

PUBLIC INTEREST AND ADMINISTRATIVE LEGAL PROCEEDINGS*

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This paper focuses attention on the issue of the definition of public interest, in particular, on the fact that the public interest lies in the organization of the most efficient protection system, one that also protects against possible abuse of power by the State itself. The paper argues that the adoption of the Administrative Court Proceedings Code of the Russian Federation was a mistake and demonstrates that the mechanisms implemented in the code to protect public interests are inefficient.

Keywords: public interest; state interests; administrative legal proceedings; Administrative Court Proceedings Code of the Russian Federation.

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1. Introduction

The definition of “public interest” should include both the interests of society in general and the interests of certain social groups representing society. In this matter it is important to correlate the categories of public and state interests. Now, it is commonly known that different approaches to such correlation have been offered in legal science. Public and state interests are frequently equated. However, in the author’s opinion, public and state interests by no means always coincide; they are, in essence, independent phenomena.¹ Upon that understanding, the lack of coincidence may be traced in various aspects which, owing to the limited framework of this paper, cannot be elaborated here in sufficient detail. So let us, rather, focus our attention on the fact that multiple cases have been reported where the State has acted contrary to the interests of society and has implemented the will of specific persons or certain groups. Moreover, the contradistinction of public and state interests cannot be excluded even when the actions of the State are in line with the will of the majority, since in such cases the interests of minorities may simply be ignored, though such persons are also members of society. In any event, it is obvious that the State is a specific subject of the law, whose interests as a legal entity can contradict other interests, including those of society.

The aforesaid by no means implies that public and state interests always contradict each other; however, it shows that they may not coincide.

Notwithstanding allegations made by certain authors,² public and state interests in general are independent in a law-bound state. Clearly, a law-bound state is more

¹ The regulations do not allow characterizing the current approaches to correlation between the interests of society and those of the State in Russian legal science.

In this case it is necessary to comment that, in the opinion of the author, any state is a unique entity that can participate in public or social life in various guises, and therefore it is impossible to assert that its interests coincide with or differ from public interests in any and all situations.

An important circumstance must be underlined. It is a well-known fact that in foreign law literature “public interest” means the interest of society but not that of the State. However, historically in Russian law literature the term “public interest” (*publichny interes*) means both public and state interests. For this reason, when such a term is used in Russian legislation, as a rule, it can mean either of the aforementioned interests. This is largely related to the fact that *in Russia the interests of society and those of the State are often equated*. I, however, *do not equate them*. Therefore, in order to avoid confusion as to which of the interests (those of society or those of the State) is implied in the Russian text of this paper, a term different from the “public interest” to refer to the interests of society, namely, “societal interest” (*obschestvenny interes*) will be used. The term “public interest” will be used only if present in the corresponding law. At the same time, the term “public interest” will be used in the English version of this paper, since, as specified above, it generally means the interests of society and not those of the State, i.e. in contrast to the corresponding Russian term, there can be no inconsistency of interpretation.

² For example, among modern Russian scientists in the field of procedural law the interests of society and a law-bound state are equated by E.S. Smagina. See Смагина Е.С. Публичный и государственный интерес: соотношение категорий [Elena S. Smagina, *Public and State Interest: Correlation of Categories*] in Проблемы обеспечения и защиты публичных интересов: Сборник научных статей [Problems of Provision and Protection of Public Interests: Collected Scientific Works] 5–13 (Moscow, 2015).

efficient compared to other states (i.e. those which are not law-bound) in the actual implementation of the interests of society as a whole as well as the interests of specific social groups and individuals. However, acting for the benefit of someone's interests and being the holder of such interests are not the same thing. Moreover, the premise that the State always acts for the benefit of society or that state interests absolutely equate to public interests is rather typical of states without the rule of law, where the State is commonly idolized. Such a state is not bound by law; it dominates it. So any possibility of unlawful state conduct is excluded although in reality the State often acts arbitrarily. On the other hand, in a law-bound state that is characterized by the rule of law *also* with regard to the State³ itself the possibility that the State can sometimes act unlawfully is not excluded precisely because the State is not idolized. Therefore, the most efficient protection is implemented in a law-bound state, including protection against arbitrary actions undertaken by the State itself.

