

# JURISDICTION OF CASES ON CONTESTING NORMATIVE LEGAL ACTS

Natalya Yushchenko\*

## Introduction

Jurisdiction in jurisprudence is understood as set of the signs (legal properties) of different categories of affairs established by the law according to which the system of vessels which shall consider and permit this category of affairs is defined; under cognizance – what court shall consider case on the first instance. Distinguish two types of cognizance patrimonial (subject) and territorial. Patrimonial cognizance means reference of case to maintaining this or that link of judicial system; territorial – determines competence of homogeneous vessels by hearing of cases, i.e. differentiates competence of different vessels of the same link of judicial system [1].

Based on the legislation on the questions connected with determination of jurisdiction and cognizance of cases of contest of regulatory legal acts, and court practice the author set for himself the task to critically estimate regulations of the current legislation on the specified questions. With this I aim it formulates the scientific hypothesis that after adoption of the Code of administrative legal proceedings of the Russian Federation permission of such affairs in special procedures of arbitral proceeding contradicts the idea of creation in Russia of administrative justice. The fact that the Intellectual Property Rights Court of the Russian Federation which is a part of the system of arbitration courts is given the right within the competence to consider such cases on the basis of special regulations of the Arbitration procedural code of the Russian Federation [2] formed the basis for promotion of such hypothesis.

The aim of the article is to give the assessment of the current legislation on the questions connected with determination of jurisdiction and cognizance of cases of contest of regulatory legal acts is set. On the basis of the analysis of court practice of the Supreme Court of the Russian Federation, courts of law and Intellectual Property Rights Court the author draws the conclusion, as after adoption of the Code of administrative legal proceedings of the Russian Federation permission of such affairs is performed not only in procedures of administrative legal

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proceedings, but also in special procedures of the arbitration legal proceedings as the Intellectual Property Rights Court of the Russian Federation which is a part of the system of arbitration courts considers such cases on the basis of special regulations of the Arbitration procedural code of the Russian Federation that it breaks unity of approach and contradicts the idea of creation of uniform administrative justice.

By results of the conducted research the author comes to the original conclusion that provisions of the Concept of the uniform Civil Procedure Code of the Russian Federation also do not correspond to the idea of development in Russia of administrative justice. Such conclusion assumes need of further scientific development of problems of jurisdiction and cognizance of the considered category of affairs.

When writing this article general scientific methods of ascension from abstract to specific, the analysis and synthesis, induction and deduction, the method of the structural analysis and special methods of legal researches – comparative and legal, historical and legal, the method of the dogmatic analysis of legal texts, etc. are used.

### **Main text**

The aim of the article is to give the assessment of the current legislation on the questions connected with determination of jurisdiction and cognizance of cases of contest of regulatory legal acts is set. Based on the analysis of court practice of the Supreme Court of the Russian Federation, courts of law and Intellectual Property Rights Court the author draws the conclusions dealing with administrative legal proceedings, but also with special procedures of the arbitration legal proceedings.

Jurisdiction in jurisprudence is understood as set of the signs (legal properties) of different categories of affairs established by the law according to which the system of vessels which shall consider and permit this category of affairs is defined; under cognizance – what court shall consider case on the first instance. Distinguish two types of cognizance patrimonial (subject) and territorial. Patrimonial cognizance means reference of case to maintaining this or that link of judicial system; territorial – determines competence of homogeneous vessels by hearing of cases, i.e. differentiates competence of different vessels of the same link of judicial system

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Considering questions of contest of regulatory legal acts, it is necessary to differentiate, first of all, jurisdiction of the affairs entering competence of the constitutional justice, and the cases considered in procedures of administrative legal proceedings.

According to the Constitution of the Russian Federation, federal constitutional laws and federal laws, Constitutions (Charters) of subjects of the Russian Federation check of constitutionality of regulatory legal acts is referred to competence of the Constitutional Court of the Russian Federation, the constitutional (authorized) courts of territorial subjects of the Russian Federation, applications for recognition of regulatory legal acts not acting can be considered only in procedures of the constitutional legal proceedings by the Constitutional Court of the Russian Federation or the constitutional (authorized) court of the subject of the Russian Federation.

