Lesya Dushakova, PhD

CURRENT WAYS OF DELEGATING ADMINISTRATIVE PROCESSESS IN RUSSIAN LEGISLATION

The present article examines modern legal technologies of delegation of administrative processes on the example of the Russian legislation. The two key concepts of delegating the administrative processes are the standardization and the regulation of delegating of the administrative and procedural mechanism of execution of the state functions, as well as providing the state services. Also the mechanism of realization of other powers based on interaction of executive authority with natural and legal entities act is proposed. In addition the current state of institute of an assessment of the regulating influence is analyzed.

Administrative reform[1] carried out in the Russian Federation, involves a number of constituent elements that can be deivided into three groups, namely: institutional (formation of the system and structure of executive power; satisfaction of the current needs of social development; maximizing effectiveness of implementation of their functional capacity); functional (identification; classification; more efficient allocation of functions between the executive authorities; possibility of transfer of authorities to other organizations, including the mechanism of outsourcing administrative processes); legal (establishment of an effective mechanism for monitoring and oversight of the procurement process for public use; the mechanisms of outsourcing administrative processes, combating corruption in the areas of executive authorities; development of mechanisms of interaction between the executive authorities and civil society). In one form or another, these elements forejudge the quality and efficiency of the administrative processes and the high level of forecited is one of the objectives of the administrative reform.

In general, by the functions of state agencies can be understood an assignment in regulation of public administration, or their obligations, or the scope of activities of state bodies or their activity as a whole. It should be noted that within the general theoretical «scatter» in the terminology, in understanding the role of the state agencies remains a fundamental intrinsic characteristics, namely, the social significance[2],

[1] *Распоряжение о Концепции административной реформы в Российской Федерации в 2006 - 2010 годах 2005.* (Правительство РФ). Собрание законодательства РФ, 46, 4720.

[2] Каск, Л.И. (1969). *Функции и структура государства*. Москва; Каск, Л.И. (1977). Системный подход в познании государства и права. *Правоведение, 4.*

inasmuch as «function is determined, not generated by an element that performs it, but on the contrary, the objective requirements of the system of some activity determines the appearance of the function, and then influences the agency realizing it»[1].

The functions of state agency are expressed in its activity and directed to achievemwnt of the goals and objectives of the government, within the limits provided by applicable law, constrained by the competence and limited powers. Accordingly, when it comes to the social significance of the functions of the state agency then the focus is made on social significance of its activity expressed in the framework of external relations, and demonstration of its essence and social purpose.

In particular, functions of public agencies are treated as a «sphere of activity», «main activitie», «defined work», «way of behaving»[2]. And in this case there is a clear division of functions, first, as defined types of activities and second, as the actual activity of the public authority. On the other hand, some opine that the notions of the functions and activities are identical, and the following pairs of words are synonyms – «function» and «activity», «function» and «main activities»[3].

Among the published articles migh be found another position that consists of distinguishing the two different concepts viz. «functions of the public agency» and «functions of administration», where the former includes, first of all, activities for the implementation of the «external» goals of the state and its agencies, while the latter are in-house in their nature[4]. Otherwise stated, «the functions of the public agency» and the «functions of administration» have a different geography of its implementation: if the first is realised in the external environment, the second exhibits in the framework of the internal system of relations. Although

[1] Спиридонов, Л.И. (1995). *Теория государства и права*. Москва, 69.

[2] Бачило, И.Л. (1976). *Функции органов управления*. Москва, 54; Ковачев, Д.А. (1985). Функции, задачи, компетенция и правоспособность государственного органа. *Правоведение, 4,* 41; *Общая теория права и государства*: учебник. (1996). Москва, 44.

[3] Берензон, А.Д. (1980). *Об основных направлениях деятельности прокуратуры* (Проблемы организации и деятельности прокурорской системы в свете Закона о прокуратуре СССР). Москва, 27-39; Герасимов, С. (1997). *Функция уголовного преследования в деятельности прокуратуры* (Прокуратура в правовом государстве. Материалы многосторонней встречи, организованной Советом Европы совместно с Генеральной прокуратурой РФ). Москва, 46-53.; Давиденко, Л.М. (1988). *Криминологическая функция советской прокуратуры, основные направления деятельности советской прокуратуры.* Свердловск, 23-26; Кондрашев, Б. (1992). Милиция: правовой статус и функции. *Законность, 6 – 7*, 13; Мелкумов, В.Г. (1980). Функции советской прокуратуры. *Советское государство и право, 11,* 89.

