal constitutional law “On Federal Administrative Courts of the Russian Federation.”

That decision was preceded by the Federal constitutional law adoption of clause 10 on the establishment of the Judicial Board for Administrative Cases within the Supreme Court of the Russian Federation.²⁴ The establishment of the Judicial Board

²³ Федеральный закон “Об административных процедурах”. Инициативный проект с комментариями разработчиков [*Federal Law “On Administrative Procedures.” Initiative Project with Developer’s Comments*] (Moscow: Complex-Progress, 2001); *Problems of Protection of Public and Private Interests*, *supra* note 18.

²⁴ Федеральный конституционный закон от 7 февраля 2011 г. № 1-ФКЗ “О судах общей юрисдикции в Российской Федерации”, *Собрание законодательства РФ*, 2011, № 7, ст. 898 [*Federal constitutional law No. 1-FKZ of 7 February 2011. On Judges of General Jurisdiction in the Russian Federation*, *Legislation Bulletin of the Russian Federation*, 2011, No. 7, Art. 898]; Федеральный конституционный закон от 8 июня 2012 г. № 1-ФКЗ “О внесении изменений в статьи 13 и 14 Федерального конституционного закона ‘О судебной системе Российской Федерации’ и статьи 21 и 22 Федерального конституционного закона ‘О судах общей юрисдикции в Российской Федерации’”, *Собрание законодательства РФ*, 2012, № 24, ст. 3064 [*Federal constitutional law No. 1-FKZ of 8 June 2012. On Amendments to Articles 13 and 14 of the Federal Constitutional Law “On the Judiciary of the Russian Federation” and Articles 21 and 22 of the Federal Constitutional Law “On General Jurisdiction Courts in the Russian Federation,”* *Legislation Bulletin of the Russian Federation*, 2012, No. 24, Art. 3064].

for administrative cases and arrangements for its composition were enforced by the further Resolution of the Plenum of the Supreme Court No. 3 of 10 March 2011. In fact, the board started functioning on 14 March 2011. Further on, in accordance with Art. 24 of the Federal constitutional law, the supreme court of any republic, a regional court, the court of a city of federal significance, the court of an autonomous region and the court of the Autonomous Okrugs were also bound to operate within a judicial board for administrative cases. This last court should be composed of a judicial committee of judges and chairpersons of the appropriate courts. The presiding committee of this administrative court had to be approved by the members of the judicial boards of the appropriate courts after the application of the chairperson of the presidium. Specialized committees for administrative cases are established and operate in accordance with the Federal constitutional laws on Military and Arbitration Courts and in these court systems.

It should be noted that there were many inconsistencies in enforcing administrative judiciary specialization. For instance, the advertisement of vacant positions for judges on administrative cases and their position adhered to the wording:

A judge of the Supreme Court of the Russian Federation of the Judicial Board of Administrative Cases.²⁵

This was obviously illogical, for it clashed with the fact that according to the law it was not possible to transfer a supreme court judge to the committee or any other jurisdiction even in extreme cases. If, in principle, we exclude the possible negligence in the wording of this document, it can be assumed that the Supreme Court was determined to see a composition of “unchanging” judges’ committees. This fact might entail serious consequences over time. For instance, if a judge of a judicial committee for administrative cases within the Supreme Court makes a point to specialize, for example, in criminal or economic law, he or she will have to go to another committee of the Supreme Court and undergo the appointment procedure identical to the one for transfer to another court. That is, he or she will have to go through all these steps again, and only in the case that there would be an announcement about opening a vacancy for the position he or she is seeking.

However, we contend that the institution of “unchangeable” committees in question may enhance the specialization of judges, i.e. raise their professionalism to the maximum possible level, which would contribute to the improvement in the effectiveness of fair justice.

²⁵ Российская газета. 27 февраля 2017 г. [Rossiyskaya Gazeta. 27 February 2017].