According to the p. 2 of Art. 125 of the Constitution of the Russian Federation the Constitutional Court of the Russian Federation permits cases of compliance of the Constitution of the Russian Federation: a) federal laws; regulations of the Russian President, Federation Council, State Duma, Government of the Russian Federation; b) constitutions of the republics, charters and also laws and other regulations of the subjects of the Russian Federation published on the questions relating to maintaining public authorities of the Russian Federation and joint maintaining public authorities of the Russian Federation and public authorities of subjects of the Russian Federation; c) agreements between public authorities of the Russian Federation and public authorities of subjects of the Russian Federation, agreements between public authorities of subjects of the Russian Federation; d) not become effective international treaties of the Russian Federation [3]. Competence of the Constitutional Court of the federal constitutional law defining its status [4] is concretized.

To vessels cases of contest completely or regarding regulatory legal acts lower than the level of the federal law on the bases of their contradiction are subordinated to other, except the Constitution of the Russian Federation, to the regulatory legal act having big legal force (for example, cases of contest of regulatory legal acts of the Russian President and the Government of the Russian Federation, laws of subjects of the Russian Federation on the bases of their contradiction to federal laws).

At the same time it must be kept in mind that administrative cases are not subordinated to vessels: about contest on the bases of the contradiction to federal laws of regulatory legal acts of the Russian President or the Government of the Russian Federation in cases when check of compliance of the specified regulatory legal acts to the federal law is impossible without establishment of their compliance of the Constitution of the Russian Federation; about contest of constitutions and charters of subjects of the Russian Federation as check of

compliance of the constituent act of the subject of the Russian Federation to the federal law is integrated to establishment of its compliance to regulations of the Constitution of the Russian Federation.

Regulation of questions of cognizance of cases of contest of regulatory legal acts underwent serious changes recently.

Adoption of law of the Russian Federation on the amendment to the Constitution of the Russian Federation "About the Supreme Court of the Russian Federation and prosecutor's office of the Russian Federation" [5] caused updating of all Russian legislation on judicial system and legal proceedings. Consolidation of the Supreme Court of the Russian Federation and the Supreme Arbitration Court of the Russian Federation, redistribution of powers of courts of law and arbitration courts led to withdrawal from cognizance of arbitration courts of cases of contest of regulatory legal acts. Thereby the issue of differentiation of jurisdiction of cases of contest of regulatory legal acts causing the numerous controversy between vessels of the general and arbitration jurisdiction was resolved [6].

This innovation, however, did not mention the Intellectual Property Rights Court which is a part of the system of arbitration courts which kept the right of permission of cases of contest of regulatory legal acts of federal executive authorities in the field of patent laws and the rights to selection achievements, the rights to topology of integral chips, the rights to know-how (know-how), the rights to means of individualization of legal entities, goods, works, services and the enterprises, rights to use of results of intellectual activity as a part of uniform technology.

Irrespective of the subject of the address with the statement for contest of such regulatory legal act and its relation to business activity of case on abstract compliance assessment treat special court jurisdiction by the intellectual rights. There is no need to establish whether the rights and legitimate interests of the applicant in the field of business or other economic activity are infringed. It is enough to establish that the rights and interests of the applicant are connected with legal protection of results of intellectual activity and means of individualization [7].

Procedural aspects of permission of cases of contest of regulations in the field of the intellectual right Intellectual Property Rights Court are regulated the specified category of affairs adapted to features by chapter 23 of the Arbitration procedural code of the Russian Federation [8].

The overwhelming number of cases on contest of regulatory legal acts is considered by the Supreme Court of the Russian Federation and courts of law. Till September 15, 2015 they considered and permitted such cases in the order of claim production on regulations of the Civil procedural Russian Federation codec with features, the established by chapters 23-26.2 [9].

On September 15, 2015 became effective the Code of administrative legal proceedings [10]. This code along with procedural aspects of legal proceedings on

administrative disputes settles also some questions of cognizance and jurisdiction of such affairs of this category of affairs, including cases of contest of regulatory legal acts.

