ADMINISTRATIVE OFFENSE PROCEEDINGS AND PRE-TRIAL DISPUTE RESOLUTION IN THE BRICS COUNTRIES

VLADIMIR VINOKUROV,

Nikiforov Russian Center of Emergency and Radiation Medicine of EMERCOM of Russia (Saint Petersburg, Russia)

VLADIMIR GAVRILENKO,

Yaroslav-the-Wise Novgorod State University (Veliky Novgorod, Russia)

VICTOR SHENSHIN,

Saint Petersburg University of State Fire Service of EMERCOM of Russia (Saint Petersburg, Russia)

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This article offers a comparative analysis of the particularities of the implementation of proceedings in cases of administrative offenses and pre-trial dispute resolution in the BRICS member states. The article observes that in the BRICS countries, the issues of pre-trial dispute settlement are resolved using the same mechanisms: negotiation and conciliation procedures, including mediation. The implementation of these mechanisms is possible by the parties to the dispute themselves, with the participation of third parties such as proxies or legal representatives who may be interested in carrying out the procedures, and with the services of independent, professional mediators. The article draws attention to the fact that the Federative Republic of Brazil, the Russian Federation, the Republic of India, the People's Republic of China and the Republic of South Africa belong to different legal families, which undoubtedly is a feature of the legal regulation of their administrative offense proceedings as well as of their pre-trial dispute resolution. The article finds that Roman law largely influenced all of the BRICS countries, with the exception of India, whose legal system was formed under the influence of English law, and that the versatility of legal regulation does not allow one to speak fully about the balance of administrative legislation in the studied areas. Furthermore, it is characteristic of all of the BRICS countries that administrative punishment cannot be aimed at humiliating the human dignity of a natural person, causing him or her

physical suffering, nor can it be aimed at damaging the business reputation of a legal person. The similarity of the tasks of the administrative legislation of the BRICS countries is noted, which should include the protection of the subjective rights and interests of citizens, ensuring the rule of law, the protection of public order and public safety, and the prevention of administrative offenses. Through the discourse presented by the authors, the concept of an administrative offense is revealed; the acts regulating the proceedings in cases of administrative offenses are considered, as well as the tasks and principles established by national legislation in this direction. Furthermore, the similarities and differences in the legal regulation of proceedings in cases of administrative offenses and pre-trial settlement of disputes are revealed.

Keywords: administrative responsibility; administrative offense; proceedings in cases of administrative offenses; BRICS countries; pre-trial dispute resolution; legal systems of the BRICS countries.

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Introduction

In the modern world, various interactions between countries are characteristic, and cooperation within BRICS is no exception.

BRICS is an association of five countries, which includes the Federative Republic of Brazil, the Russian Federation, the Republic of India, the People's Republic of China and the Republic of South Africa. Such an agreement was made possible due to the high transformation of world development and an obvious shift in the balance of power

in the international arena, as well as the rapid rise of the participating countries as growing economies. The complexity of the system of international relations and the adoption of final decisions within the framework of many international institutions (the United Nations, the World Trade Organization, among others) also formed the basis for the creation of a new center of influence in world politics. In this regard, it appears that the role and significance of the BRICS will only increase annually and acquire a clearer framework as indicated by decisions taken jointly by the BRICS member states in various fields of activity. As a result, it is important to seek out new, more dependable world partners capable of exerting an ever greater influence over decisions made on a global scale.

BRICS, an interstate association that is seeking to define its own political, economic and legal course of development, has become a new center of such development. Today, BRICS is regarded as a progressive form of institutional international cooperation as well as a new format of international relations, including in the legal sphere, which is reflected, among other things, in the inclusion of parliamentarians in the partnership dialogue within the framework of this organization as well as the participation of representatives in the discussion and decision of complex issues of integration and development. As a result, the particulars of these emerging interstate relations are based on international law. And states, as the main actors in international relations and subjects of international law, are attempting to diversify the nature of their interactions, such as by organizing cooperation in a variety of areas.

The main circumstance justifying the existence of BRICS, as recognized by experts, is the format of cooperation to achieve the economic goals and objectives of partners. At the same time, some perplexity is caused by the fact that cooperation in the legal sphere is not a priority area of joint activities between the countries, despite some integration steps having been taken in this direction. Thus, the signing of the Protocol of Intent between the Supreme Courts of the BRICS countries in 2009 was aimed at organizing mutual cooperation, identifying a general vector of development of actions aimed at implementing the exchange of information and establishing specific procedures between the higher courts of Brazil, Russia, India and China, as well as disseminating information about such activities within the jurisdiction of a particular state. However, the Strategy for Economic Partnership of the BRICS countries, the Memorandum of Understanding and Cooperation in Science, Technology and Innovation and other joint documents of the participating states allow us to conclude that guidelines have been established for the implementation of large-scale projects, as well as the beginning of movement in this direction, which, in the long run, will make the issue of compatibility of legal regulation in the BRICS countries relevant and arouse practical interest in the implementation of tasks arising in the legal field of these states.

1. Features of the Construction of the Legal Systems of the BRICS Member States

In this section, we will look at the differences in doctrinal and legislative traditions among the BRICS member states in the sphere of administrative jurisdiction, which may be explained by the particularities of the construction of legal systems and their affiliation with one or more legal families.

Brazil, in relation to belonging to a legal family, belongs either to the Latin American legal system, or to a separate Latin American group within the Romano-Germanic legal system, depending on which of the existing classifications the researcher adheres to. The details of legal regulation and a significant portion of the latter are prioritized in countries of this group. The regulation of the social sphere stems from a serious social burden of significant importance on the public sector in Brazil.

Nonetheless, the national legal system of Portugal, based on the traditions of Roman law, had a significant impact on the formation of Brazilian law. At the same time, one or more branches of law were influenced by the legal systems of other countries: for example, constitutional law was influenced by the U.S. legal system, which established the regulation of the federal structure and the delineation of powers between different levels of government; criminal law was influenced by French and Italian criminal law; and German civil law made it possible to codify the norms of Brazilian civil law.

The legal system of modern Russia is attributed to the Roman-Germanic legal family, a characteristic feature of which is the division of branches of law into public and private law. As a result, the presence of branches of law and the presence of codes in the structure, such as the Code of the Russian Federation on Administrative Offenses, is an important criterion for referring Russia to this legal system. In the context under consideration, in addition to the specified codified act, decrees of the President of the Russian Federation, decrees and orders of the government of the Russian Federation, acts of federal executive bodies, as well as laws of the constituent entities of the Russian Federation, should be classified as normative legal acts. Given the special nature of the branch of administrative law, the institutions of administrative law are at its center, and the main element of legal reality is the rule of law. All this helps to make the main point, which is determining the legal nature of the legal system, and the source of law as a law or a normative legal act. As a result, the aforementioned characteristics lead to the conclusion that there is a high degree of commonality between the Russian legal system and Romano-Germanic law.

On the one hand, modern Russian law partially replicates older Soviet models in a transformed form, and, on the other hand, Russian law has absorbed the features of many institutions of foreign law and the norms of international acts.

India, like the majority of modern states, is currently implementing administrative reforms based on the ideas of new public management and the concept of "good

governance." The set of reforms that began in 1991 are fundamental to modern Indian governance.

The Indian legal system prioritizes the characteristics of the common law family, in which, in addition to laws, judicial precedent and, in general, the practice of courts creating law, rather than simply applying it, play a significant role. The difference between the Indian legal system and the English legal system lies in the Constitution, signed in 1949, which establishes the legal system as a distinct legal pyramid. The incorporation of legal custom into the law and even the Constitution of the country can be seen here. As a consequence, the modern Indian legal system is characterized by pluralism in which Hindu law (family property, joint property and so on) and Muslim law (questions of personal status) are applied in the spheres of action for which the state has issued special laws.