The availability of such a protection system is sought by society, which is why it is especially important to implement judicial review as to the legal validity of the acts and actions (or inactions) of any state authority, whether a person or an administrative body.

2. Is There an Actual Need for the Administrative Court Proceedings Code?

It has been a while since there have been disputes over the organization of administrative justice. Until recently, cases originating from administrative and other public law relations (constitutional, administrative, financial), i.e. related to disputes with entities invested with authority or the exercise of such authority (further sometimes referred to as administrative cases), have been reviewed by the courts of general jurisdiction under civil procedure as regulated by the Civil Procedure Code of the Russian Federation (CPC RF).⁴ Currently, however, such cases are reviewed by the courts of general jurisdiction using the Administrative Court Proceedings Code

³ As specified in one of the papers by S.S. Alekseev, a famous Russian expert in the field of law, "a law-bound state is a unique crown, a culmination that reflects the positive potential of law in its relation to the state; specifically if such formula does not mean that state authorities and officers do not obey their own laws, but rather that *the law rules...*" The same legal scientist, when defining the levels of positive law development, indicates that the highest level is the so-called civil society law, which is characterized by its utmost proximity to the intrinsic law. "It is based on the natural rights of an individual that are used as a ground to define the lawfulness of judicial provisions that are introduced and supported by the government." See Алексеев С.С. Теория права [Sergey S. Alekseev, *Theory of Law*] 106, 131 (Moscow, 1995).

⁴ It is generally known that a system of arbitration courts exists in Russia; these courts hear cases that are, as a rule, related to disputes arising from any business or other economic activity between legal entities and business people. The law that regulates the court procedure is the Arbitration Procedure Code of the Russian Federation (APC RF). Furthermore, there are administrative cases among the cases heard by arbitration courts; APC RF is used in legal proceedings, ACPC RF is not.

of the Russian Federation (ACPC RF), which was adopted on 8 March 2015 and came into effect on 15 September 2015.

Some legal scientists say that the adoption of this law is an important step towards the formation of administrative justice in Russia. In particular, a well-known expert in administrative proceedings, Yu.N. Starilov, believes that the emergence of ACPC RF

was an epic event that will be part of the Russian lawmaking history... Only after the adoption of such law a complete administrative procedural system became available for regulation of any relations in the course of court actions against decisions, actions (inactions) of any public authorities or officials... The adoption of ACPC RF is a very significant and important event in development of the country's judicial system, improvement of the Russian legal system, expansion of legal state boundaries, as well as in putting the justice structure in proper order that corresponds to the standards that ensure the rights, freedoms and legal interests of individuals and entities.⁵

This statement allows drawing the conclusion that until the adoption of ACPC RF the protection of the rights and interests of various persons against illegal decisions, actions or inactions of those vested with authority, if any, was organized in a very poor manner and that this situation was rectified by the introduction of ACPC RF.

However, the validity of this conclusion is disputable.

First of all, historically in Russia, in contrast to some other countries, as soon as cases stemming from administrative and other public (authority-related) legal relations became an allowed subject for judicial inquiry, their hearing was included in civil proceedings, and certain sections relating to the particularities of such proceedings were added to the code of civil procedure (initially CPC RSFSR, later on CPC RF). Therefore, the development of the law in this area did not follow the path towards the formation of an independent administrative proceedings, but rather opted for the universality principle of the civil proceedings so that, not only cases of a civil nature could be considered within its framework, but also other cases including public (administrative) ones.

At the same time, the author believes that the unique features of public (administrative) cases are so substantial that they simply cannot be fully taken into account within the code of civil procedure, which is mainly focused on cases of a civil

⁵ Старилов Ю.Н. Кодекс административного судопроизводства Российской Федерации – надлежащая основа для развития административно-процессуальной формы и формирования нового административного процессуального права, 1 Журнал административного судопроизводства 31 (2016) [Yurii N. Starilov, *Administrative Court Proceedings Code of the Russian Federation as a Due Ground for Development of Administrative Proceedings and Formation of a Novel Administrative Procedural Law*, 1 Journal of Administrative Proceedings 31 (2016)].