Jurisdiction of administrative cases to vessels is defined by Art. 17 of KAS Russian Federation. According to it the Supreme Court of the Russian Federation, courts of law consider and permit the administrative cases connected with protection of the violated or disputed rights, freedoms and legitimate interests of citizens, the rights and legitimate interests of the organizations and also another administrative cases arising from administrative or other public legal relationship and connected with implementation of judicial control of legality and justification of implementation of the state or other public powers except for the affairs referred by federal laws to competence of the Constitutional Court of the Russian Federation, the constitutional (authorized) courts of subjects of the Russian Federation and arbitration courts.

Cognizance of affairs to the Supreme Court of the Russian Federation is defined by the Federal constitutional law "About the Supreme Court of the Russian Federation" [11]. It provides that the Supreme Court of the Russian Federation considers as trial court administrative cases about contest of regulatory legal acts of the Russian President, the Government of the Russian Federation, federal executive authorities, the Prosecutor General's Office of the Russian Federation, the Investigative Committee of the Russian Federation, Judicial department at the Supreme Court of the Russian Federation, the Central Bank of Russian Federation, Russian Central Election Commission, state non-budgetary funds, including the Pension Fund of the Russian Federation, Social Insurance Fund of the Russian Federation, Federal Compulsory Health Insurance Fund and also the state corporations.

Cases of contest of the regulations concerning the rights, freedoms and protected by the law of interests of the military personnel of the citizens undergoing military charges are considered only in Judicial board of the Supreme Court for the military personnel (Art. 7 of FKZ "About Warships of the Russian Federation") [12].

KAS Russian Federation regulates the procedure of administrative legal proceedings by consideration and permission by the Supreme Court of the Russian Federation, courts of law of administrative cases about protection of the violated or disputed rights, freedoms and legitimate interests of citizens, the rights and legitimate interests of the organizations and also another administrative cases arising from the administrative and other public legal relationship and connected with implementation of judicial control of legality and justification of implementation of the state or other public powers.

In the order provided by KAS Russian Federation, courts consider and permit the administrative cases subordinated to them about protection of the violated

or disputed rights, freedoms and legitimate interests of citizens, the rights and legitimate interests of the organizations arising from administrative and other public legal relationship including administrative cases about contest of regulatory legal acts completely or in the part (Art. 1 of KAS Russian Federation).

By rules of patrimonial cognizance except the Supreme Court of the Russian Federation cases of contest of regulatory legal acts have the right to consider courts of subjects of the Russian Federation and district courts. According to Art. 20 of KAS Russian Federation the Supreme Court of the republic, regional, regional court, court of the federal city, court of the autonomous region and court of the autonomous area consider cases of contest of regulatory legal acts of public authorities of subjects of the Russian Federation, representative bodies of municipalities as trial court. Cases of contest of acts of other local governments are included into competence of district courts. Magistrate judges the right of permission of cases of contest of regulatory legal acts of any bodies of the public power, are not allocated.

In addition to patrimonial cognizance competence of specific court is defined by rules of territorial cognizance. Cases of contest of regulatory legal acts are cognizable to vessels in the location of body or for the place of distribution of competence of the body which published the regulatory legal act. KAS Russian Federation establishes that submission of the administrative action for declaration at the place of residence, the location of the administrative defendant: the administrative action for declaration to public authority, other state body, local government is filed a lawsuit in the place of their stay, to the official, the public or municipal servant – in the location of body in which specified persons fulfill the duties (item 1 of Art. 22 of KAS Russian Federation).

If the location of public authority, other state body, local government, the organization given separate state or other public authority does not match the territory to which their powers extend or on which the official, the public or municipal servant fulfills the duties, the administrative action for declaration is filed a lawsuit that area to which territory powers of the specified bodies, the organizations or in the territory of which the corresponding official, the public or municipal servant (item 2 of Art. 22 of KAS Russian Federation) fulfills the duties, extend.