The uniqueness of the legal system of the People's Republic of China (PRC) is expressed in a number of factors, including the special socialist character of the PRC, which is a kind of combination of socialist and market principles. The modern law of the PRC is complex, largely contradictory and, yet, in its own way, an integral phenomenon, which reflects various signs: a socialist approach to regulating relations with traditionalism, modern legal forms with anachronism and vagueness of legal norms with a relative certainty of party attitudes according to their understanding and so on. According to the official position of the PRC leadership, the country has formed a "socialist legal system with Chinese characteristics."

The legal system of the Republic of South Africa has a mixed character, combining elements of the Anglo-Saxon and Romano-Germanic systems of law (in the Roman-Dutch version), as well as the customary law of African tribes. English law has had a significant impact on administrative law, as well as legal proceedings in this country, whereas Roman law is unique in terms of family, inheritance and property law.

Thus, from the presented analysis, it can be seen that Roman law influenced all countries to a greater extent, with the exception of India, whose legal system was formed under the influence of English law.

The above provisions, characterizing the legal systems of the BRICS member states, clearly show the complexity of the legal palette that representatives of states in the international arena have to deal with.

In describing the state-territorial structure and national legal systems, we note that three out of the five states (Brazil, Russia and India) are federal, while the remaining two (China and South Africa) are unitary states, but with a certain degree of decentralization. As a result, the particularities of administrative legislation can be traced and identified, which consists not only of normative acts at the national level, but also of the legislation of regions, provinces and autonomous units. On the one hand, this circumstance unites the BRICS countries; and, on the other hand, due to the initial difference, the two-level system of constructing administrative legislation complicates the harmonization of legal systems.

It is worth noting, for example, that the general direction of the development of Russian legislation coincides with the development of legislation in other countries. At the same time, the changes made to the Constitution of the Russian Federation following the results of the nationwide vote in 2020 testify to the Russian Federation's supremacy and priority of direct action on its territory, which was not previously reflected in the Basic Law of the country.

The legal system of the PRC is characterized by a small number of existing laws: As of 2009, the Chinese legal system had 232 laws, including 79 administrative laws, 1 criminal law, 33 civil laws, 55 economic laws, 16 social laws and 9 procedural laws; by the end of 2010, there were 236 laws, 690 administrative acts and more than 8,600 local law-making acts in the Chinese legal system; by the end of 2014, the total number of laws in the PRC had increased to approximately 270.[1] Consequently, in China, such a codified act as the administrative code has not been adopted, and the legislator has no plans to do so. These facts allow the Chinese authorities to respond quickly to changes in the legal field when it comes to issuing by-laws in various branches of law.

P. Troshchinsky writes:

> In the administrative and legal sphere of China, it is planned to adopt a number of amendments to the current environmental legislation, including laws in the fields of food safety, licensing, pharmaceuticals and other areas. As a result of the continuing deterioration of the environmental situation in the country, the Chinese legislator plans to amend the following laws: Land Management Law of the PRC (土地管理法); Environmental Protection Law of the PRC (环境保护法); Water Pollution Prevention Law of the PRC (水污染防治法); Prevention of Air Pollution Law of the PRC (大气污染防治法). A new Prevention of Soil Contamination Law of the PRC (土壤污染防治法) will also be introduced into the legal system. In addition, Chinese Medicine and Medicines Law of the PRC (中医药法), Planning Law of the PRC (发展规划法) will be implemented in the administrative and legal spheres.[2]

South African legislation is uncodified, which makes it possible to discuss the regulation of public relations using a variety of laws and judicial precedents.

As a result of the versatility of legal regulation, it is impossible to fully talk about the balance of administrative legislation in the area under study. The adherence of each of the participating states to the norms and principles of international law

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[1] *Трощинский П.В.* Эволюция правовой системы современного Китая в сравнительно-правовом измерении // Право и государство. 2014. № 3(64). С. 69–76 [Pavel V. Troshchinsky, *Evolution of the Legal System of Modern China in the Comparative Legal Dimension*, 3(64) Law and State 69 (2014)].

[2] *Id*.

follows from the approximation of each of the states to international standards independently. Proceeding from this, harmonization of the national legislation of each of the BRICS member states, as well as the correlation of the norms of national law not with the legislation of the participants of such an association, but with uniform international norms and standards, implies that there will always be a single pattern that simplifies the problem.

2. Characteristics of the Administrative Legislation of the BRICS Countries

In terms of the administrative legislation of the BRICS countries, it is worth noting that the administrative legislation of Brazil consists of federal and state legislation; the administrative legislation of Russia consists of the Code of the Russian Federation on Administrative Offenses and the laws of the constituent entities of the Russian Federation adopted in accordance with it; the administrative legislation of India consists of laws and judicial precedents[3] and the administrative legislation of South Africa consists of acts of parliament, provincial legislation and by-laws.

In modern China, the term "administration" is understood to mean "management and leadership of public affairs" (*zhengwu de guanlihelingdao*). "State administration" (*gojiaxing-jen*) refers to the functions of execution and administration carried out by the state. "Execution," on the other hand, refers to the implementation of state laws, state policies, goals and plans determined by the political course. "Management" (*guanli*) is responsible for the organization, leadership, coordination and control in relation to the domestic and foreign policy of the state. It should be noted that the term "administration" referred to in administrative law is simply the state administration (or state governance).[4]

Considering that there is no uniform code of administrative laws in China, administrative relations are governed by administrative legislation and the content of their control activities is rather complex and extensive. This fact is underscored by the fact that social relations in this area frequently change, posing a challenge to the drafting of the administrative code. The existing Administrative Procedure Code (*xingzhengsusun fa*), the Law on Administrative Organizations (*xingzhengzuzhi fa*), the Law on Civil Servants (*guojiagongyuan fa*) and the Law on Review of Decisions (*xingzhengfui fa*) are integral parts of administrative law, but do not cover all aspects of administrative law. Based on this, we conclude that the norms of administrative legislation are dispersed across a large number of documents.

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[3] Конституция Индии [*The Constitution of India*] 468 (2015).

[4] *Гудошников Л.М., Кокорев К.А.* О некоторых теоретических аспектах административного права КНР // Реформы и право. 2011. № 2. С. 58–63 [Leonid M. Gudoshnikov & Konstantin A. Kokorev, *On Some Theoretical Aspects of the Administrative Law of the PRC*, 2 Reforms and Law 58 (2011)].

The tasks of the administrative legislation of the BRICS countries are largely similar: protection of the subjective rights and interests of citizens; ensuring the rule of law; protection of public order and public safety and prevention of administrative offenses.

A comparison of the principles of administrative law of the member states allows one to single out the principles common to all the BRICS countries: legality; justice and equality before the law. For example, Brazil is characterized by the principles of effective judicial protection, subordination, proportionality and reasonableness and due process; the Russian Federation is characterized by the principle of the presumption of innocence; India is characterized by the principle of organizing activities; China is characterized by the principle of voluntariness and trust; while the Republic of South Africa is characterized by the principles of non-discrimination and racism based on gender, skin color and religion; general voting rights; efficiency and transparency and unified government and intergovernmental ties.[5]

In all the BRICS countries, administrative responsibility is assumed between the ages of sixteen and eighteen.

3. Classification of Administrative Offenses

The general pattern inherent in the types of administrative offenses provided for by the administrative legislation of the BRICS countries is characterized by offenses that infringe on the rights of citizens, protection of property, environmental protection, public safety and public order and transport safety.

Regarding of the types of administrative offenses, it is worth noting that there is a general pattern that applies to all countries in the economic community: offenses that infringe on the rights of citizens, which should include offenses that in one way or another negatively affect the physical, mental and emotional health of members (citizens) of society as well as violations of rights, within the framework of administrative legislation, which relates to the protection of property rights.

For example, the process of studying the environmental legislation of the BRICS countries makes it possible to single out a number of general and specific areas of activity as well as their following classifications: pollution of the environment and bodies of water; illegal logging; non-observance of environmental requirements during the disposal of hazardous substances; damage, damage or destruction of natural objects, as well as illegal hunting (poaching), fishing, construction of objects in the nature protection zone[6] and violations of agricultural norms. Similarly,

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[5] Constitution of the Republic of South Africa, 1996 (Jan. 8, 2022), available at https://www.gov.za/documents/constitution-republic-south-africa-1996.

