

ALEKSANDR MAKAROV

First-year Master's student of the Faculty of Law of the TISBI University of Management

ALFIYA KHAIRULLINA

Senior Lecturer of the Department of Constitutional and International Law of the Faculty of Law of the TISBI University of Management

**THE JURISDICTIONAL FORM OF PROTECTION
OF SUBJECTIVE CIVIL RIGHTS:
THE PRISM OF JUDICIAL AND ADMINISTRATIVE
FORM OF PROTECTION**

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Abstract. *This article presents a study of the problem of identification of types of jurisdictional form of protection of subjective rights. The analysis and conclusions are derived by the authors through the consideration of judicial and administrative orders of protection, and ways to improve the current judicial system of the Russian Federation are proposed. The form of rights protection in the study is considered from the point of view of a set of internally coordinated, organized measures for the protection of subjective rights. Of particular interest is the diversity of forms of rights protection due to the specificity of the rights to be protected, as well as legal traditions that determine the complexity or, on the contrary, the simplicity of the established legal relations.*

Keywords: *subjective rights, form of protection, judicial procedure, administrative procedure, protection of rights.*

The norms of the current Russian legislation contain methods and forms of protection of subjective rights and legally protected interests of both citizens —

individuals and legal entities. In this regard, it should be noted that such protection is carried out by specialized bodies and bodies of state power and local self-government. The diversity of jurisdictional bodies determines the difference of procedural obligations imposed on each of the bodies by law. This, in a sense procedural, theory is reflected in the studies of legal scientists¹. Let us point out that to date, the institution under consideration is still of interest among scholars².

It should be recognized that the very existence of the variety of forms and methods of protection of subjective rights is fully dependent on the existence of such legal categories as *violation* of the right and its *restoration*.

Protection of civil rights as a legal institution has a number of identifying features, namely: realization through the application by competent authorities of measures of legal and factual impact provided by law; restoration of violated or disputed rights as an aim³.

Thus, the protection of civil rights is preceded by the very fact of an offense already committed.

We consider it logically reasonable to define the definition of the term “protection”, as well as to determine its subject.

*Protection of rights*⁴ is a complex of organizational and legal measures aimed at the restoration or recognition of violated or challenged rights, as well as the elimination of legal facts and circumstances that prevent the subject from exercising rights.

¹ *Arapov N. T.* Problemy teorii i praktiki pravosudiya po grazhdanskim delam [The issues of theory and practice of justice in civil cases]. L., 1984. Pp. 61–69.

² See more: *Bazilevich A. I.* Formy zashchity subektivnykh grazhdanskikh prav: dis. ... kand. yur. Nauk [Forms of protection of subjective civil rights: dissertation of Candidate of Legal Sciences]. Ulyanovsk, 2001. 205 p.; *Grazhdanskoe pravo: uchebnik: v 2 t. T. 1. 3-e izd., pererab. i dop.* [Civil Law: textbook: in 2 vol. T. 1. 3rd ed., revision and addendum] / S. S. Alekseev, O. G. Alekseeva, K. P. Belyaev i dr.; pod red. B. M. Gongalo. M.: Statut. 2018. 326 p.; *Grazhdanskoe pravo: Uchebnik: v 3 tomakh. T. 2. Izd. 5-e, pererab. i dop.* [Civil Law: Textbook: in 3 volumes. T. 2. 5th edition, revised and supplemented] / [V. V. Baybak i dr.]; otv. red. Yu. K. Tolstoy, N. Yu. Rasskazova. Sankt-Peterburgskiy gos. un-t. Moskva: Prospekt. 2013. 924 p.

³ See, e.g. *Grazhdanskoe pravo: Uchebnik. V 2 tomakh. T. 1. 2-e izd. pererab. i dop.* [Civil Law: Textbook. In 2 volumes. T. 1. 2nd ed. revision and additions] / Pod red. B. M. Gongalo. M.: Statut, 2017. 511 p.

⁴ *Vavilin E. V.* Osushchestvlenie i zashchita grazhdanskikh prav [Realization and protection of civil rights]. Moskva: Statut, 2016. 416 p.; *Gribanov V. P.* Osushchestvlenie i zashchita grazhdanskikh prav. 3-e izd. [Realization and protection of civil rights. 3rd edition]. Moskva: Statut, 2022. 414 p.; *Zashchita grazhdanskikh prav. Izbrannye aspekty: sbornik statey* [Protection of civil rights. Special aspects: edited book] / M. A. Rozhkova, L. V. Kuznetsova, A. F. Pyankova [i dr.] / pod redaktsiey M. A. Rozhkova. Moskva: Statut, 2017. 432 p.

The subject of protection is civil rights and legally protected interests¹. It should be noted that these concepts are not identical in etymology, but in legal literature they are often mentioned in unity.

With particular confidence we can say that the mechanism of protection contains *ways, forms and means* of protection of rights².

However, the scientific interest in the framework of this study is the form of protection of civil rights, in particular — *jurisdictional*.

Thus, under the form of protection, we will understand a complex of internally coordinated organized measures for the protection of subjective rights.