In case of filing of application with abuse of regulations of cognizance the court returns the application without consideration. These rules worked also before enforcement of KAS Russian Federation. So, on May 22, 2013 the judicial board on civil cases of the Lipetsk regional court, considered case on the private complaint of M. to determination of Terbunsky district court of the Lipetsk region of April 24, 2013 which the action for declaration M. to OGIBDD of M of OMVD of Russia Terbunsky across the Lipetsk region, prosecutor's office of



the Terbunsky Region of Lipetsk region about recognition by invalid item 9.2 of Traffic regulations of the Russian Federation [13] was returned to the claimant M.

The board established that the claimant M. appeals against the regulatory legal act approved by federal executive authority. Therefore, consideration of this statement is cognizable to the Supreme Court of the Russian Federation. Under such circumstances the board recognized determination of the judge about return of the statement of M. in connection with its incompetence to Terbunsky district court of the Lipetsk region on the basis of item 2 p.1 Art. 135 of the CCP of the Russian Federation correct [14].

There are examples and wrong determination of territorial cognizance. So, the interdistrict prosecutor To. for the benefit of uncertain group of people took the Kansk city court of Krasnoyarsk Krai with the statement for recognition to pct 5.4, 5.5 of Administrative regulations of providing the service "transfer in the municipal educational institutions located in the territory of the municipality the Kansk district" by municipal educational institutions inappropriate to the current legislation. The administrative regulations are approved by the resolution of administration of the Kansk district which regarding the description of the order of consideration of addresses of citizens, from the position of the prosecutor, does not correspond h p.1, the 5th Art. 11 of the Federal law of 02.05.2006 No. 59-FZ "About the order of consideration of addresses of citizens of the Russian Federation" [15]. The application was returned by determination of the Kansk city court of Krasnoyarsk Krai of October 29, 2013 in connection with the incompetence to the Kansk city court.

In private submission to the Krasnoyarsk regional court the prosecutor asked to cancel determination of trial court, referring to cognizance of the claim to the Cannes district court owing to provisions of the p. 4 of Art. 251 of the CCP of the Russian Federation and paragraph 4 of item 2 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 29.11.2007 No. 48 [16] according to which the application for contest of the regulatory legal act is submitted to district court in the location of local government or the official who adopted the regulatory legal act as the administration of the Kansk district is located in the city of Kansk.

The judicial board on civil cases of the Krasnoyarsk regional court recognized that the trial court was correct on the incompetence of this statement to the Kansk city court as the territory to which the resolution of administration of the Kansk district extends belongs to cognizance of the Kansk district court. According to the explanations which are contained in paragraph 2 of item 14 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 10.02.2009 No. 2[17] if the location of body or the person does not match the territory to which their competence extends (for example, the local administration is located

outside the boundaries of this municipality), then the statement is filed a lawsuit around which activity the specified body or the person fulfill the duties.

The judicial board of the Krasnoyarsk regional court did not find the bases for cancellation of determination of court, considering that the judge legally, proceeding from provisions of the p. 4 of Art. 1 of the CCP of the Russian Federation, applied analogy of the procedural law and came to the valid conclusion about the incompetence of the statement to the Kansk city court [18]. At the same time the board noted that return of the statement to the prosecutor does not interfere with the repeated address of the prosecutor with similar requirements in court according to rules of cognizance of the dispute.

Already these examples show how difficult and ambiguous questions of determination of cognizance of cases of contest of regulatory legal acts are. At the new stage of legal regulation these questions do not lose the value.

## **Conclusion**

By results of the conducted research the author concludes that again adopted laws are contradictory, complicated, and it complicates their use as the legal basis of protection of the rights and interests of citizens and their associations in disputes with the public power.

Remains not settled KAS Russian Federation remaining after acceptance dualism in the solution of the question of procedures of contest of regulatory legal acts as separate categories of such affairs are considered by Intellectual Property Rights Court which shall be guided by chapter of 23 agrarian and industrial complexes of the Russian Federation which is specially devoted to hearing of cases about contest of regulatory legal acts by this court.