[6] *Анисимов А.П.* Развитие эколого-правовой культуры в России: проблемы и перспективы // Бизнес. Образование. Право. Вестник Волгоградского института бизнеса. 2014. № 4(29). С. 255–258 [Alexei P. Anisomov, *Development of Ecological and Legal Culture in Russia: Problems and Prospects*,

transportation offenses include speeding, violation of the rules for overtaking and maneuvering, violation of the rules for passing pedestrian crossings, stops and railway crossings, as well as driving under the influence (of alcohol or drugs).

Violations of rights in the field of entrepreneurship are typically associated with monetary, credit, cash and financial transactions. In addition, administrative offenses can be classified according to the following criteria: customs offenses (non-compliance with the established prohibitions and restrictions on the import and export of a certain list of items, goods and so on), violations in the field of public order and offenses relating to the field of military registration (for example, citizens (authorized persons) failing to fulfill military registration duties).

Furthermore, administrative offenses may be classified differently depending on the severity of the offense and the fine imposed, as is the case in Brazil: (a) very serious violations (7 points); (b) serious violations (5 points); (c) moderate violations (4 points); (d) minor violations (3 points).

Thus, this classification is universal for all of the BRICS countries, since the abovementioned offenses take place in each country. Because administrative offenses serve as an effective lever of government, problems with their establishment are relevant to all states.

Administrative punishment as applied in the BRICS countries is regarded as a measure of responsibility established by the state for committing an administrative offense and used in order to prevent the commission of new offenses, both by the offenders and by others. The Administrative Penalties Law of the People's Republic of China, which was adopted at the 4th session of the NPC at the eighth convocation on 17 March 1996, provides for the following types of punishments: warning, fine, confiscation of illegally obtained income and property, decision to suspend activities, administrative arrest, temporary suspension or revocation of the license, as well as other administrative penalties. Administrative penalties provided for in Article 3.2 of the Code of Administrative Offenses of the Russian Federation, in general, are similar to the administrative penalties previously mentioned. Similar parallels can be drawn for the other member states as well.

It is characteristic of all the BRICS countries that administrative punishment cannot be aimed at humiliating the human dignity of individuals, causing them physical suffering, nor can it be aimed at damaging the business reputation of a legal entity. Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights establish that "punishment does not aim at causing physical suffering or humiliation of human dignity."

The persons and bodies authorized to consider cases of administrative offenses include highly qualified, trained specialists and subdivisions (bodies). In

4(29) Business. Education. Law. Bulletin of Volgograd Institute of Business 255 (2014)]; Экологические положения конституций: сборник [*Environmental Provisions of Constitutions: Collection of Articles*] 48–59 (Evgeny A. Vystorobets ed., 2012).

Brazil, a special place in this row is occupied by the Federal Supreme Court, other higher courts and the magistracy. In accordance with section III (Chs. 22, 23) of the Code of Administrative Offenses of the Russian Federation, there are judges, bodies and officials authorized to consider cases of administrative offenses. India is characterized by the lack of a clear classification of bodies and officials who hear cases of administrative offenses; however, it is known that the Supreme Court takes over the authority to consider such cases. In the People's Republic of China, such matters are handled by the State Council or the provincial people's governments. In South Africa, the authorized person is the Commissioner, who then submits the administrative case to the court.

Thus, courts at various levels are the common body for all the BRICS countries considering cases of administrative offenses. The structural divisions of the bodies considering cases of administrative offenses have some similarities.

Administrative responsibility established by the administrative legislation of the BRICS countries consists of the application of measures of administrative punishment to individuals and legal entities guilty of committing an administrative offense. In Brazil, administrative liability is understood as a type of legal liability that determines the obligations of the subject to undergo deprivation of state power for committing an administrative offense. In Russia, administrative responsibility is a kind of state coercion, designed to ensure the implementation of legal norms. Administrative responsibility under the legislation of the PRC is currently in the process of formation and development.

Administrative responsibility is assigned in all the BRICS countries on the following grounds: actual, such as the commission of an offense; normative, such as the rule of law of a particular source and procedural, such as compliance with a special procedure for bringing legal responsibility.

The stages of the administrative process are the legal forms of the implementation of certain powers and decisions of the executive authorities, which, in turn, have a pronounced juridical administrative nature. Such stages are frequently implemented by executive authorities and their officials who ensure the implementation of substantive norms of law, and consist of the procedural activities of authorized entities. The general stages of the administrative process are as follows: analysis of the situation (fixing information in the form of protocols, certificates, diagrams and reports); decision making (order, decree) and execution of the decision. As a result, first, an administrative case is initiated and preliminary material is considered; second, the factual circumstances of the administrative case are established and its consideration on the merits by the competent authority or by the official is prepared; third, a decision is put forward to review or appeal the case and fourthly, the decision made in the administrative case is executed. This creates all of the prerequisites for upholding the guarantees of legality and ensuring the effective implementation of citizens' rights to protection.

4. Pre-Trial Resolution of Disputes Under Administrative Law of the BRICS Countries

In this section, we will look at the particularities of pre-trial settlement of disputes in the participating states, since such a resolution allows us to significantly relieve the burden of the courts.

To carry out comprehensive administrative reforms, the Government of India formed the Second Administrative Reform Commission, which submitted fifteen reports covering all aspects of public administration in 2005. Many of the reports presented are related to the promotion of good governance practices in India. Among them are: "Right to Information: Master Key to Good Governance"; "Unlocking Human Capital: Entitlements and Governance; Ethics in Governance"; "Promoting E-Governance (Unlocking Human Capital, 2005)." The main activities of the commission are to promote transparency, responsibility, accountability, efficiency, integrity and ethical behavior in management, as well as to reduce the discretionary powers of public managers through oversight mechanisms and collective decision-making.[7]

On the other hand, in Russia, when it comes to reforming control and supervisory activities, the Program "Reform of Control and Supervision Activities," approved on 21 December 2016 by the Presidium of the Council under the President of the Russian Federation for Strategic Development and Priority Projects (with an implementation period up to 2025), for instance, is of paramount importance.[8]

China's ongoing administrative reform is being implemented on an experimental basis.[9] The essence of such a reform was to simplify administrative procedures, grant broader powers to local administrative bodies and reduce discretionary powers; to eliminate bureaucracy and sluggishness in the administrative apparatus, to implement widespread introduction of electronic government; to reduce the number of administrative employees and optimize staffing.[10]

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[7] *Волкова А.В., Потапенко Т.Г.* Политико-административные институты развития и перспективы инклюзивного роста: сравнительный анализ Индии и России // Политекс. 2015. Т. 11. № 2. С. 74–86 [Anna V. Volkova & Timothey G. Potapenko, *Political and Administrative Development Institutions and Prospects for Inclusive Growth: A Comparative Analysis of India and Russia*, 11(2) Polytex 74–86] (2015).

[8] Утвержден паспорт приоритетной программы «Реформа контрольной и надзорной деятельности» // Правительство России. 29 декабря 2016 г. [The Passport of the Priority Program "Reform of Control and Supervisory Activities" Was Approved, Russian Government, 29 December 2016] (Jan. 8, 2022), available at http://government.ru/news/25930/.

[9] *Трощинский П.В.* Правовая система Китайской Народной Республики: становление, развитие и характерные особенности // Вестник университета имени О.Е. Кутафина (МГЮА). 2015. № 5. С. 99–117 [Pavel V. Troshchinsky, *The Legal System of the People's Republic of China: Formation, Development and Characteristic Features*, 5 Kutafin Law Review 99 (2015)].

[10] *Бородич В.Ф., Виноградов А.В., Трощинский П.В.* 1-я сессия ВСНП 12-го созыва и новая административная реформа в Китае // Проблемы Дальнего Востока. 2013. № 3. С. 59–65 [Vladimir F. Borodich et al., *1st Session of the NPC of the 12th Convocation and a New Administrative Reform in China*, 3 Problems of the Far East 59 (2013)].