[4] Смирнов, А.Ф. (1997). *Прокуратура и проблемы управления*. Москва, 57.

methinks such a distinction is possible only in a very specific context, since, firstly, the administration itself can have both intrasystem and intersystem character depending on the situation along with emergence and development of administrative relations. Secondly, in this version the socially important activities of the state agency that are exhibited in the external system are no longer strictly controlled whilst the functions of state agency belong to the function of administration, both external and in-house (intra-department).

By far, every state agency within the system and within the general mechaniry of government has its functional capacity, due to the specifics of the goals and objectives for the implementation of which it is established; accordingly, each state agency has powers for conducting its functions fixed in normative acts and regulations that defines the scope of its competence.

Keeping in mind the Presidential Decree of March 9, 2004 № 314 «On the system and structure of federal agencies of executive power», it should be noted that the current system and structure of federal executive bodies and state agencies has exactly a functional basis. The text of the Decree allows to state on the following socially significant fields of activity of federal bodies of executive power:

- adoption of legal acts;
- control and supervision that in turn includes sub-directions: the proper steps for control and supervision of the execution of the mandatory rules of behavior established by the current legislation by all legal entities; permits (licenses) for certain activities and (or) specific actions for legal entities and individuals; registration of deeds, documents, rights, facilities, and the publication of individual legal acts;
- administration of public property that in turnincludes enjoyment of property and administration of federally owned shares of joint-stock companies;
- provision of public services.

Whereas each function is realized in certain fixed types of activities, and the powers for exercise of its activity is prescribed in the status acts (in particular, the standing order for the executive bodies).

Administrative processes are carried out by the executive authorities to ensure the performance of state functions, including not only the above-mentioned activities, but also the implementation of a state or municipal procurement, informational, analytical, organizational and technical support of the executive authority, and so on.

The concept of administrative reform proposed modernized, previously unknown to the Russian legislation, approaches to realization of

administrative processes, including standardization, regulation, delegation of functions (including outsourcing), regulatory impact assessment.

Specification of organizational and functional component of the implementation of the competence of the executive authorities, carried out as a result of administrative reform is based i.a. on the formalization of their interaction with citizens and organizations within the standardization and regulation of administrative processes in order to create conditions for socio-economic growth and increasing the quality of power. Standardization and regulation designed to streamline and focus the obligations of the executive power to the community along with improvement of the quality and efficiency of administrative processes in the executive branch; last, but not least to form a single functional-process model of the organization of the executive authorities.

Administrative regulations as a specific normative legal act delegates the transactional communication of the state in the face of the executive authorities and the public in the face of citizens and organizations, fixing the way of their interaction in the spheres of social relations established by providing for certain administrative actions and their complexes (administrative procedures), as well as securing the order corresponding interaction withing the machinery. Architectonics and the content of any administrative regulation confirms its transactional focus.

Standardization of administrative processes in addition to the Concept of administrative reform is formalized in the Federal Law of July 27, 2012 № 210 - FZ «On the organization of provision of public and municipal services»[1] and administrative regulations of public services, the structure of which includes a standard of public services` provision.

Summarizing contents of a normative acts (inclusively the mentioned above acts) it can be assumed that the standard of a public service is a certain obligation of the executive authorities to provide an opportunity for receiving the public services of a definite volume and quality. The standard includes the technology of provision of the public service, the indicators of the quality of performance and standards factors of the public service. The standard formalizes the process model of the interaction of the state agency with individuals and organizations within the framework of administrative procedures for the provision of public services, and in fact indicates the "client" relationship between the state, represented by the relevant state agency and citizens and organizations.

The purposes of standardization can be coined from Federal Law № 210-FZ and Resolution of the the Russian Federation`s Government dated 16 May 2011 № 373 «On preparing and approval administrative

[1] *Федеральный закон об организации предоставления государственных и муниципальных услуг 2010*. Собрание законодательства РФ, 31, 4179.

regulations on execution of the state functions and administrative regulations for public services»[1] and related administrative regulations governing procedures for the provision of public services, among which are the following: improving the quality of provision public services and the quality of such services; rational utilization and economy of material and human resources; rational organization of transactions in the context of the interaction of executive authority and the citizens and organizations.