legal nature. In this pattern of thought, it is the existence of the unique features of public cases that should have caused the adoption of a separate code that fully regulates their hearing in courts and includes provisions that are not (or cannot be) included in the code of civil procedure. ACPC RF was supposed to be such a code. However, real-life practice demonstrates that ACPC RF is not essentially unique but rather includes repackaged provisions of CPC RF and the Arbitration Procedure Code of the Russian Federation (APC RF). We may say that ACPC RF is a “legal clone” of the aforementioned codes, which in itself signifies that there is no specific need to regulate the judicial examination of public (administrative) cases using provisions different from those included in CPC RF.⁶ However, such “legal cloning” in itself is not

⁶ As aptly remarked by A.T. Bonner: “Based on subparagraph 1, paragraph 6, Article 1259 of the Civil Code of the Russian Federation, laws and other legislative instruments are not subject to copyright. If not for this provision, it would be just right to introduce the term of legal plagiarism. However, such plagiarism is to a certain degree forced, since the Code authors could not and would not be able to invent something new, even if they wished to do that.” See Боннер А.Т. Административное судопроизводство в Российской Федерации: миф или реальность, или Спор процессуалиста с административистом, 7 Закон (2016) [Aleksandr T. Bonner, *Administrative Proceedings in the Russian Federation: A Myth or Reality, Or a Dispute Between Experts in Procedural Law and Administrative Proceedings*, 7 Law (2016)].

It should be taken into account that as soon as the draft of ACPC RF appeared it was negatively evaluated by almost all processualists. In addition, some experts of the Civil Proceedings Chair at MSAL (including the author) prepared and forwarded notes proving that such law is not required by the relevant committees of the State Duma. In particular, Alla K. Sergun, a well-known processualist scientist, member of the working group for development of CPC RSFSR in 1964, CPC RF in 2002, APC RF in 1995 and 2002, called attention to the fact that: “The authors of this draft specify in the explanatory note that the Code is required due to the absence of equality between the subjects of public legal relations, and therefore the need for a ‘different procedural law’ exists for hearing of cases stemming from such legal relations. Such law must cover the court activities, the right to call for evidence independently, control of the procedure development and regulatory activities of the parties, the right to move beyond the grounds and arguments of the applicant party when reviewing legal and non-regulatory instruments (p. 1, paragraph 1; p. 2, par. 7; p. 3, par. 4 and 5). However, the authors fail to mention that all of these rights have been provided to the court long ago both in CPC and APC, and the corresponding provisions have long been in force! (See part 2, article 12; part 2, article 39; parts 3 and 4, article 246; parts 1 and 2, article 249 of CPC; part 3, article 9; part 5, article 49; part 3, article 189; parts 3 and 5, article 194; parts 4 and 5, article 200 of APC). Any cases stemming from administrative or other public legal relations are considered within the framework of both civil and arbitration proceedings following the rules that include all provisions indicated in the Explanatory Note. Therefore, there is no need for a ‘different procedural law’ as such ‘different’ procedural rules have been long in force. There are no new provisions in the Code that are related to **the essence of the process**; several new provisions that have been included (i.e. mandatory representation, involvement of co-defendants, simplified (written) procedure etc.) **do not influence or modify the nature of the proceedings**, and therefore can be included into the corresponding sections of APC or CPC if required, of course after the corresponding legal elaboration. However, they cannot serve as a ground for introduction of a new Code.” See О проекте кодекса административного судопроизводства, 12 Законы России: опыт, анализ, практика (2013) [On the Draft of the Administrative Court Proceedings Code, 12 Russian Laws: Experience, Analysis, Practice (2013)] (limited access at <http://base.garant.ru/57631888/#friends#ixzz4GwPNbTV1>); On the lack of necessity to introduce ACPC RF, see also Громошина Н.А. С принятием Кодекса административного судопроизводства не следует торопиться, 3 Законы России: опыт, анализ, практика 9 (2015) [Nataliya A. Gromoshina, *There is No Need to Hurry with Adoption of the Administrative Court Proceedings Code*, 3 Russian Laws: Experience, Analysis, Practice 9 (2015)].

a very serious issue. The problem is that the authors of ACPC RF, probably afraid of being accused of word-for-word retelling of the provisions already existing in the procedural legislation, tried to modify some of them when composing ACPC RF. As a result, in many cases the meaning was wrenched, and the strict implementation of such provisions will do more harm than good.