These and other factors indicate different approaches to legislative regulation in the BRICS countries, both in terms of systemic coverage and in terms of intrastate detailing of administrative legal relations, which can be viewed not only as a complicating factor in the harmonization and unification of the administrative legislation of the member states, but also as a long-term line of strategic development of the BRICS countries, both nationally and internationally. And, of course, the achievement of certain compromises at the international level among the BRICS countries will form the basis for more fruitful and coordinated interaction between them. Clearly, the priority areas of international cooperation in the legal sphere, and in our case, in administrative justice, will predetermine the development of a coordinated and balanced vector of development of the administrative legislation of the member states at the international level.

It is necessary, in our opinion, to begin looking for common criteria and guidelines aimed at harmonizing administrative legislation, which, if successfully completed, will serve to strengthen the international legal status of the BRICS.

The harmonization of administrative legislation forms an urgent, multi-stage strategic goal of cooperation between the BRICS countries, with one of the goals being the gradual convergence of national legislation on the basis of developed and clearly formulated principles, on which work aimed at harmonization and unification of administrative legislation should be carried out.

It is unlikely that a supranational institution of administrative legislation will emerge in the near future to carry out proceedings in cases of administrative offenses as well as pre-trial resolution of disputes, since these institutions in legal regulation are more related to individual specifics and are locked into national administrative legislation.

As a result, the task of harmonizing administrative legislation should not be limited only to convergence in the regulation of national legal institutions; it should be broader and include the objective need to improve legal technology. The development of a single categorical apparatus will serve as the methodological basis that will further ensure the harmonization of regional legislation at the interstate level. Such a unification of the initial legal concepts will act as a guarantee of successful harmonization of administrative legislation, since it will eliminate a significant number of gaps and conflicts in the law.

The experience of foreign countries indicates that the settlement of disputes between citizens and the administration is carried out using a form such as administrative justice, that is, the establishment of a system of administrative courts, whose competence includes the resolution of administrative disputes. At the same time, factors such as the workload of courts, the quickest resolution of disputes, financial costs and so on, among others, contribute to the search for other ways to resolve administrative disputes, which should include administrative (pre-trial) appeals as well as other alternative methods.

Countries with a continental legal system (such as France, Germany, the Netherlands) are characterized by the adoption of regulations governing the management process in its positive form, in particular, laws on administrative procedures and management. A violation of the established rules thus falls within the purview of administrative justice. However, it is possible to resolve the dispute before going to court in an administrative manner, often by petitioning a higher authority.

For countries with an Anglo-Saxon system of law, the rule of management as such is not fixed in the normative acts, but "derived" from judicial precedents. They quite often use "appeal" proceedings (consideration of disputes by special commissions created under the departments), as well as mediation and arbitration, as alternative methods of resolving disputes.[11]

Efforts are being made in the BRICS countries to modernize the dispute resolution system. The system of bodies and officials responsible for resolving such disputes in a quasi-judicial manner is quite developed.

An institution's activities carried out in the form of a quasi-judicial procedure ("adjudication") are defined as administrative proceedings (arbitration).[12] For example, in India and South Africa, administrative proceedings are judicial in nature.[13] However, the work of some institutions is not limited to the consideration of applications (claims) of individuals, while others have only one function, which is to consider disputes. A distinctive feature of these institutions is their role in the resolution of disputes. If the court is conducting proceedings to which a public authority is a party, then such institutions are also parties to the petition of a private person. "Disputing acts of management by means of administrative claims," notes A. Zelentsov, "does not go beyond the most active administration." They are considered by bodies and services that are part of the active administration system (for example, appeal departments of various ministries) not to have jurisdictional functions and use of official investigation and review procedures. The specialization of these bodies, their separation from the active administration and giving them the

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[11] *Зырянов С.М.* Соотношение досудебного и судебного обжалования решений и действий (бездействия) органов власти и их должностных лиц при осуществлении ими государственных функций по контролю (надзору) // Государственная служба и кадры. 2014. № 4. С. 69–76 [Sergei M. Zyrianov, *The Ratio of Pre-Trial and Judicial Appeal of Decisions and Actions (Inaction) of Authorities and Their Officials in the Exercise of State Functions of Control (Supervision)*, 4 State Service and Personnel 69 (2014)].

[12] Административное право зарубежных стран: учебное пособие [*Administrative Law of Foreign Countries: Textbook*] 24–25 (Alexander N. Kozyrin ed., 1996).

[13] *Беликова К.М.* Порядок досудебного (в том числе квазисудебного) урегулирования споров в странах БРИКС: общие подходы и вехи развития // Законодательство и экономика. 2016. № 4. С. 49–61 [Ksenia M. Belikova, *Procedure for Pre-Trial (Including Quasi-Judicial) Settlement of Disputes in the BRICS Countries: General Approaches and Development Milestones*, 4 Legislation and Economics 49 (2016)].

right to use separate judicial procedural norms for considering claims leads to their transformation into "quasi-judicial bodies" in many countries.[14]

Since the decisions of such bodies can almost always be appealed in courts, the procedure for considering (settling) a dispute in such institutions (bodies) can be attributed with a certain degree of conditionality to the pre-trial settlement of disputes.

The comprehensive development of such methods as alternative ways of resolving conflicts through arbitration, pre-trial and judicial settlement of disputes through negotiations, contacting mediators and concluding amicable agreements, clearly shows their relevance. The BRICS countries have taken significant steps in this direction. In the event of disagreements between the parties in certain legal relations, the majority of internal regulatory legal acts provide for the possibility of resolving disputes between parties in certain legal relations through a pre-trial, quasi-judicial, or extrajudicial procedure. If such a settlement fails, the person whose interests have been violated has the right to file a claim with the court.

India. The development of alternative mechanisms for resolving disputes is due to the crisis of the country's judicial system associated with the length of litigation, as well as the rapid pace of economic development and an increase in the inflow of foreign investment. As a result, in 1993, a resolution was adopted that secured the legality of resolving disputes not only in court, but also within the framework of the institutions of negotiation, mediation, conciliation and arbitration, as well as the creation of centers for alternative dispute resolution.[15]

Studies carried out in 1994–1996 to identify the causes of delays in the consideration of private law disputes in courts allowed the adoption of proposals to amend the Code of Civil Procedure of India[16] on the admissibility of alternative methods of dispute settlement. According to the 1999 amendment to Article 89 of the Indian Code of Civil Procedure of 1908, judges were empowered to transfer the process of further consideration and resolution of the dispute to one of the alternative dispute resolution (ADR) forms when they discovered, during the course of legal proceedings, the possibility of resolving a dispute by alternative means (including mediation).[17] These ADR methods include conciliation procedure (conciliation proceedings), mediation, arbitration, proceedings through the

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[14] *Зеленцов А.Б.* Административная юстиция: учебное пособие [Alexander B. Zelentsov, *Administrative Justice: Textbook*] 11 (1997).

[15] *Попат П.Д.* Альтернативные способы урегулирования споров – опыт Индии // НП «НОМ» [Prathamesh D. Popat, *Alternative Dispute Resolutions – The Indian Experience*, NOM] (Jan. 8, 2022), available at http://nom-mediator.ru/mediation-in-india.

[16] Mediation and Conciliation Project Committee of the Supreme Court of India, Mediation Training Manual of India (Jan. 8, 2022), available at https://main.sci.gov.in/pdf/mediation/MT%20MANUAL%20OF%20INDIA.pdf.

[17] Popat, *supra* note 15.

"lokadalat" system, negotiation the so-called conciliation procedure (mediation), arbitration (con/med-arb), conciliation (mediation), (conciliation/mediation), mini-trial and fast-track arbitration.

The legal basis for a non-judicial, alternative dispute settlement procedure in India is established by the Code of Civil Procedure of 1908[18] which incorporates the norms for such a dispute settlement procedure. It should be noted that it provides for the possibility of alternative settlement of the dispute at the stage of pre-trial proceedings, when the court, after accepting the statement of claim and without considering the case on the merits, may offer the parties to settle the dispute in other ways. According to Article 89 of the Code of Civil Procedure of 1908, in cases where the court believes there are grounds for an alternative means of settling a dispute between the parties, the court must set out the conditions for the settlement of the dispute in writing and issue them to the parties for consideration.