The purpose of standardization of public services is the reduction of transaction costs incurred by citizens and organizations in cooperation with authorities and officials.

The concept of transaction costs appears to be promising for the purpose of administrative and legal regulation of the interaction of the executive authorities with citizens and organizations. Under the transaction costs shall be understood the costs of both parties to the interaction itself, which may have an organizational or financial statement. As part of the transaction costs and the need to fulfill the obligations established in the framework of the interstation as regulated by the corresponding norms. Retrenchment on transaction costs allows to interact more effectively.

The question optimization of transaction costs can be discussed in the context of improving the quality of administrative procedures, which represents one of the teleological foundations of administrative regulations and suggests the need to streamline administrative procedures (actions), the elimination of redundant administrative procedures (actions), the reduction of the period of performance of public functions and the provision of public services, as well as the due date of certain administrative procedures (actions) in the framework of these shares; establishment of specific procedures on accountability of the public officials of the authorities for failure to comply with regulatory requirements in the performance of administrative procedures (actions).

As indicated in the Concept of administrative reform, outsourcing can improve the efficiency of the administrative processes and grant a possibility for better control on costs of its activity as well as to focus attention of the executive on the core functions, improve service quality and ensure the availability of new technologies to reduce capital costs, reduce the number of administrative staff, that altogethers will lead to significant savings of the budget.

Outsourcing as a mechanism for removing certain activities beyond the powers of the executive branch through contracts with outside

[1] *Постановление о разработке и утверждении административных регламентов исполнения государственных функций и административных регламентов предоставления государственных услуг 2011* (Правительство Российской Федерации). Собрание законодательства РФ, 22, 3169.

performers (outsourcers), possessing the necessary basic organizational, human, financial, material and technical conditions on a competitive basis is one of the conditions for optimization of functions of executive authorities.

The doctrine presents the view of impossibility of outsourcing as the way of delegating of functions, as it does not correspond to the idea of keeping the state functions in the public jurisdiction. Accordingly, outsourcing should be correlated with the concept of redistribution of competence in public administration, which may be expressed, including in the form of their delegation. In this context, outsourcing can be understood as a way to establish the competence of a public authority, that is to delegate (transfer) the powers within the individual functions to other organizations that do not have the status of bodies of state power and local self-government[1]. At the same time, as noted by Yu. Tikhomirov, maintenance of outsourcing is one of the ways to «reset» state functions that should not reduce the level of their performance[2].

Several authors have invoked the impossibility of outsourcing on the functions of the executive power (as opposed to public services). In particular, the A.V. Sharoff suggested that outsourcing shall include the functions of monitoring the status of a particular sector of public relations, conducting scientific research, management of inventories, inventories of non-supervisory functions, IT. But the power functions can not be outsourced[3]. However, in this case, distinction between the concepts of public functions and public services can not be traced, and the limits of the state functions are not taken into account.

International experience shows that outsourcing allows an effective control of the costs of the executive authorities and makes it possible to focus attention of the executive on the core activity, improve the quality of public services, to ensure the availability of modern technology performance of public functions and public services along with not the least achievement of budgetary savings.

Currently we can state the process of formation of the new for the Russian legal system Institute of RIA takes place; this element belongs to the overall mechanism of the creation of the normative act and its

[1] Петров, М.П. (2007). *Аутсорсинг в системе средств административной реформы на региональном уровне: теория, правовое регулирование, организационно-практические рекомендации*. Саратов: Изд-во ГОУ ВПО «Саратовская государственная академия права», 111-125.

[2] Тихомиров, Ю.А. (2007). Централизация и децентрализация: динамика соотношения. *Журнал российского права, 2.*

[3] Тихомиров, Ю.А. (2007). Централизация и децентрализация: динамика соотношения. *Журнал российского права, 2.*

application. At the same time there are still no integrated system of research concepts, the nature and content of this legal institution, as well as no defined place in the technology of the law creation and its impact on provorealizatsiyu, in particular law enforcement, is unclear.