One cannot deny that ACPC RF has some appropriate new provisions that do not exist in CPC RF. However, all of them could be introduced into CPC RF, either added to provisions that are generally applicable to all cases or to those that rule the proceedings for cases stemming from public legal relations (i.e. administrative cases).⁷ The introduction of ACPC RF also has raised other issues. As pointed out by A.T. Bonner, "Judges, lawyers and other legal practitioners as well as citizens now need to rack their brains as to which code (CPC or ACPC) should be used to file and hear the corresponding case."⁸

In this situation the issue is not about the legal illiteracy of citizens, but rather about the difficulty to understand which procedure (civil or administrative) should actually be used to consider the claim. Moreover, often the issues of private and public law are closely interrelated, and certainly their joint consideration would be more appropriate. It is known that in a letter No. 7-BC-7105/15 of November 5, 2015, the Supreme Court of the Russian Federation tried to define which disputes related to civil rights and obligations linked to claims to invalidate non-regulatory acts are subject to consideration within the civil court procedure. However, the approach suggested by the Supreme Court is far from being unassailable.⁹ This issue has also not been resolved in the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 36 of September 27, 2016 "On Some Issues Related to Application of the Administrative Court Proceedings Code of the Russian Federation by Courts."

So, just the aforesaid is enough to understand that the introduction of ACPC RF has not duly facilitated the implementation of societal (public) interests in efficient administrative justice.

3. Public Interest as a Protected Object in Administrative Legal Proceedings

Let us move on to the issue of public interest as a protected object in administrative court proceedings.¹⁰ It is clear that the public interest may be an immediate or indirect

⁷ For solid criticism of certain provisions of ACPC RF, see, e.g., in papers published in "5 Russian Laws: Experience, Analysis, Practice (2016)."

⁸ Bonner 2016.

⁹ *Id.*

¹⁰ The constraints of space do not permit specifying all the aspects of public interest protection issues in administrative proceedings, therefore only some of them will be considered here.

object of protection, which influences the defense procedure.¹¹ The public interest is indirectly protected if it is not a direct object of protection. For example, it is clear that the protection of the interests and rights of individuals is also within the scope of the public interest, as individual protection fosters public order. However, it is also clear that in cases where the public interest is indirectly protected, i.e. exclusively through the protection of rights and interests of individuals, following the general rule, only persons whose interest is subject to immediate protection may apply to the courts.

The public interest is often an immediate object of protection. It is obvious that in actions considered within ACPC RF this is frequently the situation in many cases related to, for example, the protection of electoral rights and challenges to non-regulatory instruments that affect the rights and interests of the general public or social groups whose members can be personified. On account of that, the public interest is often an immediate object of protection together with other interests, including the interests of individuals. For example, in Russia, according to Article 208 of ACPC RF, any person can file a suit challenging a statutory act if he or she believes that such act violates his or her rights, freedoms or legal interests. Therefore, as a result of such suit his or her personal interests are also protected. At the same time, if it is found that such challenged statutory act in fact contravenes another statutory act that prevails, this will be enough to sustain the claim (paragraph 1, part 2, Article 215 ACPC RF). Consequently, if such claim is sustained, this leads to the simultaneous immediate protection of two types of interests: (a) the interests of the applicant party, whose violated rights served as a ground for the suit and whose rights were protected as the result of such challenge (in addition, when the statutory legal act is rendered invalid for the person who challenged it, this allows requesting review of other court orders where the invalidated act was applied to such person due to newly discovered circumstances); (b) public interests, as the invalidated act will not be applicable to any persons to whom it was supposed to be applicable before the court proceedings.

It should be taken into consideration that in Russia the right of recourse to the courts for the protection of public interests is allowed in cases specified by the law. Prosecutors, as well as certain authorities and officials, are vested with such a right within their power by virtue of the explicit reference in the law. In some cases the law states that non-governmental entities and sometimes citizens can also apply to