After receiving the opinion of the parties on this issue, the court may reformulate the conditions set forth earlier and determine the following methods of resolving the dispute between the parties: conciliation proceedings; arbitration proceedings; proceedings through the LokAdalat system; mediation.

When settling a dispute between the parties through the first two methods, the Arbitration and Conciliation (Mediation) Act 1996,[19] which replaced the Arbitration Act 1940,[20] and the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards[21] come into play.

The concept of "conciliation proceedings" in the 1996 Law refers to a pre-trial process in which a conciliator assists in the settlement of a dispute between the parties. The conciliation procedure can be applied to all disputes arising from legal relations, regardless of whether they are of a contractual or non-contractual nature. Conciliation procedures are completely dependent on the wills and wishes of the parties and can be terminated by the parties at any time. These procedures result in a settlement agreement.

Achieving a compromise in disputes is ensured by the special People's Courts (Courts for the People) of India (LokAdalat), which operate under the judicial authorities considering and assisting the parties to the dispute. LokAdalat are traditional Indian dispute resolution methods.

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18 Code of Civil Procedure, 1908 (Act No. 5 of 1908) (Jan. 8, 2022), available at http://chdslsa.gov.in/right_menu/act/pdf/codecivil.pdf.

19 Arbitration and Conciliation Act, 1996 (Act No. 26 of 1996) (Jan. 8, 2022), available at http://www.wipo.int/wipolex/en/text.jsp?file_id=207821.

20 Brochure of ICADR, International Centre for Alternative Dispute Resolution (Jan. 8, 2022), available at http://icadr.ap.nic.in/images/ICADR%20Brochure.pdf.

21 India acceded to the aforementioned 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards on 13 July 1960 (Jan. 8, 2022), available at http://www.newyorkconvention.org/contracting-states/list-of-contracting-states.

In this regard, it is worth noting that to this day in India, a country with a multi-structured culture and ancient traditions, a number of specific mechanisms for alternative dispute settlement continue to operate and there has not been a rejection of the legal concepts and particularities rooted in the previous period, which is reflected in Article 372 of the Constitution of India. As such, even in ancient India, community professional organizations (such as the Gulas, the Kulas and the Shrenis) were engaged in resolving disputes, the first mention of which dates back to the 5th century BC, and until now, in some parts of the country, the Panchayats, councils of five members, leading a caste, temple organization or rural cooperative, are involved in resolving disputes.[22] That is to say, while India remained member of the British Commonwealth of Nations and part of the family of common law after gaining independence from Great Britain, in many respects, Indian law as a whole is inherently unique in comparison with English law, particularly in the issue under consideration, just as it differs from English law and U.S. law, while remaining generally under common law.[23]

The LokAdalat system was introduced for the first time at the legislative level by the Law "On Services for the Provision of Legal Services" (The Legal Services Authorities Act, 1987[24]), which entered into force in 1989 with the goal of implementing programs to provide qualified free legal aid to the most vulnerable segments of the population.

Under section 22 of the 1987 Act, the LokAdalat is empowered to: summon and ensure the attendance of witnesses; examine and study written or material evidence in the case; direct requests for evidence and so forth. That is, the procedure for considering a dispute by the People's Courts is similar to that of a court (statements by the parties, summoning and questioning witnesses, providing evidence and so on). However, the conditions for resolving the dispute should be acceptable to both parties.

The LokAdalat can handle civil, labor, land and some other cases. The dispute is referred to the LokAdalat within the framework of an ongoing legal proceeding, either at the request of one of the parties, or at the discretion of the court (para. 1 of Art. 20 of the 1987 Law). The parties may also agree to transfer the case to LokAdalat outside of court proceedings.

Thus, in India, the envisaged pre- and quasi-judicial dispute settlement procedures can lead to either an amicable agreement or a compromise solution.

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[22] БСЭ, 1969–1978 [Great Soviet Encyclopedia, 1969–1978] (Jan. 8, 2022), available at http://slovari.yandex.ru.

[23] *Давид Р., Жоффре-Спинози К.* Основные правовые системы современности [René David & Camille Jauffret-Spinosi, *Basic Legal Systems of Our Time*] 477 (1996).

[24] Legal Service Authorities Act, 1987 (Act No. 39 of 1987) (Jan. 8, 2022), available at http://cgslsa.gov.in/Acts/act.pdf.

Brazil. According to Ricardo Perlingeiro,

> The time has come, characterizing a new stage in the interaction of administrative law systems and the administrative processes of Brazil and Russia, within which both countries have reached a new level of interaction within the BRICS and an exchange of experience in the legal field.[25]

Because both countries belong to the same continental legal family, their systems of administrative law and administrative processes are comparable to varying degrees. As much as the scope of the study allows, we will attempt to outline in general terms the system of administrative justice in Brazil, as seen through the prism of the principles of the rule of law and the effectiveness of judicial proceedings.

In Brazilian law, the term "administrative dispute" is defined as a dispute arising from a claim of an individual against an administrative authority or a complaint about its actions; "administrative justice" is characterized as the administration of justice in administrative disputes; and a "administrative court" is a public authority that adjudicates administrative disputes.

The judicial process is preceded by administrative hearings, which, according to the rule of law, are considered exclusively by the judicial authorities. Similarly, filing a complaint directly with an administrative body or its official prior to exercising judicial control does not violate the principle of effective judicial protection.

It should be noted that, similar to Russian legislation, Brazilian legislation allows for the filing of a complaint with a higher authority if the applicant's requirements are not met. Moreover, if the complaint is pending before a higher administrative body, the court proceedings are automatically suspended. When complaints in administrative cases are considered by a public official who, despite being appointed by the highest administrative body, performs his functions independently and is not subordinate to any higher authorities, the concept of an independent administrative body comes into play. Administrative tribunals in England, the appeal commissions in Switzerland and the administrative senates (*unabhängige Verwaltungsenate*) in Austria are just a few examples.[26] In Brazil, all of these models are applicable.

Taking into account the principle of effective judicial protection, applicants may, at their discretion, choose a model of behavior that does not exclude the simultaneous filing of a complaint with a court demanding interim measures, such as a preliminary injunction.

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

[26] Michel Fromont, *Droit administratif des Etats européens* 112–119 (2006).

The Brazilian Administrative Procedure Law allows for a complaint to be filed with a higher administrative authority.[27] Complaints to independent administrative authorities are, for example, complaints to the Brazilian Tax Complaints Council (Conselho Administrativo de Recursos Fiscais, CARF),[28] regulatory agencies,[29] the Federal Audit Office (Tribunal de Contasda União, TCU)[30] as well as the National Council of Justice (Conselho Nacional de Justiça, CNJ).[31]

Russia. The ongoing administrative reform, which provides for the implementation of the "regulatory guillotine,"[32] pays special attention to the development of a mechanism for pre-trial (extrajudicial) procedure for appealing decisions and actions (inaction) of bodies exercising state control (supervision) and their officials.[33]

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[27] *See* Art. 56 of the Law No. 9,784 of 29 January 1999 (Jan. 8, 2022), available at http://www.planalto.gov.br/ccivil_03/leis/l9784.htm.

[28] Conselho Administrativo de Recursos Fiscais (Jan. 8, 2022), available at http://idg.carf.fazenda.gov.br.