Regulating effect is measured by the objectives, providing for at least minimum level of administrative and economic costs to ensure the proper functioning of the controlled system. It is obvious that the accepted model of regulation, as well as subsequent changes within can lead to absolute benefits or, conversely, to the increased costs in the socio-economic component of the controlled system, which causes the need for continuous assessment of the positive and negative effects of regulation, as well as monitoring changes in the adopted model of regulation. Accordingly, the regulatory impact assessment is intended to identify the costs and benefits, as well as create alternative models of effective implementation of public policy objectives.

The doctrine of the Russian law pinpoints the foundations and prerequisites for the formation of a national model of RIA in the context of research on the effectiveness of law (the law, regulations, enforcement legislation). Design of the efficiency is generally based on the ratio between the actual achieved, the actual result and the purpose for the attainment of which was adopted by the appropriate regulatory model. Specialists put forward different approaches to determine the efficacy and methods of evaluation, however, a single integrated method has not been proposed.

At present the formation of the Institute of RIA is performed both in terms of legal and regulatory component, and of the institutional component.

The institutionalization of RIA is carried out by the Ministry of Economic Development of the Russian Federation. In 2011, the Advisory Council on Regulatory Impact Assessment at Ministry of Economic Development of Russia was organized. Organizational and technical support activities of the Advisory Board is entrusted to the Department of Regulatory Impact Assessment of the Ministry of Economic Development of Russia[1].

Within the framework of the Russian legal system, we can speak of the successive formation of legislation in the field of RIA and examination of the normative acts.

[1] *Приказ об образовании Консультативного совета по оценке регулирующего воздействия при Министерстве экономического развития Российской Федерации 2011.* (Минэкономразвития РФ). Документ опубликован не был. Доступ из СПС КонсультантПлюс.

The basics of the Institute RIA correlate to the Constitution of the Russian Federation. In particular, in this context it should be mentioned constitutional provisions such as the recognition of the supreme value of the rights and freedoms of individuals in relation to their direct action that determine the meaning, content and application of laws, the activities of the legislative and executive authorities, local self-government and guaranteed by law; unity of economic space, free movement of goods, services and financial resources, support for competition and freedom of economic activity; state compensation for damages caused by unlawful actions (or inaction) of state authorities or their officials.

Conduct of the regulatory impact assessment is provided by the Rules of the Government of the Russian Federation[1], as well as Regulations on preparation of normative legal acts of the federal executive bodies and their state registration[2].

Legal regulation of RIA currently operates at a level of substatutory lawmaking. Regarding the latter it can be said with certain reservations about different stges. In addition, the actual RIA is linked to the examination of normative legal acts that within the domain of RIA is in fact the RIA itself.

It seems that this is a preliminary (preparatory) stage of the legal model of RIA`s formation that has been reflected, in particular, in the Guidelines for the development of procedures for preparation and approval of the administrative regulations` performance with regard to state functions and the provision of public services[3] by the executive authorities of subjects of the Russian Federation that apply for the expertise of the effects of administrative regulations` implementation, as well as the Government of Russian Federation Resolution of May 16, 2011 № 373 «On preparing and approval administrative regulations on execution of

[1] *Постановление о Регламенте Правительства Российской Федерации и Положении об Аппарате Правительства Российской Федерации 2004.* (Правительство РФ). Собрание законодательства РФ, 23, 2313.

[2] *Постановление об утверждении Правил подготовки нормативных правовых актов федеральных органов исполнительной власти и их государственной регистрации 1997.* (Правительство РФ). Собрание законодательства РФ, 33, 3895.

[3] *Рекомендации по разработке порядка разработки и утверждения исполнительными органами государственной власти субъектов Российской Федерации административных регламентов исполнения государственных функций и предоставления государственных услуг 2010.* (Одобрены Правительственной комиссией по проведению административной реформы 23 ноября 2010 г. № 109). Документ опубликован не был. Доступ из СПС КонсультантПлюс.

the state functions and administrative regulations for public services»[1], according to which the projects of regulations are subject to an independent expertise. The subject to an independent expertise of the draft regulation is the assessment of the possible positive effects, as well as the possible negative consequences of the implementation of the provisions of the draft regulations for individuals and organizations.