¹¹ On this issue, the opinion of the author is described in: Туманов Д.А. Об общественном интересе и его судебной защите, 12 *Законы России: опыт, анализ, практика* 54 (2015) [Dmitry A. Tumanov, *On Public Interest and Its Judicial Protection*, 12 *Russian Laws: Experience, Analysis, Practice* 54 (2015)] (the English version is available at https://www.academia.edu/19957808/On_Public_Interest_and_Its_Judicial_Protection_Russian_Laws_Experience_Analysis_Practice_2015_No_12_p.54-70_English_). See also Туманов Д.А. Общественный интерес как опосредованный и непосредственный объект защиты в гражданском судопроизводстве, 2 *Юстиция* 8 (2016) [Dmitry A. Tumanov, *Public Interest as Indirect and Immediate Object of Protection in Civil Court Proceedings*, 2 *Justice* 8 (2016)].

the courts in order to protect public interests.¹² On this last point we should note that individuals can take legal recourse to protect public interests only if such protection is integrated within the simultaneous protection of individual rights and interests of such person searching for legal recourse. In its turn, if a citizen cannot prove his or her personal (immediate) interest that directly follows from the law, but can only specify that he or she is a member of a social group for which such interest may be important, most probably he or she will not be recognized as a person having the right to take legal recourse.¹³

Detailed inspection of ACPC RF shows that the issue related to the right to apply to the courts in order to protect public interests is resolved by the code in a manner that is totally unacceptable. On the one hand, from part 1, Article 40 of ACPC RF it follows that only governmental bodies, officials and human rights ombudsmen in the Russian Federation or its entities can take legal recourse in order to protect the general public and public interests. It is easy to see that neither public nor non-profit organizations nor citizens are indicated as allowed applicants. Therefore, following the logic described here, it is obvious that the applicability of the right to take legal recourse is reduced as compared to the provisions noted above.

On the other hand, the provisions of part 1, Article 40 of ACPC RF directly contravene other provisions of many federal laws that grant the right to protection also to public entities, not to mention some other provisions of ACPC RF itself (e.g., Article 4).

This flaw in ACPC RF (as well as other flaws) was discussed both in law publications¹⁴ and during hearings related to the provisions of ACPC RF in the Supreme Court of the Russian Federation.¹⁵ It should be noted that, as far as the author is aware, currently a draft law that will modify ACPC RF has been developed; it is targeted at elimination of this flaw.¹⁶

¹² See, e.g., paragraph 3, part 3, Article 26 of the Federal law No. 212-FZ of June 21, 2014 "On Basic Principles of Public Control in the Russian Federation," which allows public associations and other non-governmental non-profit entities to take legal recourse in specific cases in order to challenge statutory acts, orders, actions (inaction) of various bodies and persons that are vested with authority. It is clear that if the suit is filed for the benefit of the general public, then the public interest is the object of protection.

¹³ Often judicial practice is based on that, though there are exceptions in certain cases. It has already been mentioned that it is required to expand the list of cases when the law would allow citizens to take legal recourse in order to protect public interests, where it would be only required to prove that such a citizen is part of the corresponding social group. See Туманов 2015.

¹⁴ See, e.g., Туманов Д.А. Участие в административном судопроизводстве прокурора, а также органов, организаций и граждан с целью защиты «чужих» интересов, 5 Законы России: опыт, анализ, практика 60 (2016) [Dmitry A. Tumanov, *Participation of Prosecutor, Bodies, Entities and Individuals in Administrative Proceedings in Order to Protect "Another Person's" Interests*, 5 Russian Laws: Experience, Analysis, Practice 60 (2016)].

¹⁵ The author is a member of a working group that elaborates comments in regard to ACPC RF together with the judges of the Supreme Court of the Russian Federation.

¹⁶ However, unfortunately, ACPC RF not only leaves some flaws uncorrected but also aggravates the corresponding issues.

The Administrative Court Proceedings Code of the Russian Federation also includes other substantial flaws that are related to the protection of public interests. Let us consider just some of them.

ACPC RF specifies that if a prosecutor, entities or persons that took legal recourse in order to protect the general public (which usually also means protection of public interests) withdraws the suit, the proceedings continue. However, it is completely unclear as to who is supposed to carry on the lawsuit in order to protect the general public. Obviously, several solutions may be proposed, as has already been done in the judicial literature.¹⁷ Nevertheless, in any case such proceedings can hardly be efficient as in fact the public interest will not be actively defended in court, which will definitely affect the result.