4. Integrity of the Existing Terms “Administrative Wrongdoing” and “Crime”

Alongside the above inconsistencies, there is the critical problem of the procedural affiliation of the norms that govern court proceeding on administrative offenses. In the related literature it is noted that in Soviet law the administrative judiciary was understood as consideration by the court of administrative offenses or complaints about similar decisions made by other executive bodies within their competencies. In the post-perestroika period, administrative cases also included the cases arising from public relations, which dealt with civil or arbitration procedure.²⁶ In an article by B. Rossinskiy, it was proposed that administrative liability, unlike criminal and civil liability, which are assigned to the judicial order (in litigated cases), should be predominantly shifted to extrajudicial procedure by officials of executive bodies.²⁷

At first glance, this proposal may seem attractive, as it might lead to the significant decrease of the judicial burden. It is critical to be sensible concerning the amount of related responsibilities accounted for by this “out of court” administrative dispute resolution means, especially if this “predominantly extrajudicial procedure” deals with administrative offenses of legal entities. Moreover, it seems unrealistic that officials of executive bodies would scrupulously stick to the norms of legal jurisdiction, though it would do a world of good if a certain number of cases on administrative offenses could be delegated to the jurisdiction of the relevant officials of executive authorities.

Nevertheless, some number of cases on administrative offenses will still be tried in the courts. In addition, this number will be significant. For instance, the Chairman of the Supreme Court of the Russian Federation, V. Lebedev, in his speech delivered on 6 December 2016 at the 9th All-Russian Congress of Judges, held that in 2016 the courts tried 6 million cases of administrative offenses.

In order to increase the efficacy of administrative justice it could be reasonable to do two main things: transfer some administrative cases to the jurisdiction of executive bodies; and organize judicial proceedings on administrative offenses. The latter should deal with electoral disputes, challenging decisions in respect of the qualifications for judges on the committees, appeals of the ombudspersons, the rights of the child, the rights of entrepreneurs, defense of individuals or an indefinite group of people. Such suggestions for the efficacy of administrative justice

²⁶ *Воскобитова Л.А.* Предметная область судебной власти и виды судопроизводства // Судебная власть и уголовный процесс. 2017. № 1. С. 59–67 [Lidiya A. Voskobitova, *Subject Area of the Judiciary and Types of Legal Proceedings*, 1 *Judicial Power and Criminal Procedure* 59 (2017)].

²⁷ *Россинский Б.В.* Окончательно ли разграничение административного производства и производства по делам об административных правонарушениях? // Журнал административного судопроизводства. 2016. № 1. С. 49–51 [Boris V. Rossinskiy, *Is the Delimitation of Administrative Judiciary and Administrative Proceedings on Administrative Wrongoings Totally Final?*, 1 *Journal of Administrative Judicial Proceedings* 49 (2016)].

enhancement will be in keeping with the “closed” types of proceedings proclaimed by Art. 118 of the RF Constitution. However, the suggested approach is neither radical nor constructive. There is another proposal that mostly deals only with administrative offenses. In relation to this issue in Russia, it is interesting to note the suggestions made by French scholar K. Beshe-Golovko who believes that, in principle, in French law all “administrative offenses” (using Russian terminology) are part of criminal law, which in its essence and in a broad sense is a repressive right. As an exception, in France an offense is considered “administrative,” i.e. related to the competence of administrative courts but not criminal courts, when dealing with encroachment relating to all types of state property, except for violation of traffic rules (in the latter case, the offense will be “criminal” in the strict sense of the word).²⁸ To put it in a nutshell, in the context of the issue studied in this article, the main thing is that in French law there are no administrative offenses (except for those associated with encroachment relating to all types of state property), and all of them are referred to as criminal offenses.

Comparing French legal experience concerning the issue in question with that of Russia, we can claim that the gap between a criminal offense (a crime) and an administrative offense is not that big. First, because such remedies as fines for both kinds of offenses are quite comparable. Second, because theorists and practicing legal professionals have singled out a certain group of socially dangerous actions which in criminal legislation is called “criminal misconduct.”²⁹ It is noted that this proposal is not new, and its origins can be traced back to the 1960s.³⁰

All of the above gives justification for raising the questions (at least in theoretical studies) and sequentially to correlate the terms “administrative offense,” “criminal offense” and “crime.”³¹ However, we trust that the practical implementation of this

²⁸ Беше-Головко К. Административная юстиция во Франции: вопрос развития правового государства // Административное судопроизводство в Российской Федерации: развитие теории и формирование административно-процессуального законодательства. Вып. 7 [Karin Beshe-Golovko, *Administrative Justice in France: The Issue of the Development of a Rule of Law State in Administrative Court Proceedings in the Russian Federation*, supra note 21] 778.

