



September 2015

The RF Code of Administrative Court Procedure (the “RF CACP”) goes into effect as of September 15, 2015).

The new procedural law establishes specialized procedures for trial of administrative cases which until now have been considered in accordance with the procedure established by the RF Civil Procedure Code (the “RF CPC”). Provisions of the RF CPC, that governed proceedings in legal disputes arising out of public legal relationships, examination of requests for award of compensation for violation of the right to a trial and to enforcement of a court ruling within a reasonable time and other categories of disputes become legally invalid.

Below are some of the most important, in our opinion, provisions of the RF CACP.

RF CACP. Some categories of cases

As of September 15, 2015, among others, the following topical categories of cases will be tried in accordance with the rules of administrative court proceedings by courts of general jurisdiction and the RF Supreme Court (the “RF SC”):

- Contesting of normative legal acts;
- Contesting of resolutions, actions (inactions) of governmental authorities, officials (eg. contesting actions acts of a bailiff, contesting of State Labor Inspection’s orders);
- Contesting of determined cadastral value;
- Contesting of resolutions, actions (inactions) of non-profit organizations vested with certain powers of the government or other public powers, including those of self-regulating organizations;
- Discontinuation of activity of mass media;
- Award of compensation for violation of the right to a trial within a reasonable time of cases tried by courts of general jurisdiction, or the right for execution of a judgement of a court of general jurisdiction within a reasonable time;
- Other categories specified in Art. 1 of RF CACP.

Accordingly, starting from September 15, 2015 pending cases, appeals, cassation appeals, supervisory appeals, and special appeals, relating to the above referenced categories, that have not been examined before September 15, 2015, will be examined in accordance with the rules of RF CACP.

Most important of Administrative Court Procedure

Administrative Court Procedure, to the extent of staging and general principles of organization of the procedure, is similar to proceedings in civil causes. However, unlike the civil procedure, RF CACP provides for the additional requirement where under a party to the proceedings may be represented only by persons with higher education in law. A representative is to provide the court with evidence of his/her higher education in law in addition to the documents evidencing his/her status and powers.

By analogy with the civil procedure, powers of a representative to handle a matter in court is to be set forth in a power of attorney. A power of attorney issued by a company or an individual entrepreneur is to be signed by the head of the company or the individual entrepreneur and bear a seal.

According to RF CACP, a power of attorney, along with granting of the right to take main procedural actions on behalf of the grantor, is to specifically grant power to take such actions at attorney's own discretion or with grantor's sanction.

In view of enactment of RF CACP, AGP recommends to proactively address the new requirements of the administrative court procedure, introduced by RF CACP, related to company's representatives, in particular requirements to the effect that they must have higher education in law and that their powers are to be duly documented and requirements related to content of powers of attorney.

Limitation periods for legal recourse and other procedural time limits, set by RF CACP, are shorter than those set for civil cases and depend on the category of the dispute underlying the administrative action, on type of the action taken, type of the judicial act. Upon that, limitation periods for legal recourse vary even within one and the same category of disputes. For example, as a general rule, an administrative claim challenging resolutions, actions (inaction) of governmental authorities, officials, government or municipal official, etc. may be filed with a court within three months of the day on which an individual, organization or another person became aware of violation of their rights, freedoms and legitimate interests. However, an administrative claim for invalidation of resolutions, actions (inaction) of a bailiff is to be filed with a court within ten days of the day on which an individual, organization or another person became aware of violation of their rights, freedoms and legitimate interests.

If the statute of limitation deadline is missed, this serves a valid ground for a court's order to dismiss the administrative action without consideration on the merits, unless the procedural period has been extended by the court. RF CACP also specifies cases in which procedural periods are not extended irrespective of reasons for missing such deadlines. In particular, in some cases time limit for filing of an administrative claim for dissolution of an electoral commission, referendum commissions is not subject to extension.

Provisions of RF CACP elaborate on a number of procedural instruments available to parties involved in proceedings. Specifically, administrative legal procedure directly provides for the right of parties involved in proceedings to request for non-admission of evidence and exclusion thereof from the administrative case file. RF CACP does not make filing of such a request conditional upon allegation of falsity of evidence and conducting of

a relevant expert examination, thus considerably extending procedural opportunities available to parties.

One more useful instrument available to an administrative claimant may be the right to request, irrespective of the category of the matter, for examination of the dispute in summary (written) proceedings. If an administrative defendant does not raise an objection and summary proceedings in that case are not expressly prohibited by provisions of RF CACP, the case will be tried by the court solely without summoning the parties. Where duly notified parties in proceedings have not ensured appearance in court, the summary proceedings may also be applied. In such a case no request of the administrative claimant or consent of the administrative defendant is required.

Along with usual methods of giving of a court attendance notice by a registered letter with return receipt requested, by servicing of a court summons with notification of delivery, a telephone message or cable, facsimile or other methods of delivery or communications, allowing the court to be certain that the addressee has received the court attendance notice or summon, RF CACP also provides for new methods of giving of notices to parties involved in the proceedings. Specifically, now it is possible to give a notice of the scheduled date of a court hearing to a party involved in the proceedings, subject to its consent, by sending it an SMS or an e-mail notice or summon. Consent of a party involved in the proceedings to receiving of a notice by an SMS message or by e-mail is to be evidenced by a written document signed by such party, which should contain details of the party, its consent to receive notices in this manner, its mobile phone number or e-mail address, to which a notice should be sent. A written court notice addressed to an individual involved in the proceedings, in case he/she is absent from the place of his/her residence, may be sent to the place of his/her employment, and a court notice addressed to an organization may be sent to the address of its representative office or branch, if they are set out in the constitutive documents.

Administrative court procedure also provides for the possibility of sending of a writ of execution for enforcement by court itself in the form of an electronic document, for filing of an administrative claim by completion of an electronic form on the court's website. The new options, if properly implemented, can expedite and facilitate examination of a matter and enforcement of a court's order, especially after enactment of electronic support of court procedures and electronic signature laws.

Unlike the civil procedure, administrative procedure is based on the "court's active role" principle. In administrative proceedings, a court has broad discretionary rights, including the right to use its discretion to summon a person as a co-defendant in proceedings, not to accept an administrative claimant's withdrawal of the claim, where this is contrary to the law or violates others' rights. For similar reasons the court has the right to not approve parties' settlement agreement. In such cases the court continues trial of the administrative case on the merits.

RF CACP provides for new measures of procedural constraints on parties involved in legal proceedings such as limitations on oral argument of a party to proceedings or denial of the right to speak. Setting a legal framework for the above measures of procedural constraints, which judges had been readily inclined to apply, irrespective of the court

instance or jurisdiction, highlights the importance of engaging of representatives having higher education in law who have gained extensive litigation experience.

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This overview is not intended to provide legal advice and/or any other form of legal assistance that may be rendered by attorney-at-law to client. The exclusive purpose of this review is to make aware its recipient of certain recent changes in Russian laws and regulations, and of the development of law application practice. Any use of the information contained herein for particular purposes may require more detailed case-specific explanations. Further information can be obtained via +7 (495) 933 75 67 or office@agp.ru



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