4. Class Action as One of the Mechanisms to Protect Public Interests

One of the procedural mechanisms to protect *inter alia* the public interest is a class action. Article 42 of ACPC RF provides for the possibility to take legal recourse using such action. In particular, the article states that citizens who participate in administrative or any other public legal relations, as well as other persons as specified by federal law, can file administrative class actions with courts in order to protect violated or challenged rights and legal interests of a group of people.

Article 42 also specifies the conditions required for such application, which include: (a) the numerical size of the group or the impossibility to define the number of its members, which hinders filing of individual claims by potential group members or filing of joint administrative claims (joint participation); at the same time the law determines that administrative cases for protection of violated and challenged rights and legal interests of a group shall be considered by the court if as of the day of such application at least twenty persons acceded to the aforementioned claim filed by a person in order to protect the rights and legal interests of a group; (b) consistency of the dispute subject and grounds for the claims made by the group members; (c) the presence of a common administrative defendant (co-defendants); and (d) all group members must use the same remedies.

A case for the benefit of a group is handled by a person (or persons) who have been appointed to do so. Such person must be indicated in the statement of the administrative claim. On account of that, such person (or persons) acts without any power of attorney, enjoys the rights and must perform the procedural duties of administrative plaintiffs.

Article 42 also addresses other issues, including a description of the consequences of class actions filed in the absence of the required conditions and the consequences

¹⁷ Tumanov, *supra* note 14.

of legal recourse for a person with a claim that is similar to a claim heard within the framework of a class action. In addition, the article contains a highly disputable provision stating that if administrative co-plaintiffs are involved in an administrative case and it is found that there are circumstances allowing to consider the case as an administrative class action, upon petition of a claim participant, and taking the opinions of the parties into account, the court may issue an order to consider the administrative case as an administrative class action. The author has already indicated that this provision of ACPC RF is erroneous, because it means it is not the co-plaintiffs but the court which decides that the case is transferred to the category of administrative class actions: the court is only supposed to take the opinion of such persons into account, which, as we know, does not mean it is obligated to follow it.

If the case is considered an administrative class suit, the co-plaintiffs will lose their status (and therefore the corresponding rights); therefore such transfer should be possible only if the co-plaintiffs expressly agree to it and provided that the court has explained the consequences to them.

There are no other rules that govern the procedures for consideration of class suits in ACPC RF. There are even no provisions that define the rights of group members. This circumstance led V.V. Yarkov to believe that similar provisions of APC RF that govern the protection of group interests in arbitration procedures (Chapter 28.2 of APC RF) can be applicable to resolving the corresponding issues.¹⁸

We should note the following regarding this issue.

First, the presence of a major gap in ACPC RF attests to its poor elaboration, which once again shows that the law was prepared in a hurry causing the appearance of unsustainable provisions.

Second, since there is a gap in regulation of class action consideration in ACPC RF, one may raise the question of whether in this case Chapter 28.2 of APC RF is applicable in a similar way; however, it is doubtful that this will finally make administrative class suits efficient, as the relevant provisions of APC RF are far from perfect, which also explains why the concept of class action is rarely used in arbitration proceedings.¹⁹

¹⁸ Комментарий к Кодексу административного судопроизводства РФ (постатейный, научно-практический) [*Comments to the Administrative Court Proceedings Code of the Russian Federation (Article-by-Article, Research and Practical)*] 146 (V.V. Yarkov, ed., Moscow, 2016).

¹⁹ On the flaws of Chapter 28.2 of the APC RF, see, e.g., Алехина С.А., Туманов Д.А. Проблемы защиты интересов группы лиц в арбитражном процессе, 1 *Законы России: опыт, анализ, практика* 38 (2010) [Svetlana A. Alehina, Dmitry A. Tumanov, *Problems of Protection of Group Interests During Arbitration Proceedings*, 1 *Russian Laws: Experience, Analysis, Practice* 38 (2010)]; Стрельцова Е.Г. О некоторых сложностях практического применения гл. 28.2 АПК РФ, 4 *Право и политика* 718 (2010) [Elena G. Streltsova, *On Some Difficulties of Practical Implementation of Chapter 28.2 of APC RF*, 4 *Law and Politics* 718 (2010)]. See also Малешин Д.Я. Гражданская процессуальная система России [Dmitry Ya. Maleshin, *Civil Procedural System of Russia*] (Moscow, 2011).