²⁹ See, e.g., Гаврилов Б.Л., Рогова Е.В. Мировая юстиция и уголовный проступок: мнение ученого и практика (обоснование проблемы, современное состояние и меры по совершенствованию) // Мировой судья. 2016. № 12. С. 20–31 [Boris L. Gavrilov, Evgeniya V. Rogova, *World Justice and Criminal Misconduct: Point of View from a Theorist and Practitioner (Problem Statement, Current Status of the Problem and Improvement Measures)*, 12 *Justice of the Peace* 20 (2016)]; Дорошков В.В. К вопросу об уголовном проступке // Мировой судья. 2016. № 12. С. 31–39 [Vladimir V. Doroshkov, *On the Issue of Criminal Offense*, 12 *Justice of Peace* Judge 31 (2016)].

³⁰ Кузнецова Н.Ф. Преступление и преступность [Ninel F. Kuznetsova, *Crime and Crime Wave*] 167–170 (Moscow: Moscow State University, 1969).

³¹ See for further details Клеандров М.И. О линейке понятий “административное правонарушение”, “уголовный проступок” и “преступление” // Мировой судья. 2017. № 7. С. 3–12 [Mikhail I. Kleandrov, *On the Line of Concepts “Administrative Offense,” “Criminal Offense,” and “Crime,”* 7 *Justice of the Peace* 3 (2017)].

theoretical understanding of the problem may be hindered by the issue of the criminal liability of legal entities, whose administrative responsibility has long been provided in legislation and does not raise any objections in theory nowadays. In addition, on the contrary – in the criminal law, there is the term “group crime,” but there is no such term in administrative law as “group administrative wrongdoing.” However, it is evident that legal practice badly needs the enforcement of administrative responsibility not only for individual legal entities, but also for the groups of legal entities with the main “person involved” who has criminal liability: for example, for bribery, the one who has committed this offense in the interests of a certain group of legal officials associated with him or her.

Implementation of this approach will make it possible to create:

a) a single substantive legal basis and codified legislative act on criminal and administrative offenses (since there is a similarity in their social nature, it provides the grounds for making general and special parts in the code);

b) a single codified procedural act regulating criminal-administrative relations on proceedings, investigation and preliminary investigation³² of administrative cases.

Naturally, implementation of these suggestions will require much effort in order to incorporate them into the procedural code of the following norms relating to the investigation of administrative offenses:

- principles of competitiveness;
- introduction of a position to support “prosecution”;
- institutions providing state-supported free legal advice to a person suspected of committing an administrative offense;
- provisions designed to ensure compliance with the guarantees of suspects committing administrative offenses which are similar to the guarantees provided for the commission of crimes, both during the preliminary investigation and during the trial of the case (with all necessary natural and justifiable exceptions).

In a certain way, the possibility to similarly treat an administrative offense and a crime was demonstrated by the Constitutional Court of the Russian Federation in Resolution No. 20-P of 4 June 2015.³³ The subject of consideration by the Constitutional

³² See *Воскобитова Л.А. Судопроизводство по делам об административных правонарушениях и его место в системе реализации судебной власти // Мировой судья. 2017. № 2. С. 31 [Lidiya A. Voskobitova, *Judicial Proceedings on Administrative Wrongs and Its Place in the System of Exercising Judicial Power*, 2 Justice of the Peace 28, 31 (2017)]. Also, it can be noted that for cases of administrative offenses dealing not with the disputes of physical persons with the executive body, but, the opposite, the claim of the state against a physical person who has breached the ban, mandated by the state. In such cases, criminal procedure rather than civil procedure should apply.*

³³ See Постановление Конституционного Суда Российской Федерации от 14 июля 2015 г. № 20-П “О проверке конституционности части 2 статьи 1.7 и пункта 2 статьи 31.7 Кодекса Российской Федерации об административных правонарушениях в связи с запросом мирового судьи судебного участка № 1 Выксунского судебного района Нижегородской области”, *Собрание законодательства РФ*. 2015. № 30. Ст. 4657 [Resolution of the Constitutional Court of the Russian Federation No. 20-P of 4 June 2015. On Verification of the Constitutionality of Part 2 of Article 1.7

Court in this case was the provisions of the RF Code of Administrative Offenses acting as the legal basis for resolving the issue of termination of enforcement of a final court decision on imposing an administrative penalty.

In the applicant's opinion, the legal provisions challenged by him are contrary to Arts. 2, 15 (part 1), 18, 19 (part 1) and 54 (part 2) of the RF Constitution, providing for the termination of the enforcement of administrative punishment in cases, because according to the law, administrative responsibility or liability for a particular wrongdoing is canceled should a criminal liability have been imposed for the same wrongdoing. As a result, a wrongdoer avoids administrative punishment or liability. In such cases, we can state that administrative liability of a wrongdoer (even if his or her fault was decided in court) is never enforced. Similarly, neither can a wrongdoer be charged with criminal liability, as criminal law is irreversible.