In a system with proper RIA there can be seen certain types of expertise of the normative regulations, in particular, the examination of normative legal acts of the federal executive bodies in order to identify the provisions that unduly impede the conduct of business and investment, and on amendments to certain acts of the Government of the Russian Federation which is carried out by the Russian Ministry of Economic Development. The latter has issued the Order of November 9, 2011 № 634 «On approval of the expertise of legal acts of the federal executive bodies in order to identify the provisions that unduly impede the conduct of business and investment»[2].

In fact, the active formation of the Institute of RIA in the Russian legal system is carried out since 2012. The first document on the RIA can be ctraced back to the Government Resolution dated May 2, 2012 № 421 «On measures to improve the drafting the normative legal acts of federal executive bodies, establishing mandatory requirements that does not belong the sphere of technical regulation». This document regulated the procedure of non-statutory act drafting of the federal body of executive power, imposing mandatory requirements that provide for public opinion and peer review of the draft, as well as the conclusion of the regulatory impact assessment of the draft. In the context of the Decree № 421 public discussion, expert assessment and regulatory impact assessment sare the independent stages of general procedure for the preparation of a draft law. In fact, justification of the project included the provisions specific to the regulatory impact assessment. The abovementioned Decree lost its force on July 1, 2013 in connection with the publication of the Decree of the Government of the Russian Federation of December 17, 2012 № 1318.

The next documents that should be considered is the Presidential Decree of May 7, 2012 № 601 «On main directions of improving the

[1] *Постановление о разработке и утверждении административных регламентов исполнения государственных функций и административных регламентов предоставления государственных услуг 2011.* (Правительство РФ). Собрание законодательства РФ, 22, 3169.

[2] *Приказ об утверждении Порядка проведения экспертизы нормативных правовых актов федеральных органов исполнительной власти в целях выявления в них положений, необоснованно затрудняющих ведение предпринимательской и инвестиционной деятельности 2011* (Минэкономразвития РФ). *Бюллетень нормативных актов федеральных органов исполнительной власти,* 51.

system of stsate administration»[1], according to which up to 1 January 2013 the implementation of measures aimed at the further improvement and development of the Institute of Regulatory impact of draft regulations must be improved. The Decree № 601 can be seen as a policy document on RIA.

Pursuant to the Decree № 601 the Government Resolution of December 17, 2012 № 1318 «On the procedure of regulatory impact assessment of draft regulations, draft amendments to the draft federal laws and draft decisions of the Council of the Eurasian Economic Commission, and and on amendments to some acts of the Government of the Russian Federation by the federal bodies of executive power» was issued[2]. The Resolution № 1318 has stated goals and base RIA.

In accordance with the said Resolution the RIA draft acts is carried out in respect of acts regulating relations in the organization and implementation of state control (supervision), the relationship for the collection of taxes and fees, matters arising in the implementation of the tax audit, the appeal of tax authorities, actions (inaction) of their officials and the prosecution of tax offenses, the relationship in the establishment, application and enforcement of mandatory requirements for products or related processes of design (including research), manufacturing, construction, installation, commissioning, operation, storage, transportation, marketing and utilization, performance of works and rendering of services in the field of procedures and rules governing the customs affairs, in conformity assessment and safety of production processes. Projects such acts shall be made to the Government of the conclusion of the RIA, the Ministry of Economic Development of the Russian Federation.

In addition, the drafts of the acts regulating relations of business entities or their relationship with the state, as well as influencing the macroeconomic indicators of the country's development, is planned to obtain a conclusion of the Ministry of the Economic Development of Russia in order to assess the impact of the relevant decisions on macroeconomic indicators and their implications for business entities. This conclusion is not designated as an RIA, but in fact, in the context of understanding the RIA, we are talking about it, at least one of the variants of this evaluation.

[1] *Указ об основных направлениях совершенствования системы государственного управления 2012* (Президент РФ). Собрание законодательства РФ, 19, 2338.

[2] *Постановление о порядке проведения федеральными органами исполнительной власти оценки регулирующего воздействия проектов нормативных правовых актов, проектов поправок к проектам федеральных законов и проектов решений Совета Евразийской экономической комиссии, а также о внесении изменений в некоторые акты Правительства Российской Федерации 2012* (Правительство Российской Федерации). Собрание законодательства РФ, 52, 7491.