Finally, we should note that any cases considered within the framework of ACPC RF are quite specific with regard to the presence of required circumstances or shortened periods for proceedings. In its turn, the protection of group interests within APC RF also has substantial features that may be implemented during extended periods for proceedings (in APC RF claims are processed within a period not exceeding five months after a determination is rendered to initiate the proceedings based on the action). In this case it is clear that the provisions of the law do not match. Therefore, it is doubtful that the provisions that regulate the order of proceedings for protection of group interests in APC RF, if applied by analogy to administrative court proceedings, would fully foster the efficient functioning of the administrative class action institution.

An attempt was made to resolve certain issues related to class suits in administrative legal proceedings, as reflected in the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 36 of September 27, 2016 "On Some Issues Related to Application of the Administrative Court Proceedings Code of the Russian Federation by Courts." In particular, the Resolution sets out the procedural rights of group members. These include the right to familiarize oneself with administrative case materials, to make excerpts and copies; to request the substitution of a person who is appointed to pursue an administrative case to the benefit of a group of persons.²⁰ At the same time, in the author's opinion, the rights of group members specified in the draft document are not enough, as the author and others have repeatedly pointed out in legal publications.

Specifically, it is more than disputable that members of a group are not entitled to individually appeal against a court order, since it is obvious that the person who pursues the case can refuse to file the appeal. It should also be taken into account that the initial version of the draft Resolution featured a rule stating that court orders can be appealed by any group member provided that he or she is supported by at least twenty other group members.²¹ Such an approach, in the author's opinion, is also far from being the best one; however, it is definitely better than that reflected in the Regulation adopted by the Supreme Court of the Russian Federation on September 27, 2016.

5. Conclusion

We see from the foregoing that, as has been frequently noted in judicial publications, ACPC RF is a law that notably repeats the provisions of CPC RF and APC RF. Its adoption was not governed by a critical societal need for a law that

²⁰ As such rights are not mentioned in Article 42 of ACPC RF, the Resolution proposes to release them from the general provisions of ACPC RF. In addition, there is a reference to part 3, Article 225 of APC RF, which probably means that the corresponding provisions of APC RF are applicable to ACPC RF by analogy, though this is not indicated in the Resolution.

²¹ The aforementioned version of the Resolution was received by the Civil and Administrative Legal Proceedings Chair at the Kutafin Moscow State Law University (MSAL) for comment by the chair members.

regulates consideration of administrative cases by the courts, as such laws already existed and had been efficiently applied prior to its adoption.

ACPC RF was adopted in a hurry, which resulted in substantial defects in some of its provisions. This in turn has led to a lower level of warranty ensuring the administration of justice as compared to its level before the adoption and enactment of the new code. The provisions referring to the protection of the public interest are also faulty. In particular, ACPC RF restricts the right to judicial protection. Some of its institutions cannot be implemented owing to important legal gaps that can hardly be successfully overcome even by the use of legal analogy.

It follows then that the availability and application of ACPC RF is unlikely to foster the actual protection of the rights and interests of various social groups and individuals, nor the protection of public interests.

References

Алексеев С.С. Теория права [Alekseev S.S. *Theory of Law*] (Moscow, 1995).

Алехина С.А., Туманов Д.А. Проблемы защиты интересов группы лиц в арбитражном процессе, 1 *Законы России: опыт, анализ, практика* 38 (2010) [Alekhina S.A., Tumanov D.A. *Problems of Protection of Group Interests During Arbitration Proceedings*, 1 *Russian Laws: Experience, Analysis, Practice* 38 (2010)].

Смагина Е.С. Публичный и государственный интерес: соотношение категорий [Smagina E.S. *Public and State Interest: Correlation of Categories*] in Проблемы обеспечения и защиты публичных интересов: Сборник научных статей [Problems of Provision and Protection of Public Interests: Collected Scientific Works] (Moscow, 2015).

Туманов Д.А. Об общественном интересе и его судебной защите, 12 *Законы России: опыт, анализ, практика* 54 (2015) [Tumanov D.A. *On Public Interest and Its Judicial Protection*, 12 *Russian Laws: Experience, Analysis, Practice*, 54 (2015)].

Mareshin D. *The Russian Style of Civil Procedure*, 21(2) *Emory Int'l L. Rev.* 543 (2007).

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