In the above resolution, the Constitutional Court determined how to limit this injustice. It was noted that the enforcement of this ruling leading to the termination of administrative punishment in the event it incorporates criminal elements should be done in keeping with clause 2 of Art. 31.7 of the RF Code of Administrative Offenses if the following conditions are not met: firstly, legal provisions to terminate administrative liability for concrete administrative wrongdoing and replacing it with criminal liability should these have been enforced simultaneously; secondly, legal transformation of administrative wrongdoing into administrative offense would retain liability exactly for the wrong, which had been previously provided for administrative punishment. The RF Code of Administrative Offenses prescribed to courts and other law enforcement bodies to follow clause 2 of Art. 31.7, explaining the conditions for the implementation of administrative punishment first enforced by law and terminated later on the grounds of incorporation into it some criminal elements. It also noted the necessity of checking the above conditions. The Constitutional Court found clause 2 of Art. 31.7 of the RF Code of Administrative Offenses not to comply with Arts. 15 (parts 1 and 2) and 54 of the RF Constitution concerning the issue of termination of the decision to impose an administrative penalty for the commission of an administrative offense, if the termination of administrative liability for an administrative offense is simultaneously accompanied by criminal liability for the same wrongdoing.

5. Shortcomings of Modern Administrative Procedural Law

The adopted Code of Administrative Proceedings of the Russian Federation on 8 March 2015³⁴ and part 2 of Art. 118 of the RF Constitution provided that the judiciary

and Paragraph 2 of Article 31.7 of the Code of Administrative Offenses of the Russian Federation in Connection with the Request of the Magistrate of Judicial Section No. 1 of the Vyksa Judicial Area of the Nizhny Novgorod Region, Legislation Bulletin of the Russian Federation, 2015, No. 30, Art. 4657].

³⁴ Федеральный закон от 8 марта 2015 г. № 21-ФЗ "Кодекс административного судопроизводства Российской Федерации", Собрание законодательства РФ, 2015, № 10, ст. 1391 [Federal law No. 21-FZ

should act through constitutional, civil, criminal and administrative proceedings. Correspondingly, the issue about the role and function of the administrative judiciary was legally completed. In fact, from legislative and procedural points of view, it is still far from being called appropriate, and it is not clear how this constitutional provision is implemented in modern Russia.

The situation may be considered more or less appropriate with criminal procedural law and legal proceedings, since it is based on one federal law – the RF Criminal Procedure Code. In addition, it draws many complaints from legal professionals and has many amendments as well as suggestions to adopt a new criminal code because of a new criminal policy. It is good that the entire legislation for criminal proceedings is currently concentrated in a single federal law and in a single criminal code.

The state of affairs with constitutional legal procedure is much worse. There is no single law on constitutional legal proceedings in Russia at all, although a number of states with much less constitutional and judicial activity, especially in non-federal states, have codified constitutional acts (e.g. in Belarus and Mongolia). In Russia, judicial procedural norms for the Constitutional Court are contained in the Federal constitutional law “On the Constitutional Court of the Russian Federation,”³⁵ but they are rather scattered and they are not concentrated in a separate section. The procedural norms for the constitutional and statutory courts of the subjects of the Russian Federation are also embedded in the nominal laws of the subjects themselves and regulate their judiciary. There are twenty-four such laws in Russia, and all of them, including procedural institutions and related regulations, are the so-called “sleeping laws,” except for those in the subjects of the Russian Federation, where these courts function today. And most importantly, all laws on these courts – including the Federal constitutional law “On the Constitutional Court of the Russian Federation” as well as the laws of the subjects of the Russian Federation and their constitutional (statutory) courts do not have a single, codified legislative basis. Correspondingly, their procedural norms and institutions, organizational aspects, scopes of authority and judicial status characteristics vary greatly.

The state of affairs with civil procedure concerning its legislative and procedural provisions is not much better. However, there is also another inconsistency, in that Art. 118 of the RF Constitution does not mention an arbitration judiciary, whereas

of 8 March 2015. Code of Administrative Proceedings of the Russian Federation, Legislation Bulletin of the Russian Federation, 2015, No. 10, Art. 1391]. The draft Code on Administrative Proceedings was submitted to the State Duma by the Supreme Court of the Russian Federation in 2008, which the President of this Court mentioned at the 7th All-Russian Congress of Judges, while noting that the prospect of its adoption by the legislator was “rather vague” (Российская газета. 2 декабря 2008 г. [Russian Newspaper. 2 December 2008]).