In research studies³ we follow the diversity of forms of protection of rights due to, we dare to assume, the specificity of the rights to be protected, as well as legal traditions that determine the complexity or, on the contrary, the simplicity of the established legal relations.

Paying special attention, we will point out that the *jurisdictional form* of protection is the activity of state-authorized bodies to protect violated or disputed subjective rights, the character of which is expressed in the appeal of a person whose subjective civil rights are violated by illegal actions, for protection to the state or other competent authorities authorized to take the necessary measures to restore the violated right and suppress the offense.

Within the jurisdictional form of protection, in turn, there are general and special procedures for the protection of violated rights. As a general rule, the protection of subjective civil rights is carried out in court.

¹ See, e.g. *Sinyukov V.N.* Doktrina verkhovenstva prava i formirovanie postklassicheskoy pravovoy traditsii [The doctrine of the rule of law and the formation of the post-classical legal tradition] // V sbornike: II moskovskiy yuridicheskiy forum "Gosudarstvennyy suverenitet i verkhovenstvo prava": mezhdunarodnoe i natsionalnoe izmereniya. Plenarnye doklady i materialy konferentsiy [In edited book: II Moscow Legal Forum "State sovereignty and the rule of law": international and national measurements. Plenary reports and conference proceedings]. 2015. Pp. 38–44; *Solovykh S.Zh.* Predely soderzhaniya subektivnogo protsessualnogo prava [The limits of the content of the subjective procedural right] // Arbitrazhnyy i grazhdanskiy protsess [Arbitration and civil procedure]. 2012. No. 10. Pp. 2–6.

² See, e.g. *Grazhdanskoe pravo: uchebnik: v 2 t. T. 1. 3-e izd., pererab. i dop.* [Civil Law: textbook: in 2 vol. T. 1. 3rd ed., revision and addendum] / S.S. Alekseev, O.G. Alekseeva, K.P. Belyaev i dr.; pod red. B.M. Gongalo. M.: Statut. 2018. 326 p.

³ *Arefyev G.P.* Ponyatie zashchity subektivnogo prava [The definition of the protection of subjective right] // Protessualnye sredstva realizatsii konstitutsionnogo prava na sudebnuyu zashchitu [Procedural means of realization of the constitutional right to judicial protection]. Kalinin, 1982. 238 p.; *Volozhanin V.P.* Nesudebnye formy razresheniya grazhdansko-pravovykh sporov [Non-judicial forms of civil law dispute resolution]. Sverdlovsk, 1974. 368 p.; *Belykh V.S.* Formy i sposoby zashchity prav khozyaystvennykh organizatsiy: Ucheb. Posobie [Forms and methods of protection of rights of economic organizations: Textbook]. Sverdlovsk, 1985. P. 5; *Sergeev A.P.* Grazhdanskoe pravo. T. 1. Uchebnik [Civil Law. Vol. 1. Textbook] / Pod red. A.P. Sergeeva, Yu.K. Tolstogo. M., 2002. P. 337.

The judicial form of defense is the central form for the domestic system of law, as indicated by a number of system-forming factors:¹

1. The judicial form of protection is realized through the activity of courts, which are the bearers of judicial power, according to the Constitution of the Russian Federation.

2. The existing feature of the modern period of development of the judicial system — in addition to Arbitration Courts and courts of General Jurisdiction, the real protection of subjective rights is more and more revealed through the activities of the Constitutional Court of the Russian Federation².

3. The universal character of the judicial form of protection allows protecting any subjective right and (or) legally protected interest.

All forms of protection of subjective rights are activated through the application of certain means of protection.

Although in the legal literature there is no uniformity of approaches to the definition of the concept of “legal protection means”, we will still focus on the point of view of Yu. F. Besspalov, who the means of judicial protection includes a lawsuit (applications, complaints, court rulings), decision (in absentia decision, court order, determinations, approval of a settlement agreement), cassation and supervisory appeal, application for review of the case on newly discovered circumstances³.

Among the jurisdictional forms of protection of subjective rights considered by us in this study includes the *administrative* form of protection.

Most administrative and legal cases in the Russian Federation are considered in courts of General jurisdiction according to the rules of civil proceedings in the global sense — which, in turn, gave rise to the widely used concept of “*administrative process*”. Some scientists believe that administrative process includes the resolution of cases with the application of measures of administrative

¹ Chechot D.M. Subektivnoe pravo i formy ego zashchity [Subjective right and forms of its protection]. L., 1968. P. 53; Osipov Yu.K. Podvedomstvennost yuridicheskikh del [Jurisdiction of legal cases]. Sverdlovsk, 1973. Pp. 93–94; Volozhanin V.P. Nesudebnye formy razresheniya grazhdansko-pravovykh sporov [Non-judicial forms of civil law dispute resolution]. Sverdlovsk, 1974. P. 33 et al.

