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Contractual Forms of Agreement Between the Bodies of the Executive

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Introduction

The governance system that is adequate to modern social realities dictates the need to review traditional views about the extremely powerful and imperative specifics of managerial actions in favor of recognizing the admissibility of the tools and techniques of a private nature in the field of administrative and legal regulation of social relations. The determinants of such transformation include, firstly, the general legal trend synthesis of private and public beginning in the legal system, and secondly, the formation of a fundamentally new concept of interaction between the state and the society, which involves the delegation of powers by public authorities to the subjects of private law, reserving, mainly powers of coordination, control and supervision. Accordingly, we are seeing an increase in the number of relationships, traditionally of subordinate nature, which are formed on the basis of self-regulation of discretionary items. Actively, by shaping the forms and mechanisms of coordination and cooperation between the subjects of the public administration, which in the future will harmonize administrative activity, expands the system of horizontal transactions between entities of public law. One of the manifestations of these trends is the development of an administrative contract institute (Erastova, 2016).

The main hypothesis of the author, according to which, deep doctrinal study requires the construction of an administrative contract, as evidenced by the absence of its system of legalization given the presence of certain indications of situational character of the legislator to the possibility of using a number of administrative and contractual forms (Ivanova and Bikeeva, 2016).

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The aim of the study is to test this hypothesis and to define the role of the administrative agreement in order to regulate relations in the sphere of public administration, which involves the following targets: determining the nature and content of the administrative contract as an independent public and legal structures; definition of the cause of administrative contract; analysis of certain aspects of the practice of administrative contract.

The main target of the study is social relations in the sphere of public administration. The subject of research is the set rules of administrative law governing the administrative and contractual relationships and the doctrine of administrative contract.

Materials and research methods

The theoretical base of the research was provided by the works of scientists in the field of investigating the forms of government management in general, and administrative contract, in particular, among which are the works (Nozdrachevetal., 2012), (Deminetal., 1997), (Shmaliyetal., 2013) and etc. The study also considers the workings of scientists related to jurisprudence, dealing with the issues of contractual regulation, including (Porotikovaetal., 2013), (Ivanovetal., 2000), and others.

Analysis of the degree of elaboration investigated issues revealed that not all experts recognize the structure of the administrative contract. In particular, O. A. Porotikova believes that, despite positive intentions, the essence of the contract is contrary to the model of subordination as the main basis of relations governed by administrative law, whereby the model contract cannot find the right environment and hence cannot settle down on the basis of public relations (Porotikova, O. A., 2013). At the same time institute of the administrative contract for a long time has successfully operated in foreign legislation, and this is not disputed by experts and those who believe it is impossible to use this design in the domestic legislation.

It should be noted that the method of legal regulation of the industry is not the only proof of the fact that agreement construction cannot be used in public law. The noted specifics can certainly act as formal restrictions, but do not appear meaningful. In addition, based on the specification method of legal regulation in the industry, in this case, usually it is not as singular and exceptional. This, in particular, work done by Y.N. Starilov and E.V. Tregubova (Rossinsky, B. V., Starilov, Yu.N., 2010; Savina, P.T., 2016; Sharashkina, P.T., 2016). In this regard, we believe it is necessary to conduct a comprehensive study, due to the purpose and objectives, as well as the subject area set forth above.

The empirical basis of the research was presented in the form of normative legal acts of the administrative legislation, including federal laws and acts of the Russian Federation.

The methodological basis of the research mainly included scientific methods, such as: analysis, synthesis, induction and deduction. Also, a special formal research method used in jurisdiction was applied.

Results

1. At present, within the activity of the executive authorities it is actively practiced to conclude various types of agreements that establish, as a rule, non-property obligations and are aimed at providing and facilitating one of the functions of the executive power.
According to A.F. Nozdracheva legally approval procedure results in various types of contracts and agreements with public authorities, legal persons, institutions, organizations and even the citizens. In this case there is an agreement between two parties - the executive authority and the contractor - the other contracting party. However, the content of those treaties has not been issued as of the many administrative standards (Nozdrachev, A.F., 2012).

The contractual forms also receive practical expression in the framework of the mediation of institutional relations in order to organize the system of executive power. For example, the Federal Law "On general principles of organization of legislative and executive bodies of state power of subjects of the Russian Federation" (hereinafter - the Law). The federal law of October 6, 1999 No. 184-FZ legalized two types of administrative competences of the agreement: an agreement between the federal and sub-federal public authorities of delimitation of powers and an agreement on the delegation of powers between the federal authorities and the "subjective" executive authorities (Art. 5.6 Art. 1 of the Act).