³⁵ Федеральный конституционный закон от 21 июля 1994 г. № 1-ФКЗ “О Конституционном Суде Российской Федерации”, Собрание законодательства РФ, 1994, № 13, ст. 1447 [Federal constitutional law No. 1-FKZ of 21 July 1994. On the Constitutional Court of the Russian Federation, Legislation Bulletin of the Russian Federation, 1994, No. 13, Art. 1447].

in fact it does exist in the form of the Arbitration Procedure Code, and a part of it, more precisely, half of it, is devoted to the resolution of economic disputes arising out of civil legal relations.

As for the current situation with the administrative judiciary stipulated in Art. 118 of the RF Constitution, it has not been based so far on the recently adopted RF Code of Administrative Proceedings. First, this can be explained by the fact that the administrative procedure, mostly dealing with the judiciary on economic disputes, arises from administrative legal relations, i.e. administrative legal proceedings on economic issues are largely based not on the Administrative Procedure Code of the Russian Federation (hereinafter the APC) but on the Arbitration Procedure Code.

Secondly, the APC itself indicates that its competence (powers, authority) is not projected onto proceedings on administrative offenses (part 5 of Art. 1), even though they include a large segment of the general administrative judiciary. Currently, the RF Code of Administrative Offenses leaves this issue open and under the ruling of Art. 24.1 that defines the tasks for the judiciary on administrative cases and the ruling for judicial procedures regulated by Chapter 29, "On Litigation of Cases on Administrative Offense." And without embedding in one "line" of relations covered by the notions of "administrative offense," "criminal offense" and "crime," as suggested above, the problem of breach – procedural – but (in the constitutional dimension) of the rules governing the procedure for dealing with cases administrative offenses do not solve.

Thirdly, the APC has several other gaps concerning its legal proceedings arrangement where the provisions are contained in the APC itself and they "do not work out." It is evident that this is caused by the inconsistency of some articles of Chapter 2 with Art. 134 (RF Civil Procedure Code). This is proved by the fact that the Constitutional Court repeatedly has encounters with this matter. In practice, it means that the APC will have to be thoroughly reconsidered and updated.

In addition, there are evident gaps in the legislative provisions in respect of access to justice, including, first, the gaps in the administrative legislation. These gaps have been repeatedly manifested in law enforcement practice, and mainly seen before the Constitutional Court. Thus, for example, the Constitutional Court, in its consideration of the case that ended up with the adoption of Resolution No. 6-P of 31 March 2015, stated that in the modern judiciary there are no judicial bodies in the current system of legal regulation that would be bound to try administrative cases on the acts of the Federal Tax Service. These do not comply with the requirements for the regulation of legal norms adopted by federal executive bodies, neither in their form and subject, nor in their registration and publication. However, at the same time they contain an explanation (normative interpretation) of the duty for all tax authorities and of tax regulations that may contradict their true goal (meaning) of taxation and, thereby, violate the rights of taxpayers. The case in question, having been considered by the Constitutional Court, came across such an explanation given by the Federal Tax Service, which implicitly but inevitably, bound a huge number of taxpayers to commit actions which were rather burdensome for them.

This serves as an example where the Constitutional Court found the mechanism of administrative judiciary lacks special rulings for court proceedings applying the norms of federal executive bodies as well as the norms of the Federal Tax Service. The interpretation of these provisions cannot be considered to be a legal basis, but actually they possess legal power. Some of the federal taxation interpretations contained not only regulations directed to an uncertain audience of taxpayers, but also ruled that the failure to comply with the regulations would be followed by imposing on such taxpayers corresponding tax sanctions. The imperfections of these interpretations made it impossible to appeal in court. The implementation of these sanctions limited access to justice, in breach of part 1 of Art. 46 of the RF Constitution, which guarantees the judicial protection of people's rights and freedoms to everyone. Also, it was in breach of part 2 of Art. 46 of the RF Constitution according to which the decisions and actions or omission of action by federal public authorities, local government bodies, public associations and officials, and thus people shall have the right to appeal the court decisions.