It is represented that the instruction in the Code of administrative legal proceedings of the Russian Federation would be quite reasonable that permission is performed by Intellectual Property Rights Court of cases of contest of the regulatory legal acts carried to its competence according to chapter 21 of KAS Russian Federation "Administrative cases production about contest of regulatory legal acts". Such decision would provide the optimum combination of specialization of court to unification of judicial processes at permission of the same affairs.

Practical implementation of many regulations of the Code about administrative legal proceedings of the Russian Federation raises many questions. On most of them law-enforcement practice shall give the answer. But even before introduction of KAS to action the Concept of the uniform Civil Procedure Code of the Russian Federation appeared [19]. It is supposed to consolidate the civil and arbitration procedural legislation in the uniform CCP of the Russian Federation. It would be still possible to agree with it though such withdrawal pains of procedural



codes are fraught with numerous losses too if authors of the Concept had no far-reaching plans to include afterwards in this uniform code and administrative legal proceedings.

"Considering that the affairs arising from public legal relationship in essence have the same procedural forms of consideration, as private-law, the Code of administrative legal proceedings, – P.V. Krasheninnikov in the opening speech to the concept says, – can become the transitional step to further standardization of all legal procedure, except for criminal procedure, in the uniform codified act" [20].

As far as such decision is conformable with the idea of creation in the country of administrative justice, when there is no special administrative courts, and administrative legal proceedings can be dissolved completely in civil? It is asked why then it was necessary to make changes to the Constitution of the Russian Federation, to introduce in the p. 2 of Art. 118 the instruction, on the fact that "judicial authority is performed by means of the constitutional, civil, administrative and criminal trial"?

Question of how the administrative justice in the Russian Federation shall be organized, – in the form of specially created vessels or specialization within the existing vessels shall be provided or in general it is possible to be limited to specialization of judges, – long time was discussed in jurisprudence. Establishment of special procedures of the dispute resolution of public character by vessels of the general and arbitration jurisdiction was the first step on the way of creation of administrative justice in Russia; introduction of the special administrative legal proceedings oriented to consideration of such affairs by vessels became the second; creation of system of administrative courts had to become the third, final stage. It is represented that in this discussion still early to put the end. Provisions of the Concept of the uniform Civil Procedure Code of the Russian Federation, from the point of view of the author, do not correspond to the idea of development in Russia of administrative justice.

### Notes:

[1] Barikhin A. B. (2005), Big legal encyclopedic dictionary. – M.: Book world, p. 444.

[2] Arbitration procedural code of the Russian Federation. Approved by Federal law of 24.07.2002, No. 95-FZ. In the edition of 30.12.2015 No. 425-FZ//SZ Russian Federation. 2002. No. 30. St. 3012; 2016. No. 1. P.1. Art. 45. – Further: Agrarian and industrial complex of the Russian Federation.

[3] Constitution of the Russian Federation. National vote accepts it 12.12.1993. Considering the amendments made by Acts of the Russian Federation about amendments to the Constitution of the Russian Federation of 30.12.2008 No.

6-FKZ, of 30.12.2008 No. 7-FKZ, of 05.02.2014 No. 2-FKZ, of 21.07.2014 No. 11-FKZ//SZ Russian Federation. 2014. No. 31. Art. 4398.

[4]. Federal constitutional law "About the Constitutional Court of the Russian Federation" of 21.07.1994, No. 1-FKZ. In the edition of 14.12.2015 No. 7-FKZ//SZ Russian Federation. 1994, No. 13. Art. 1447; 2015. No. 51. P.1. Art. 7229.

[5] The law of the Russian Federation on the amendment to the Constitution of the Russian Federation "About the Supreme Court of the Russian Federation and prosecutor's office of the Russian Federation" of 05.02.2014, No. 2-FKZ//SZ Russian Federation, 2014, No. 6. Art. 548.

[6] Responsibility of the state to individuals (Experience of the complex research). In 2 t., 4 h / Under. edition of L.I. Antonova. T. 2, p. 3. – SPb.: Prod. SZIU RANEPa, 2013. Page 344-360. – Author of paragraph 5.5. "The dispute on legality of the regulatory legal act – S.Yu. Katukova.