On the basis of the theory of indication of the legal acts (the external form of expression, legal orientation, volitional action Ivanov, V. V., 2000)), we can conclude that the administrative contract is a type of legal acts, namely - Legal Control Act.

2. The reasoning stated before allows us to formulate a system of descriptive indicators of the administrative contract as one of the forms and sources of executive power.
a. The administrative contract is a type of administrative decision, which has been adopted in order to achieve certain goals, mediated by the implementation of appropriate management functions. According to this criterion, the administrative contract distinguishes from the type of jurisdictional acts that intend to resolve the administrative and legal conflicts. Administrative contract is a form of public response to the subjects committing administrative offenses. Thus, the administrative contract aims to achieve positive social result, which characterizes it as administrative act of positive regulation.
b. Administrative contract expresses the consent will of the subjects, endowed with personal identification, one of which has public authority. This administrative agreement peculiar to particular subject composition - at least one of the parties to

the agreement must be the subject of the imperious act of administrative law. This distinctive feature separates administrative contract by a unilateral act of the legal department, whose action does not imply the need for approval by the controlled entities.

c. The legal consequences arising from the administrative contract, allow considering its legal management act. On contrast to the unilateral legal acts of regulatory or individual legal regulation, administrative contract is a legal fact, which creates, modifies or terminates specific administrative relationship. The peculiarity of the administrative contract as a legal form of government is that, unlike other types of legal facts, it is not limited to the role of incorporating the use of the mechanism of a specific legal provision. Permitted by law within itself, it creates a binding within the generated their legal rules of conduct (Shmaly, OV, 2011).

The content of the agreement as an administrative act constitutes the totality of its terms and conditions. Unfortunately, the concept of the possible grounds of administrative contract regulations are not fixed today to enter into administrative agreements, subject, objective form of administrative contract, the scope of application, as well as the responsibility for non-administrative contract.

3. Causa of administrative contract.

It is also important to point out the Causa of administrative contract, which is recognized by all the experts, and in the literature as a whole is treated fairly equally: the effective implementation of the public service tasks, in order to meet the state or public interests; the achievement of public interest; satisfaction of public needs as well as protection of public interests; implementation of state administrative tasks; the achievement of socially significant results (Rossinsky, B.V., Starilov, Y.N., 2010; Mickiewicz L.A., 2009; Kurchevskaya S.V., 2002; Dmitriyev, Y.A., Polyansky, I.A., Trofimov E.V., 2009; Konin N.M., 2006) .

In general, at the level of administrative contract, in an agreement between two or more subjects of administrative law, public interest gets its concrete expression, indicating socio-significant result, which is aimed at achieving the joint will of the parties. Accordingly, causa administrative contract determines the fundamental difference between the administrative and contractual obligations of civil law.

4. Enforcement of issues of administrative and contractual regulation, due to the lack of a systematic construction.

A good example of the problems associated with the implementation of the treaty in administrative relations is the lack of agreements related to the transfer of powers between the Interior Ministry and the executive bodies of subjects on the matter of protocol construction.

In accordance to Part 1 of Article 1 of the Federal Law dated February 7, 2011 № 3-FZ "On Police" (hereinafter - the Law on Police) (The federal law of February 7, 2011 No. 3), the main purpose of the police is to protect life, health, rights and free-

doms of Russian citizens, foreign citizens, stateless persons, the protection of public order, property and public safety. As for the prevention and suppression of administrative offenses proceedings on administrative offenses, that in accordance with paragraph 2 of Part 1 of Article 2, paragraph 5 of Part 1 of Article 2 of the Police Act, the following functions are identified as the main areas of police work.

For the implementation of their duties, police officers have the right to draw up protocols on administrative offenses, gather evidence, take measures to ensure proceedings upon administrative offenses, apply other measures provided by the legislation on administrative offenses (paragraph 8 of Part 1 of Article 13 of the Police Act).

In accordance with Part 2 tbsp. 3 of the Police Act, police is guided by laws of the Russian Federation on the protection of public order and public security, issued within their competence. At the same time, the legislator has not determined the order of the police empowerment by drafting protocols on administrative violations stipulated in the sub-national level.

In this regard, the Federal Law of July 21, 2014 № 247-FZ changes were made to Article 28.3 of the Code of Administrative Offences (hereinafter - the Code of Administrative Offences) (The code of the Russian Federation about administrative offenses of December 30, 2001 No . 195-FZ), according to which the officials of the bodies of internal affairs (police) empowered by drawing up protocols on administrative offenses, encroaching on public order and security, provided by laws of the Russian Federation. This happens only in case the transfer of powers is agreed between the Russian Interior Ministry and the executive authorities of the Russian Federation.

The federal law is aimed at addressing the ambiguous interpretation of the norms of the federal law in determining the competence of police on drawing up protocols on administrative offenses provided for by the laws of the Russian Federation.