[29] *See, e.g.*, Law No. 11.182 of 27 September 2005 "On the Establishment of the National Civil Aviation Agency" (Jan. 8, 2022), available at http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2005/lei/l11182.htm; Law No. 9.984 of 17 July 2000 "On the Establishment of the National Water Agency" (Jan. 8, 2022), available at http://www.planalto.gov.br/ccivil_03/leis/l9984.htm; Law No. 9.427 of 26 December 1996 "On the Establishment of the National Electricity Agency" (Jan. 8, 2022), available at http://www.planalto.gov.br/ccivil_03/leis/l9427cons.htm; Law No. 9.478 of 6 August 1997 "On the Establishment of the National Agency for Petroleum, Natural Gas and Biofuels" (Jan. 8, 2022), available at http://www.planalto.gov.br/ccivil_03/leis/l9478.htm; Law No. 12.351 of 22 December 2010 "On the Establishment of a Social Fund That Finances Social and Regional Development Through Programs and Projects for Development and Poverty Alleviation" (Jan. 8, 2022), available at http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2010/lei/l12351.htm; Law No. 9.961 of 28 January 2000 "On the Establishment of the National Agency for the Promotion of Health" (Jan. 8, 2022), available at http://www.planalto.gov.br/ccivil_03/leis/l9961.htm; Law No. 10.233 of 5 June 2001 "On the Establishment of the National Road Transport Agency" (Jan. 8, 2022), available at http://www.planalto.gov.br/ccivil_03/leis/leis_2001/l10233.htm; Law No. 9.782 of 26 January 1999 "On the Establishment of the National Agency for Financial Rehabilitation and Monitoring" (Jan. 8, 2022), available at http://www.planalto.gov.br/ccivil_03/leis/l9782.htm. *See also* Law No. 9.990 of 21 July 2000 "On the Extension of the Transition Period Provided by Law No. 9.478" (Jan. 8, 2022), available at http://www.planalto.gov.br/ccivil_03/leis/l9990.htm.

[30] *See* Law No. 8.443 of 16 July 1992 "On the Establishment of the Federal Accounts Chamber" (Jan. 8, 2022), available at http://www.planalto.gov.br/ccivil_03/leis/l8443.htm.

[31] *See* Law No. 11.364 of 26 October 2006 (Jan. 8, 2022), available at http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2006/lei/l11364.htm.

[32] *Мартынов А.В.* Перспективы применения механизма «Регуляторной гильотины» при реформировании контрольно-надзорной деятельности // Вестник Нижегородского университета им. Н.И. Лобачевского. 2019. № 5. С. 143–165 [Alexei V. Martynov, *Prospects for the Application of the "Regulatory Guillotine" Mechanism in Reforming Control and Supervisory Activities*, 5 Bulletin of the Nizhny Novgorod University 143 (2019)]; *Макарейко Н.В.* Риск-ориентированный подход при осуществлении контроля и надзора // Юридическая техника. 2019. № 13. С. 225–229 [Nikolai V. Makareiko, *Risk-Based Approach to Control and Supervision*, 13 Legal Technology 225 (2019)].

[33] *Шеншин В.М.* К вопросу о досудебном (внесудебном) порядке обжалования решений и действий (бездействия) должностных лиц Росгвардии, осуществляющих государственный контроль (надзор) // Военно-юридический журнал. 2020. № 11. С. 12–16 [Victor M. Shenshin, *On the Issue of the Pre-Trial (Out-of-Court) Procedure for Appealing Decisions and Actions (Inaction) of Rosgvardia Officials Exercising State Control (Supervision)*, 11 Military Law Journal 12 (2020)].

The traditional approach to the relationship between the state and civil society is being modified. The state, as a provider of public services, is guided by the assessment of its activities by citizens and organizations, and seeks to make certain adjustments to them to make them better and more accessible. Citizens and organizations have the right to receive quality public services, and bodies and officials are entrusted with the responsibility to ensure the quality of such services. In this regard, streamlining of control and supervisory relations, including the development of a pre-trial appeal mechanism, as a means of protecting the rights of citizens and organizations in the implementation of state control (supervision), is important.[34]

The Federal Law No. 294-FZ of 26 December 2008, "On the Protection of the Rights of Legal Entities and Individual Entrepreneurs in the Exercise of State Control (Supervision) and Municipal Control" essentially does not regulate relations arising in connection with pre-trial appeal of decisions and actions (inaction) of state bodies control (supervision), but rather refers to the general procedure for appeal, which does not take into account the specifics of control and supervisory activities, provided for by Federal Law No. 59-FZ of 2 May 2006, "On the Procedure for Considering Appeals from Citizens of the Russian Federation."

Part 12 of Article 16 of Federal Law No. 294-FZ creates the prerequisites for the formation of a special procedure for pre-trial appeals of control and supervisory activities, establishing that

> a legal entity, an individual entrepreneur, in case of disagreement with the facts, conclusions, or proposals set out in the inspection report, or … [having been] issued an order to eliminate the identified violations within fifteen days from the date of receipt of the inspection report, have the right to submit to the appropriate state control (supervision) body, in writing, objections to the inspection report and (or) the issued order to eliminate the identified violations in general or its individual provisions.

Furthermore, it did not take off in the indicated direction of development. According to M. Zyryanov,

> Despite a number of obvious advantages, practice shows that individual entrepreneurs and legal entities prefer to seek protection in the courts, rather than use a pre-trial appeal procedure.[35]

We agree with the scholar's assessment that an out-of-court (pre-trial) mechanism for appealing decisions and actions (inaction) of control and supervisory bodies and their officials has a number of advantages:

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[34] Zyrianov 2014.

[35] *Id*.

• firstly, the extrajudicial (pre-trial) appeal procedure does not require financial costs, because administrative complaints in accordance with Federal Law No. 59-FZ are not subject to duty, whereas in accordance with Articles 333.19 and 333.20 of the Tax Code of the Russian Federation, the state duty is paid when filing an application to the court for the recognition of decisions and actions (inaction) of state bodies and their officials that are not legal;

• secondly, the judicial order is characterized by its own attributes, such as the more thorough preparation of the statement of claim, the availability of legal knowledge of the applicant or the involvement of a specialist to provide qualified legal assistance;

• thirdly, the period of limitation of appeal for the pre-trial procedure is not established; in court the period is three months from the day when the applicant became aware of the violation of his rights;

• fourthly, a higher authority or official is vested with broader powers than a court. They have the right not only to recognize the contested decision or action (inaction) as unlawful, but also to change it, as well as to independently reconsider the case and make a new decision;

• fifthly, the choice of the pre-trial procedure does not deprive the applicant of the opportunity to apply to the court as well, which, of course, is a certain guarantee of the successful resolution of the complaint if it is not considered or a decision is made on it that is not in favor of the applicant.

O. Grechkina draws attention to the number of citizens of the Russian Federation who have filed applications with the European Court of Human Rights, with Russia ranking third in the world for the number of complaints against the actions of government officials.[36] In this regard, the Council of Europe recommended that Russia establish a system for resolving applications by public authorities.

In a resolution of 22 July 2020, No. 38-P, the Constitutional Court of the Russian Federation stated that the Constitution of the Russian Federation guarantees everyone the right to apply personally, as well as to send individual and collective appeals to state bodies and local self-government bodies (Art. 33), to defend their rights and freedom in all ways not prohibited by law (part 2 of Art. 45). These constitutional norms require that a citizen be considered not as an object of state activity, but as an equal subject who can defend his rights by any means not prohibited by law and argue with the state in the person of any of its bodies, implying not only the right to submit to the appropriate state body or official application, petition or complaint, but also the right to receive an adequate response to this appeal (Resolution of the Constitutional Court of the Russian Federation of 3 May 1995 No. 4-P; definitions of

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[36] *Гречкина О.В.* Особенности досудебного порядка обжалования решений, действий (бездействий) таможенных органов и их должностных лиц // Вестник ВГУ. Серия: Право. 2009. № 2. С. 228–234 [Olga V. Grechkina, *Features of the Pre-Trial Procedure for Appealing Decisions, Actions (Inaction) of Customs Authorities and Their Officials*, 2 Proceedings of Voronezh State University. Series: Law 228 (2009)].

the Constitutional Court of the Russian Federation of 26 May 2011 No. 619-O-O, of 29 March 2016 No. 551-O, of 30 January 2020 No. 16-O, among others).[37]

Administrative legislation uses concepts such as: pre-trial appeal;[38] out-of-court appeal; claim proceedings[39] and administrative complaint proceedings.[40] However, the legislature does not provide a legal definition or clear delimitation criteria for their application. Some scholars defend the concept of "right to complaint." Thus, S. Makhina considers the right to file a complaint to be an inalienable, universal right inherent in a citizen of any state; he indicates that in the current Russian legislation, the legal institution in question is represented very weakly, dissolving into a more capacious institution of citizens' appeals.[41]

According to the Federal Law "On the Procedure for Considering Appeals of Citizens of the Russian Federation," an appeal is a proposal, statement or complaint sent to a state body or official in writing or in the form of an electronic document, as well as an oral appeal of a citizen to a state body, local self-government body; a complaint is a request of a citizen to restore or protect his violated rights, freedoms or legitimate interests or the rights, freedoms or legitimate interests of others.