² Belkin A.A. Konstitutsionnaya okhrana: tri napravleniya rossiyskoy ideologii i praktiki [Constitutional protection: three directions of Russian ideology and practice]. SPb, 1995. 142 p.; Khabrieva T.Ya. Pravovaya okhrana Konstitutsii [Legal protection of the Constitution]. Kazan, 1995. 217 p.; Shulzhenko Yu.L. Konstitutsionnyy kontrol v Rossii: avtoref. dis. ... d-ra yurid. nauk [Constitutional control in Russia: abstract of the dissertation of Doctor of Legal Sciences]. M., 1995. 175 p.

³ Besspalov Yu.F. Sredstva sudebnoy zashchity grazhdanskikh prav rebenka [The means of judicial protection of a child's civil rights] // Rossiyskaya yustitsiya [Russian justice]. M.: Yurid. lit., 1997, No. 3. P. 25.

enforcement — which suggests a narrower interpretation of administrative process; however, Professor S. S. Studenikin pointed out that administrative process is nothing but “executive-administrative activity, carried out on the basis of certain procedural rules”¹; A. E. Lunev formulated the concept of administrative process as follows: “Administrative process is always where the norms of substantive law are applied”².

Conclusions of legal scholars give us a clear and unconditional understanding that administrative process is nothing but the activity of jurisdictional bodies on the application of norms of substantive law, being at the same time a type of legal process. Undeniable in this regard is also that the administrative form of defense is part of the administrative process.

It is accepted to believe that the breadth of the system of bodies of administrative jurisdiction, called by the legislation of the Russian Federation, implies a wider differentiation of the system itself, however, we consider indirect attribution of judicial authorities to the bodies carrying out activities aimed at the administrative form of protection of subjective rights to be sufficiently conflicting. We believe that such an identification can have a devastating effect on the entire system of law, while there are separate forms — *judicial* and *administrative* protection of subjective rights.

We should also not forget that there is a special system of bodies to control the observance of legality in the sphere of public administration — *administrative justice*³.

We consider it logically reasonable to emphasize the problem of administrative justice, which is the main element of legal discussions.

As we noted earlier, in the Russian Federation, most administrative-legal cases fall under the jurisdiction of courts of General jurisdiction and are considered under the general rules of civil proceedings, while it is impossible not to mention the peculiarities of the administrative process, which we consider necessary to consider in detail by specialized courts — for example, we are talking about Administrative Courts⁴.

¹ Studenikin S. S. Sotsialisticheskaya sistema gosudarstvennogo upravleniya i voprosy o predmete sovetskogo administrativnogo prava [Socialist system of state administration and questions about the subject of Soviet administrative law]. M., 1949. P. 44.

² Lunev A. E. Voprosy administrativnogo protsesssa [Issues of administrative process] // Pravovedenie [Jurisprudence]. L., 1962. No. 2. P. 43.

³ Bolshaya yuridicheskaya entsiklopediya [The great legal encyclopedia] / pod red. A. Ya. Sukhareva. M.: INFRA, 1999. P. 14.

⁴ Sazhina V. V. Administrativnaya yustitsiya v SShA [Administrative justice in the USA] // Gosudarstvo i pravo [State and law]. 1993. No. 3. Pp. 7–51.

Such a system works successfully in countries that use the German model of Administrative Justice (Finland, Austria, Germany).

The essence of administrative justice lies in the fact that the established Administrative Courts receive the status of full legal independence from the courts of General Jurisdiction, while still being somewhat dependent in terms of organizational connection with the governing bodies¹.

In the Russian legal system in recent decades, the issue of the need to organize separate specialized Administrative Courts, which would act on the basis of the general rules of civil proceedings, taking into account the specifics of the administrative process, has been raised more than once in the Russian legal system.

In our opinion, on the one hand, to organize of Administrative Courts would improve and promote more detailed and scrupulous consideration of administrative cases, excluding cursory, incomplete consideration of an administrative case by a court, in whose proceedings and other categories of cases; and on the other hand, this process is a long, complexly organized, generating the need for expansion of the judicial system of the Russian Federation and its inclusion in the judicial system of the Russian Federation.

And yet, raising this issue today, we mean that the creation of administrative justice and separate specialized Administrative Courts in its composition has a place, as it is traditional for Russia to have a high proportion of public administration and participation of the state in the structure of civil society, which could well acquire points of contact in the consideration of administrative-legal cases, with less emphasis on the civil-procedural character in making a decision on the case under consideration.

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¹ *Breban G.* Frantsuzskoe administrativnoe pravo [French administrative law]. M., 1988. 488 p.; *Vedel Zh.* Administrativnoe pravo Frantsii [Administrative law of France]. M., 1973. 512 p.

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Information about the authors

Aleksandr Makarov (Kazan, Russia) — First-year Master's student of the Faculty of Law of the TISBI University of Management (13, Mushtari St., Kazan, 420012, Russia; e-mail: sanek2902200025@mail.ru).

Alfiya Khairullina (Kazan, Russia) — Senior Lecturer of the Department of Constitutional and International Law of the Faculty of Law of the TISBI University of Management (13, Mushtari St., Kazan, 420012, Russia; e-mail: alya_khairullina@mail.ru).

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