The mechanism of conclusion of these agreements is determined by the RF Government dated December 8, 2008 № 924 "On the Procedure for the conclusion and entry into force of the agreements between the federal executive authorities and executive authorities of the Russian Federation on the partial transfer of power to each other' (the resolution of the Government of the Russian Federation of December 8, 2008 No. 924 (an edition from 4/28/2015)).

Under this regulation, the draft agreement is sent to the party - initiator on the other side of the agreement. The term coordination of this project is 2 weeks and may be extended by mutual agreement by 1 month. If the draft agreement is not agreed by the parties after the deadline, the initiator of the agreement may apply to the Government Commission on Administrative Reform to resolve the differences. Moreover, 2 years have passed since there have been amendments to the Administrative Code of the Russian Federation. However no subject to date, has agreed to transfer

authority to the police, for drawing the administrative violations protocol, responsibility for which is established by law relevant entities of the Russian Federation.

Thus, for individual formulations of administrative offenses provided by laws of the subjects of the administrative offense (including the Rostov region), almost no reports on administrative offenses have been made. In particular, severe difficulties arise during the preparation of protocols on administrative offenses, expressed in violation of the right to peaceful life of citizens. Given the fact that these protocols are currently authorized to be put together by officials from the administrative commissions of local governments, it is difficult to imagine how an official of the municipal authority will be able to visit the crime scene after 23 hours, while he is neither allowed to carry weapons, nor delay the rowdy, nor has the skills necessary for suppression of such offenses. In the same way, things are in violation of the statutory prohibition of tobacco smoking in designated areas, indoors and other offenses.

Inadequacy of administrative and contractual forms has given rise to another problem. Thus, the draft model agreement prepared by the Ministry of Internal Affairs of the Russian Federation, and directed by the Commission at the government top officials, provides for payments for the police service being taken from the local budgets (for drawing up protocols on administrative violations). The payment should include funds for the purchase of blanks, stationery, vehicles and other expenses. Thus, it is the conclusion of onerous agreement between the federal authority and the authority of the local executive branch.

In our opinion, while applying administrative and contractual forms it is necessary to consider the possibility of using them in particular areas. We believe that the use of administrative contracts in the field of law enforcement is unacceptable, in the view of the fact that the protection of public safety and public order is a basic function of the state, which should be carried out regardless of any agreements.

Discussion

As a result of the study the hypothesis that was put forward is proven. It has been found that the administrative contract is an important form of external expression of the exercise of powers by public administrative entities, creating favorable conditions for the development and evolution of horizontal interaction of subjects in the sphere of public administration.

In the general it is necessary to point out three relatively autonomous regions where administrative state contracts are used:
1) Areas of management, where the conclusion of agreements is unacceptable (it is primarily the use of administrative coercive measures, including liability);
2) Areas of management, attributable to the discretion of public authority to choose administrative agreement or use of the administrative act according to the actual situation;

3) Areas of management, where the only negotiating regulatory methods can be used. Here, the authors talk about some relations in the economic sector (privatization, provision of public needs, etc.), many federal, inter-regional relations, private investment, attracting citizens to cooperate with law enforcement agencies, etc. (Dyomin, A.V., 1997)

Conclusion

All of the stated above suggests the necessity to study the administrative contract not only in the context of substantive, but also in the context of the administrative-procedural law. Currently, administrative and contractual processes have not been investigated in the doctrine of administrative contract.

It should be noted that the factor reducing the effectiveness of the executive power in the form of administrative contract is the defect of the legal framework for implementing the rights and duties. This in itself forms the content of the administrative and contractual relations, manifested in the absence of sectoral measures of violation responsibilities within the poise law system, as well as the lack of legal consequences associated with non-concluded administrative contract. As rightly pointed K.V. Khodakovsky, in cases relating to the protection of important public interests, the guarantor of which is the state, the mandatory security requirements of entering the administrative contract is required (Hodakovsky, K.V., 2010).

Since the administrative responsibility cannot be established under the administrative agreement, this problem can be solved only by normative regulation of administrative-contractual liability on the federal law. Existing administrative legislation does not provide for liabilities in case of breaching the administrative contract. In the current system of administrative punishments the most appropriate kinds of penalties that provide administrative liability for violation of the contract are: a warning and an administrative financial penalty. In addition, the responsibility of officials may be mediated in such punishment via disqualification (Shmaly O.V, 2011).

With regard to the problem of evasion of duties established by the establishment of an administrative agreement, a possible measure in case of violation of the terms of the agreement may be a duty to enter into such an agreement, free of charge, or the giving right to parties to create their own bodies, to ensure the implementation of certain legal relations.

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