The above definition of "complaint" is controversial and puzzling, especially given that the law stipulates that a complaint is a request. Why a "request" if the right of a citizen is violated? The Russian Federation positions itself as a rule-of-law state. The priority of the rights and freedoms of citizens is enshrined in Article 2 of the Constitution of the Russian Federation, and according to Article 18, the rights and freedoms of man and citizen determine the meaning, content and application of laws. As a result, the

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37 Shenshin 2020.

38 Распоряжение Правительства Российской Федерации от 25 октября 2005 г. № 1789-р «О Концепции административной реформы в Российской Федерации в 2006–2010 годах» // Собрание законодательства РФ. 2005. № 46. Ст. 4720 [Order of the Government of the Russian Federation No. 1789-r of 25 October 2005. On the Concept of Administrative Reform in the Russian Federation in 2006–2010, Legislation Bulletin of the Russian Federation, 2005, No. 46, Art. 4720]; Постановление Правительства Российской Федерации от 21 сентября 2006 г. № 583 «О федеральной целевой программе «Развитие судебной системы России» на 2007–2012 годы» // Собрание законодательства РФ. 2006. № 41. Ст. 4248 [Resolution of the Government of the Russian Federation No. 583 of 21 September 2006. On the Federal Target Program "Development of the Russian Judicial System for 2007–2012," Legislation Bulletin of the Russian Federation, 2006, No. 41, Art. 4248].

39 *Зырянов С.М., Лебедева Е.А., Спектор Е.И., Гармаева М.А.* Досудебное урегулирование споров в публичном праве // Журнал российского права. 2011. № 11. С. 21–33 [Sergei M. Zyrianov et al., *Pre-Trial Settlement of Disputes in Public Law*, 11 Journal of Russian Law 21 (2011)].

40 *Назарова И.С., Шеншин В.М.* Проблемы укрепления исполнительной власти в Российской Федерации: учебное пособие [Irina S. Nazarova & Victor M. Shenshin, *Problems of Strengthening the Executive Power in the Russian Federation: Textbook*] (2016).

41 *Махина С.Н.* Диалектика правового института административной жалобы в российском праве и проблемы его дальнейшего развития // Правовая наука и реформа юридического образования. 2012. № 2(25). С. 62–69 [Svetlana N. Makhina, *Dialectics of the Legal Institution of Administrative Complaint in Russian Law and the Problems of its Further Development*, 2(25) Legal Science and Reform of Legal Education 62 (2012)].

requirement to eliminate the violations committed by the state authorities and their officials should be discussed, since the rights and freedoms of citizens are violated. The legislator's approach to an administrative complaint, as revealed in the mentioned law, significantly diminishes the value of this institution.

Pre-trial (out-of-court) appeal is provided for by the Government of the Russian Federation No. 373 of 16 May 2011 "On the Development and Approval of Administrative Regulations for the Implementation of State Control (Supervision) and Administrative Regulations for the Provision of Public Services" which approved the rules for the development and approval of administrative regulations. These rules include a section on the pre-trial (out-of-court) procedure for appealing decisions and actions (inaction) of bodies exercising state control (supervision), as well as their officials.

It is also worth noting the Decree of the Government of the Russian Federation of 24 July 2020 No. 1108 "On Conducting in the Territory of the Russian Federation an Experiment on Pre-trial Appeal of Decisions of a Control (Supervisory) Body, Actions (Inaction) of its Officials," which provides for an experiment on pre-trial appeal of decisions of control (supervisory) bodies and actions (inaction) of their officials from 10 July 2020 to 30 June 2021.

The purpose of the experiment is to test a new pre-trial appeal procedure for the maximum convenience of all participants in control and supervisory activities, while also maximizing automation of this procedure. Control and supervisory authorities received a tool for analyzing law enforcement practice and unifying it, as well as reducing the costs of litigation, all of which will contribute to improving the efficiency of public administration.

The Federal Law "On the Procedure for Considering Appeals from Citizens of the Russian Federation" in Article 15 establishes a rule on liability for violations of the legislation on appeals, establishing that persons guilty of violating the law are liable under the legislation of the Russian Federation.

Part 3 of Article 5.63 of the Code of Administrative Offenses of the Russian Federation, establishes that violation by an official of the procedure or terms for considering a complaint or illegal refusal or evasion of the said official from accepting it for consideration shall result in the imposition of an administrative fine ranging from 20,000 to 30,000 rubles.

The draft of the new Code of Administrative Offenses of the Russian Federation, part 3 of Article 6.11, states that any violation by an official empowered to consider complaints about a violation of the procedure for the provision of a public service, the procedure or terms for considering a complaint, or the illegal refusal or evasion of the said official will entail the imposition of an administrative fine in an amount ranging from 20,000 to 30,000 rubles or disqualification for a period of six months to one year. As can be seen in the draft of the new Code of Administrative Offenses of the Russian Federation, the size of the administrative fine has not changed.

The provisions of the Federal Law "On the Procedure for Considering Appeals from Citizens of the Russian Federation" are aimed at regulating the constitutional

right of citizens to appeal. At the same time, there are no norms that would apply to associations of citizens, including legal entities. As a result, it is recommended at the legislative level to establish the right of legal entities to pre-trial (extrajudicial) appeal against decisions and actions (inaction) of bodies exercising state control (supervision) and their officials, which will meet the requirements of the Constitution of the Russian Federation and the legal position of the Constitutional Court of the Russian Federation on the extension of constitutional human and civil rights to legal entities to the extent that this right by its nature can be applied to them (Resolutions of the Constitutional Court of the Russian Federation of 24 October 1996 No. 17-P and of 17 December 1996 No. 20-P, definition of the Constitutional Court of the Russian Federation of 22 April 2004 No. 213-O).

These findings indicate both the advantages and disadvantages of the pre-trial procedure for considering a complaint.

China. The concept of out-of-court settlement of disputes for the Chinese is a prerogative method of settlement, in which preference is given to "finding a way for a settlement," while "enforcing the law is considered a major failure."[42] This is one of the reasons why the state places a high priority on the development of alternative dispute resolution methods, the use of which has a long cultural tradition.

For the resolution and settlement of disputes, the legislation of China allows the use of such mechanisms and procedures as mediation (mediation) (conciliation procedures); arbitration proceedings[43] and mediation in arbitration proceedings (ArbMed).[44]

In China, there are two ways to conduct conciliation procedures prior to litigation. The first method presupposes the mandatory nature of conciliation (conciliation) procedures with the help of the People's Courts of the People's Republic of China in accordance with the provisions of the Civil Procedure Code of the PRC of 1991,[45] containing Chapter 8 "Reconciliation," also known as judicial mediation. Judicial mediation implies carrying out procedures not only in the period before the trial, but also during the course of the judicial proceedings. At the same time, if the pre-trial procedures are not successful, the judge conducting the pre-trial conciliation procedures, is not entitled to subsequently carry out the trial, whereas the judge conducting the conciliation procedures during the judicial proceeding, even if they are not effective, continues to conduct the trial.

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42 David & Jauffret-Spinosi 1996.

43 Arbitration Law of the People's Republic of China, adopted at the 9th Meeting of the Standing Committee of the 8th National People's Congress on 31 August 1994 and promulgated by Order No. 31 of the President of the People's Republic of China on 31 August 1994 (Jan. 8, 2022), available at https://www.jus.uio.no/lm/china.arbitration.law.1994/.