And only after that, in keeping with the mandates of the Constitutional Court, the Federal law of 15 February 2016 No. 2-FZ expanded the powers of the Supreme Court, enabling it to try at first instance the cases brought about by federal executive bodies. The court on intellectual rights was given the authority to try at first instance the disputable cases on interpretation of intellectual property, including patent rights, company brands, goods and logos, etc. These helped to fill in the gap of illegality in this area of the law.

Moreover, we can foresee the possible prospective "splitting off" of certain types of administrative judiciaries, capable of "developing" first into separate procedural institutions and then obtaining autonomy and becoming an independent type of legal judiciary. That may lead to amendment of Art. 118 of the RF Constitution. Let us take, for instance, legal proceedings for electoral disputes. Here, according to the Constitutional Court, by virtue of the constitutional nature of the proceedings, the trial disputing substantive laws shall be conducted through litigation when trying the cases on the merits on the basis of the adversarial and equal rights of the parties. This law also extends to appealing court decisions and actions (as well as inaction) of electoral boards. The process of counting votes and calculating the results of voting is critical for the full results of elections. The existing law enforcement practice that completely excludes the possibility of judicial protection of citizens' electoral rights, in case they are breached at any stage of the electoral process, following the moment of voting, and thereby denying the right of voters to appeal the results of voting in the polling station where they have voted, does not meet the requirements of the RF Constitution.³⁶

³⁶ Постановление Конституционного Суда Российской Федерации от 22 апреля 2013 г. № 8-П [Resolution of the Constitutional Court of the Russian Federation No. 8-P of 22 April 2013] (Jun. 9, 2018), available at <http://www.garant.ru/>.

In general, it is obvious that the procedure for electoral matters should be carried out especially in the periods of the elections themselves, which are very time-consuming and conducted regardless of the day of the week and the time of day. The situation is similar with disputing the decisions of the qualification panel of judges, both federal and regional, in defining judges' competencies provided in the Committee for Judges' Qualifications with respect to their disciplinary proceedings. With regard to the latter, an analysis of Decree No. 13 of the Plenum of the Supreme Court of the Russian Federation on 14 April 2016 "On Judicial Practice of Implementing Legislation Regulating Disciplinary Responsibility of Judges" provides definite and considerable grounds concerning fundamental and constitutionally proclaimed responsibilities of the judges, their autonomy and independence. This approach is explicit in federal and regional administrative court proceedings that try the cases on human rights, children's rights, entrepreneurs' rights, rights of individuals and an indefinite group of persons. Unfortunately, the APC does not provide for the regional commissioner to apply to the court in defense of the rights of other persons, and the laws of the subjects of the Russian Federation do not allow such rights to be granted to them either.

But no sooner had the norms of the APC been enforced than the Constitutional Court received appeals to consider some of the code's provisions to be unconstitutional. A number of such appeals dealt with part 9 of Art. 208 APC, which provided that the claimants or their representatives disputing the normative legal acts in the courts, or other subjects of the Russian Federation in the Supreme Court of the Russian Federation, should have a degree in law or have higher legal education in law. The Constitutional Court, in its court decisions of 6 June 2016 No. 1157-O, 6 June 2016 No. 1156-O, etc., incorporated this provision into a number of other norms that do not limit the access to justice and, thus, are not in breach of the provisions of the RF Constitution. However, in fact, the above problems do exist and they are manifested through limited access to justice in Russia,³⁷ as well as the demand for some of the code's provisions and amendments,³⁸ which has been discussed in more detail in one of the specialized periodicals in this field.³⁹

³⁷ Власов Е.В. Проблемы доступности судебного представительства в административном судопроизводстве // Российское правосудие. 2016. № 7. С. 23–32 [Evgeniy V. Vlasov, *Problems of Accessibility of Judicial Representation in Administrative Legal Proceedings*, 7 Russian Justice 23 (2016)].

³⁸ Тарибо Е.В. О неопределенности переходных законодательных норм (на примере Кодекса административного судопроизводства) // Журнал конституционного правосудия. 2016. № 3(51). С. 12–13 [Evgeniy V. Taribo, *On the Ambiguity of Transitional Legislative Norms (on the Example of the Code of Administrative Proceedings)*, 3(51) Journal of Constitutional Justice 12 (2016)].

³⁹ Серков П.П. Административное право, административное судопроизводство и механизм правоотношений // Журнал административного судопроизводства. 2016. № 1. С. 14–24 [Pyotr P. Serkov, *Administrative Law, Administrative Proceedings and the Mechanism of Legal Relations*, 1 Journal of Administrative Judiciary 14 (2016)].