Resolution № 1318 was a condition for adoption of the Order of Ministry of Economic Development of Russia from May 27, 2013 № 290 «On Approval of the consolidated report on the conduct of regulatory impact assessment, form conclusions about the regulatory impact assessment, regulatory impact assessment methodologies»[1].

A set of normative legal acts in the field of RIA also includes acts of the subjects of the Russian Federation and local self-government. In particular, the Federal Law of October 6, 1999 № 184-FZ «On general principles of organization of legislative (representative) and executive bodies of state power of subjects of the Russian Federation»[2] establishes that the normative legal acts of the Russian Federation, of the issues affecting business and investment in order to identify provisions that unnecessarily impede the implementation of business and investment activities are subject to the examination carried out in accordance with the procedure established by normative legal acts of the Russian Federation. Methodological support for the regulatory impact assessment and examination regulations, including the development of guidelines for the implementation of the procedures and arrangements for regulatory impact assessment in the subjects of the Russian Federation shall be exercised by the ,federal executive body empowered by the Government of the Russian Federation.

Currently such an empowered bodu is the Ministry of Economic Development of Russia, by the Order of whoch Guidelines for the implementation of the procedures and arrangements for regulatory impact assessment in the subjects of the Russian Federation were approved[3].

Federal Law of October 6, 2003 № 131-FZ «On General Principles of Local Self-Government in the Russian Federation»[4] established the municipal legal acts affecting matters of the business and investment activities in order to identify provisions that unnecessarily impede the

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[1] *Приказ об утверждении формы сводного отчета о проведении оценки регулирующего воздействия, формы заключения об оценке регулирующего воздействия, методики оценки регулирующего воздействия 2013* (Минэкономразвития России). <http://regulation.gov.ru> (2013, май, 27).

[2] *Федеральный закон об общих принципах организации законодательных (представительных) и исполнительных органов государственной власти субъектов Российской Федерации 1999* (Правительство Российской Федерации). Собрание законодательства РФ, 42, 5005.

[3] *Приказ об утверждении Методических рекомендаций по внедрению процедуры и порядка проведения оценки регулирующего воздействия в субъектах Российской Федерации 2012* (Минэкономразвития России). Нормирование в строительстве и ЖКХ, 5.

[4] *Федеральный закон об общих принципах организации местного самоуправления в Российской Федерации 2003* (Правительство Российской Федерации). Собрание законодательства РФ, 40, 3822.

implementation of business and investment activities, subject to examination, carried out by local authorities in the manner prescribed by the municipal regulatory legal acts in accordance with the laws of the Russian Federation.

In a system with proper RIA certain types of examination regulations can be seen. In particular, there is an examination of normative legal acts of the federal executive bodies in order to identify their provisions that unduly impede the conduct of business and investment, and on amendments to certain acts of the Government of the Russian Federation which is held by Russian Ministry of Economic Development. The latter has issued the Order of November 9, 2011 № 634 «On approval of the expertise of legal acts of the federal executive bodies in order to identify their provisions that unduly impede the conduct of business and investment».

In general, current approaches to delagation of the legal administrative processes are characterized by a number of provisions:

1. The legal structure of transactional control administrative processes was formed as a way of formalizing the interaction between state and society in the framework of administrative procedures such as standardization, regulation, delegation of authority, regulatory impact assessment. The concept of transaction control can be incorporated in the context of administrative law in the formalization of the external and intra-interaction in the execution of the state imposed obligations to society.

2. To date, the development and implementation of the system, the principles and mechanisms of outsourcing administrative processes in the territory of the Russian Federation have not been implemented, which prevents the optimization of administrative processes, increase their efficiency.

3. RIA prvides for a mechanism for preventing the emergence of new administrative barriers to business and other economic activities. In this case, RIA is linked to certain types of examination regulations, which could be attached directly to an element of RIA. RIA is a manifestation of an empirical approach to management decisions (the decision is based on an analysis of the evidence, determine the parameters of action in accordance with prescribed criteria). The basis is the systematic study of the potential impact of successive decisions of the public administration, as well as the distribution of the load between its actors. Russian RIA model focuses on a preliminary assessment of the effects of actually losing or fixing the current fragmented and subsequent evaluation. Last, but not least the emphasis lays on the potential costs of the actors of economic activity.