44 Gu Xuan, *The Combination of Arbitration and Mediation in China* (May 2008) (Jan. 8, 2022), available at http://www.unige.ch/droit/mbl/upload/pdf/ Gu_Xuan__s_paper.pdf.

45 Гражданский процессуальный кодекс КНР от 9 апреля 1991 г. [Civil Procedure Code of the PRC of 9 April 1991) (Jan. 8, 2022), available at http://chinalawinfo.ru/procedural_law/law_civil_procedure.

The second method presupposes the voluntary nature of conciliation procedures carried out in accordance with the provisions of the 2010 Law on People's Mediation[46] in the People's Conciliation Commissions with the participation of People's Mediators,[47] the so-called people's mediation.

South Africa. The exercise of citizens' constitutional right to judicial protection in South Africa is hampered in practice by the excessively high cost of litigation and the length of the process (as in the other BRICS countries). Due to the heavy workload of the courts, they only conduct a study of the evidence base in cases (the parties do not directly participate in the process), affecting the objectivity and fairness of court decisions. The international practice of the last twenty years has revealed a worldwide increase in interest in the mechanisms of alternative dispute resolution based on Aco-existential justice, and South Africa is no exception. This type of justice has always been a part of African or Asian (for example, China or India) traditions, where conciliatory decisions appeared to be more constructive than other legal remedies, and their application frequently became a sine qua non for survival.

In South Africa, the procedure for out-of-court dispute settlement is carried out through arbitration, conciliation and mediation, which are provided as alternative means of resolving disputes in many legislative acts regulating private and public law relations.

There is no legal definition of the term 'conciliation' in South Africa, but a number of regulatory legal acts directly indicate the possibility of referring to this mechanism for resolving disputes between interested parties (for example, the Labor Relations Act 1995 No. 66).[48] The use of conciliation procedures in the consideration of commercial, labor and other disputes meets the goals of justice, which include promoting the formation and development of business partnerships between counterparties, employees and employers and so on.

In practice, objective conflicts frequently arise when determining the differences (advantages and disadvantages) of ADR procedures such as conciliation procedures and mediation. Of course, both forms of ADR refer to a consensual mechanism for

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[46] People's Mediation Law of the People's Republic of China, Order of the President of the People's Republic of China (No. 34), adopted at the 16th meeting of the Standing Committee of the 11th National People's Congress of the People's Republic of China on 28 August 2010 (Jan. 8, 2022), available at https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/85806/96276/F1660942158/CHN85806.pdf.

[47] In China, there are other laws on mediation: for example, the Law of the People's Republic of China on Mediation and Arbitration of Disputes Arising from Contractual Relations over Agricultural Lands dated 1 January 2010 No. 14 (Law of the People's Republic of China on the Mediation and Arbitration of Rural Land Contract Disputes); the Labor Dispute Mediation and Arbitration Law of the People's Republic of China, etc. *See, e.g.*, Jim H. Young & Lin Zhu, *Overview of China's New Labor Dispute Mediation and Arbitration Law*, Davis Wright Tremaine (2012) (Jan. 8, 2022), available at http://www.dwt.com/advisories/Overview_of_Chinas_New_Labor_Dispute_Mediation_and_Arbitration_Law_01_29_2008.

[48] Labour Relations Act, 1995 (No. 66 of 1995) (Jan. 8, 2022), available at https://www.gov.za/sites/default/files/gcis_document/201409/act66-1995labourrelations.pdf.

resolving disputes with the assistance of a neutral person (mediator), but there are fundamental differences. Thus, the mediator is not authorized to make independent decisions that are binding on the parties. The functions of the mediator are reduced to assisting in determining the most acceptable way for the parties to resolve their dispute by familiarizing themselves with the written materials submitted by them, hearing the parties, putting forward proposals for possible resolution of disagreements and so on. As a result, the decision, if reached, is taken by the parties themselves, but with the assistance of a mediator.

One of the mechanisms designed to achieve this goal is the Commission for Conciliation, Mediation and Arbitration (CCMA).[49] The advantages of conciliation procedures include the voluntariness of the participation of each of the parties in all its stages, economy, confidentiality and the ability to resolve the dispute in a shorter period of time. All decisions reached between the parties during the course of the conciliation procedures must be recorded in writing and non-compliance with this peremptory norm forfeits the parties' right to refer to the results of the compromise reached in the future.

Conciliation procedures may result in the conclusion of a settlement agreement that is final and binding on the parties, as well as the conciliation commission issuing a certificate of the results of the conciliation procedure. The parties to the settlement agreement may apply to the court with an application for its approval if one of the parties fails to fulfill any of the obligations stipulated by the agreement. However, reaching an agreement does not always serve as the basis for ending conciliation procedures. As such, if the parties are unable to reach a mutually beneficial compromise within thirty days and do not agree to extend the term for holding conciliation commissions, the CCMA commissioner issues a certificate of results, on the basis of which the parties may apply to the arbitration procedure or directly to the court.

In general, conciliation procedures as an alternative method of resolving differences are gaining popularity in South Africa.

Conclusion

As can be seen from the foregoing, the issues of pre-trial settlement of administrative disputes are resolved using the same mechanisms in all the BRICS countries: negotiations and conciliation procedures, including mediation.

It is shown that the implementation of these mechanisms is possible both by the parties to the dispute themselves, with the participation of third parties who may be interested in carrying out the procedures (such as proxies and legal representatives) and independent professional mediators.

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[49] Commission for Conciliation, Mediation and Arbitration (Jan. 8, 2022), available at http://www.ccma.org.za.

It was revealed that in both India and China, the legislation allows for the suspension of the trial (litigation of disputes on the merits) at the stage of receipt of materials in court and transferring them by the judge to pre-trial settlement using alternative methods: conciliation procedures with the participation of an independent mediator (in India, there are professional mediators, but in China, there may be another judge), mediation (for example, in China, there is people's mediation), the LokAdalat People's Court in India, arbitration and so forth. It is shown that while the use of mediation as a pre-trial procedure for dispute settlement is not widely developed in Brazil, Russia and South Africa, mediation is recognized as an effective way of resolving disputes in these countries and is moving toward legislative and practical implementation.

Unlike court procedures, which bear the imprint of national particularities and traditions, the resolution of a dispute with the participation of a mediator (mediation that takes into account the interests of the parties) is more flexible than court proceedings, a procedure with a unique opportunity to establish and maintain long-term contacts not only at the level of official relations states, but also subjects of private law of the BRICS countries.

The particularities of the development of the administrative legislation of the BRICS countries include the implementation in practice of large-scale administrative reforms carried out, for example, in Russia, Brazil and China. As a result, each country has accumulated its own experience in the field of administrative reforms,[50] due primarily to the legal characteristics of the development of this sphere of public relations. At the same time, the vector of administrative reforms can be considered in general, allowing comparisons of reforms carried out in the Russian Federation with similar processes in the other BRICS countries.

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Information about the authors

Vladimir Vinokurov (Saint Petersburg, Russia) – Deputy Director for Administrative and Legal Affairs, Nikiforov Russian Center of Emergency and Radiation Medicine of EMERCOM of Russia (4/2 Lebedeva St., Saint Petersburg, 194044, Russia; e-mail: v.vinokurov.jd@gmail.com).

Vladimir Gavrilenko (Veliky Novgorod, Russia) – Associate Professor, Department of Civil Law and Procedure, Law Faculty, Yaroslav-the-Wise Novgorod State University (41 Bolshaia Sankt-Petersburgskaia St., Veliky Novgorod, 173003, Russia; e-mail: gv22@mail.ru).

Victor Shenshin (Saint Petersburg, Russia) – Associate Professor, Department of Theory and History of State and Law, Saint Petersburg University of State Fire Service of EMERCOM of Russia (149 Moskovskii Av., Saint Petersburg, 196105, Russia; e-mail: vitya-shen@mail.ru).