Conclusion

Elimination of the imperfections discussed in these pages, as well as overcoming inconsistencies in the Administrative Justice Code of the Russian Federation to codified legislation, will undoubtedly increase the efficacy and excellence of the administrative justice mechanism and lead to the improvement of relevant judicial practice. A real increase in the effectiveness of administrative court judicial procedure and proceedings will be possible with the adequate and systemic improvement of the entire complex of all the constituents of the administrative justice mechanism, including the development of an administrative judiciary and the status of judges within the administrative judiciary. Such a complex development of all the components of Russian administrative mechanism will lead to the setting up of separate, albeit autonomous at first, systems of administrative courts.

Specifically, administrative justice itself can operate within a framework of courts of general jurisdiction. This is a separate independent administrative and judicial system incorporating separate administrative courts that may operate as systems, not only as components, including quasi-judicial specialized bodies with the subsequent judicial control functions, as well as strong financing and adequate human resources (personnel) for their functioning.

It would be advisable to develop a strong legal basis resting on scholarly research, and legislative, normative, organizational, financial, information and methodological developments so as to enable administrative justice to operate effectively.

In considering the issue in question, we propose the following. The judicial part of the administrative justice mechanism should make use of the best Russian and foreign developments relating to an effective administrative judiciary and judicial proceedings,⁴⁰ and also to the legal basis of the Russian Federation with its amendments and minimized norms regulating the resolution of administrative disputes and cases which are not subject to the Administrative Justice Code.

The authors consider it critical to provide legal assistance to a party who needs it and does not have the opportunity to provide it, should the interests of justice so require.⁴¹

As for the status of the judges in the prospective administrative courts, it is our view to retain the requirements existing at present, except for those newly appointed judges who need to pass a qualification examination on administrative justice. For example, the staffing of the judiciary of the administrative courts of the specialized, administrative judiciary of the Russian Federation will be carried out to a significant

⁴⁰ *Euro-American Model Code of Administrative Jurisdiction: English, French, German, Italian, Portuguese and Spanish Versions* (R. Perlingeiro & K.-P. Sommermann (eds.), Niterói: Editora da UFF, 2014).

⁴¹ Malgorzata Wasek-Wiaderek, *The Principle of "Equality of arms" in Criminal Procedure Under Article 6 of the European Convention on Human Rights and Its Functions in Criminal Justice of Selected European Countries* (Leuven: Leuven University Press, 2000).

extent by the “overflow” of judges who previously specialized either in administrative dispute resolution or in commercial (arbitration) or military courts.

The current situation with the judicial hierarchy is more complicated,⁴² because the implementation of the bill on administrative courts, passed in 2000, is not fully appropriate. We also suggest that the area of operation of the administrative court of any level should not coincide with the administrative division of the country. In the very first approximation, the structure of the links of the prospective system of administrative courts proposed by the authors of this article may be as follows.

The first tier includes non-federal, independent justices of peace, which are the lower court. The legal basis for this is contained in Federal law of 5 April 2016 No. 163-FZ “On Amendments to the Code of Administrative Judicial Proceedings of the Russian Federation and Certain Legislative Acts of the Russian Federation.” The wording of this Law (part 1 of Art. 1 of the APC) was amended and, after the words “courts of general jurisdiction”, a comma appears followed by the words “justice of the peace judges”. We consider that being non-federal courts the justice of peace courts, as independent courts, will become the lowest link not only for administrative justice. Their jurisdiction will include the resolution of a number of categories of criminal and civil cases. We suggest that the jurisdiction of the justices of the peace should hear the cases on normative acts and actions committed (as well as inactions) by municipal authorities.

The second tier is represented by district administrative courts. These are courts of first instance that should hear the cases on challenging the acts, actions and decisions of federal executive bodies’ area (district) administrative court. The Bill of 2001⁴³ may serve as a legal basis for this. Geographically, their authority may extend to several administrative districts within the boundaries of the common territory. In the capacity of a court of first instance, there will be the hearing of cases disputing normative acts, decisions and actions by regional authorities. Also, complaints against judicial acts issued on administrative cases by magistrates may be tried by the first instance courts.

The third tier is the area (district) administrative courts, which operate on the territories of several subjects of the Russian Federation and deal with appeals relating to offenses by its authorities. The legal basis for this tier rests on the Bill of 2001. Geographically, the authority of these courts will extend to the territory of several subjects of the Russian Federation. These courts should be similar to the current

⁴² Стариков Ю.Н. Административные суды в России: новые аргументы за и против [Yuriy N. Starilov, *Administrative Courts in Russia: New Arguments “for” and “against”*] (Moscow: Norma, 2004).