[7] Novoselova L. A. (2013), Procedural features of consideration of disputes by Intellectual Property Rights Court//Messenger of civil process., No. 4. Page 8-26.

[8] Federal law "About Modification of the Arbitration Procedural Code of the Russian Federation" law of 28.06.2014, No. 186-FZ//SZ Russian Federation. 2014. No. 26. P. I. Art. 3392.

[9] Civil Procedure Code of the Russian Federation. Approved 14.11.2002, No. 138-FZ. In the edition of 30.12.2015 No. 425-FZ//SZ. Russian Federation 2002. No. 46. Art. 4532; 2016. No. 1. P. I. Art. 45. – Further: CCP of the Russian Federation.

[10] Code of administrative legal proceedings of the Russian Federation. Approved 08.03.2015 No. 21-FZ. In the edition of 30.12.2015 No. 425-FZconsultantplus://offline/ref=8BD927CC691569ED60D0DAC89D17184F4018247FC3DB87B403204DEE9030EB6F1808C51205CB53D4n5QAJ//SZ Russian Federation (2015) No. 10. Art. 1391; 2016. No. 1. P. I. Art. 45. – Further: KAS Russian Federation.

[11] Federal constitutional law "About the Supreme Court of the Russian Federation" of 05.02.2014 No. 3-FKZ. In the edition of 04.11.2014 No. 16-FKZ//SZ Russian Federation. 2014. No. 6. Art. 550; No. 45. Art. 6130.

[12] Federal constitutional law "About Warships of the Russian Federation" of 23.06.1999 No. 1-FKZ. In the edition of 08.03.2015 No. 1-FKZ//SZ Russian Federation. 1999. No. 26. Art. 3170; 2015. No. 10. Art. 1390.

[13] Order of the Government of the Russian Federation "About Traffic Regulations" of 23.10.1993 No. 1090//Collection of acts of the President and Government of the Russian Federation. 1993. No. 47. Art. 4531.

[14] Determination of the Lipetsk regional court of 22.05.2013 No. 33-1286a/2013//Help search engine ConsultantPlus – Further: SPS "ConsultantPlus".

[15] Federal law "About the Order of Consideration of Addresses of Citizens of the Russian Federation" of 02.05.2006 No. 59-FZ. In the edition of 03.11.2015

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No. 305-FZ//SZ Russian Federation. 2006, No. 19. Art. 2060; 2015. No. 45. Art. 6206.

[16] The resolution of the Plenum of the Supreme Court of the Russian Federation "About practice of consideration by vessels of cases of contest of regulatory legal acts completely or in the part" of 29.11.2007 No. 48. In the edition of 09.02.2012, No. 3//the Bulletin of the Supreme Court of the Russian Federation. 2008, No. 1, 2012, No. 4.

[17] The resolution of the Plenum of the Supreme Court of the Russian Federation "About practice of consideration by vessels of cases of contest of decisions, actions (failure to act) of public authorities, local governments, officials, public and municipal servants" of 10.02.2009. No. 2. In the edition of 09.02.2012, No. 3//the Bulletin of the Supreme Court of the Russian Federation, 2009, No. 4, 2012, No. 4.

[18] Determination of the Krasnoyarsk regional court of 15.12.2014 on the case No. 33-11859/2014, A-65//SPS ConsultantPlus.

[19] Concept of the uniform Civil Procedure Code of the Russian Federation. It is approved by the decision of Committee on the civil, penal, arbitration and procedural legislation of the State Duma of Federal Assembly of the Russian Federation of 08.12.2014, No. 124 (1)//SPS ConsultantPlus.

[20] In the same place//SPS "ConsultantPlus".

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The aim of the article is to give the assessment of the current legislation on the questions connected with determination of jurisdiction and cognizance of cases of contest of regulatory legal acts is set. Based on the analysis of court practice of the Supreme Court of the Russian Federation, courts of law and Intellectual Property Rights Court the author draws the conclusions dealing with administrative legal proceedings, but also with special procedures of the arbitration legal proceedings.

**Key words:** legal act, jurisdiction, legal procedure, Code of Civil Procedure, administrative justice.

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