⁴³ Федеральный конституционный закон от 15 декабря 2001 г. № 1-ФКЗ “О внесении изменений и дополнений в Федеральный конституционный закон ‘О Конституционном Суде Российской Федерации’”, Собрание законодательства РФ, 2001, № 51, ст. 4824 [Federal constitutional law No. 4-FKZ of 15 December 2001. On Amendments to the Federal Constitutional Law “On the Constitutional Court of the Russian Federation,” *Legislation Bulletin of the Russian Federation*, 2001, No. 51, Art. 4824].

appellate arbitration courts. In the capacity of a court of first instance, they will consider appeals against acts, decisions, actions, etc., passed by the authorities of the subjects of the Russian Federation. Also, they will be a higher authority for inter-district administrative courts.

The fourth tier is the independent Supreme Administrative Court of the Russian Federation, which considers disputes on challenging acts, actions and decisions of federal executive bodies. This tier should be represented by the current Administrative Committee of the Supreme Court of the Russian Federation with the appropriate distribution of powers, and later, should there be a clearly indicated need, it would transition into an independent Higher Administrative Court of the Russian Federation. Its competence will embrace the jurisdiction of the courts of first instance and it should review cases on challenging acts, actions and decisions of federal executive bodies. It will also integrate the functions of higher courts in relation to the district administrative courts and a supervisory court. It will also have to interpret the law and provide explanations on issues relating to judicial practice. Thus, the range of the specialized Higher Administrative Court⁴⁴ should be the creation of an independent, four-tiered administrative and judicial system of the Russian Federation headed by the Higher Administrative Court of the Russian Federation. The proposed four-tiered administrative and judicial justice system, being specialized at each operational level of administrative justice, may significantly, in comparison with the operation of non-specialized justice, increase the quality of court decisions and opinions and the quality of judicial protection of the rights and legitimate interests of citizens and organizations should they be violated or challenged.

References

Euro-American Model Code of Administrative Jurisdiction: English, French, German, Italian, Portuguese and Spanish Versions (R. Perlingeiro & K.-P. Sommermann (eds.), Niterói: Editora da UFF, 2014).

Fa J.-P. & Leng S. *Judicial Review of Administration in the People's Republic of China*, 23(3) *Case Western Reserve Journal of International Law* 447 (1991).

La justicia administrativa en el derecho comparado (J. Barnés Vázquez (ed.), Madrid: Civitas, 1993).

Maleshin D. *Overview of Russian Civil Justice*, 3(4) *BRICS Law Journal* 41 (2016).

Naitao W. *The Origin of the Chinese Legal System*, 33 *Beijing Review* 23 (1990).

Perlingeiro R. *Contemporary Challenges in Latin American Administrative Justice*, 3(2) *BRICS Law Journal* 21 (2016).

Silvestri E. *Judicial Specialization: In Search of the "Right" Judge for Each Case?*, 2(4) *Russian Law Journal* 169 (2014).

⁴⁴ *La justicia administrativa en el derecho comparado* (J. Barnés Vázquez (ed.), Madrid: Civitas, 1993).

Uzelac A. *Mixed Blessing of Judicial Specialization: The Devil Is in the Detail*, 2(4) Russian Law Journal 146 (2014).

Voet S. *Belgium's New Specialized Judiciary*, 2(4) Russian Law Journal 129 (2014).

Wasek-Wiaderek M. *The Principle of "Equality of arms" in Criminal Procedure Under Article 6 of the European Convention on Human Rights and Its Functions in Criminal Justice of Selected European Countries* (Leuven: Leuven University Press, 2000).

Information about the authors

Mikhail Kleandrov (Moscow, Russia) – Corresponding Member, Russian Academy of Sciences, Senior Researcher, Institute of State and Law, Russian Academy of Sciences, Former Judge of the Constitutional Court of the Russian Federation (11-2 Kutuzova St., Moscow, 121354, Russia; e-mail: mklean@ksrf.ru).

Irina Pluzhnik (Tyumen, Russia) – Professor, Head of the Department of Foreign Languages and Intercultural Professional Communication for Law and Economics, Tyumen State University (38 Lenina St., Tyumen, 625000, Russia; e-mail: irinapluzhnik@gmail.com).