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Judicial regulatory control in the field of tariff regulation

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ANNOTATION
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ANNOTATION

Relevance of the topic of scientific research. Utilities are the part of the life support infrastructure of any settlement, city, state. The safety, standard of living and well-being of citizens directly depend on the reliability and quality of the functioning of the system for providing the population with communal resources.

Market mechanisms for price regulation do not work in the field of utilities, and at the same time producers and suppliers of utilities generally appear as natural monopolies. In order to ensure the availability of utilities for all segments of the population without prejudice to the economic activity of resource-supplying organizations, the state regulates tariffs and prices for these resources by adopting by regulatory bodies regulatory tariff prescriptions. The high degree of monopolization of this sphere of economic activity requires state regulators to comply with the basic principles of tariff regulation, which include: ensuring the rule of law and transparency in setting tariffs for utilities and services, maintaining a balance between the economic interests of regulated entities and the interests of consumers, as well as setting prices (tariffs), based on their economic feasibility. However, in practice, the regulatory authorities do not always manage to comply with the above principles, and therefore a legal conflict arises, and the parties of such a conflict apply to the court for its resolution.

Judicial control over regulatory legal acts that establish tariffs and prices is one of the manifestations of the control function of the judicial authority and is aimed at maintaining the rule of law in the field of tariff regulation, as well as protecting the rights, freedoms and legally protected interests of consumers and producers (suppliers) of utility resources and services. The possibility of an interested party to appeal against regulatory legal acts taken by public authorities, local authorities and their officials is an integral part of the right to a fair trial.

Recognition of regulatory legal acts that establish tariffs as invalid by court has an impact on an indefinite number of subjects and is of significant importance

both for producers and suppliers of utilities, and for a wide range of consumers, and also affects public interests.

Cases on challenging tariff prescriptions make up a significant part (30% in 2018, 22% in 2019, 45% in 2020) in the general structure of cases on challenging regulatory legal acts considered by courts of general jurisdiction¹.

According to the statistics presented on the official websites of the courts², the supreme courts of the republics, regional and district courts, courts of autonomous districts and autonomous regions, courts of federal cities considered more than 2,5 thousand cases as first instance courts during the period from 2015 to 2021. At the same time, there is a significant increase in the number of cases in this category: from 2015 to 2021, their number increased by 62%³.

Taking into account the social significance of cases on challenging regulatory legal acts setting tariffs (prices) for resources, and their public-law nature, it is extremely important to timely analyze the reasons for the increase in the number of cases of this category considered by the courts, as well as the reasons for cancellations in the appeal and cassation instances adopted judicial acts. The formation of uniform and predictable judicial practice in the application of the norms of substantive and procedural law when considering such cases is also of particular importance.

Provided by the current Russian legislation procedural order of legal protection of citizens and organizations from the action of illegal regulatory legal acts setting tariffs and prices, and the adverse consequences of their application, is a set of procedural rules aimed at the legal and timely resolution of contradictions in the regulatory legal system by courts, and also to ensure the right to judicial protection against illegal regulations in this area. This procedural order is far from

¹ The calculation of the percentage was made on the basis of the Consolidated statistical information on the activities of federal courts of general jurisdiction and justices of the peace, published on the official website of the judicial department under the Supreme Court of the Russian Federation URL: <http://www.cdep.ru/index.php?id=79> (date of appeal 12/23/2020).

² Statistical data were calculated by the author on the basis of data presented on the official websites of the supreme courts of the republics, regional and district courts, courts of autonomous districts and autonomous regions, courts of federal cities.

³ Cases on challenging regulatory legal acts of representative bodies of municipalities are considered by district courts as a court of first instance and were not included in the statistics presented above.

ideal and contains a number of gaps and contradictions that require resolution either at the legislative level or at the level of corresponding clarifications of the highest courts.

Numerous changes made to procedural legislation over the past few years indicate that currently there is a search for the most optimal procedural orders (forms) of judicial regulation that will correspond to the goals and objectives of justice at the present stage. In this regard, scientific research in this area seems to be relevant and demanded.

The degree of scientific elaboration of the research topic. The problems of legal regulation and the implementation of judicial control over the legality of regulatory legal acts setting tariffs have not previously become the subject of a special comprehensive study in procedural science.

Certain aspects of judicial control in the field of tariff regulation were touched upon in scientific research devoted to general issues of judicial control in the civil process (*S.V. Nikitin*), as well as in research papers which dealt with procedural peculiarities of court consideration of cases on challenging regulatory legal acts (*I.V. Antonov, O.A. Bek, A.A. Gusev, V.A. Kirsanov, A.A. Solovyev etc.*).

The judicial review of the legality of regulatory legal acts was considered by scientists - proceduralists in the course of scientific analysis of proceedings in cases arising from public legal relations (*A.T. Bonner, Yu.A. Popova, L.V. Tumanova, S.L. Simonyan, etc.*)

The issues of the legality of the normative regulation of relations in the field of energy supply were considered in the works of civil scientists (*M.M. Agarkov, A.K., A.P. Vershinin, Zakharov, S.M. Korneev, E.O. Mamedov, E.L. Osipchuk, B.M. Seynaroiev, V.Yu. Sinyugin, A.M. Shafir, S.B. Yakovlev and others.*).

The subject of judicial control over regulatory legal acts was touched upon by the authors in studies on the theory of state and law when researching the problems of exercising the control function of the judiciary and the role of courts in the system of checks and balances (*B.A. Edidin, V.V. Ershov, R. 3. Livshits, V.M. Lebedev, A.V. Molotov, V.S. Nersisyan, Parshina T.V. and others*), on

constitutional law in the framework of the study of constitutional proceedings (*V.I. Anishina, N.V. Vitruk, G.A. Gadzhiev, L. V. Lazarev, O.E. Kutafin, V.V. Nevinsky, V.A. A.L. Burkov, P.P. Serkov and others*). Also, normative control was considered as a way of resolving constitutional and legal disputes (*E.K. Zamotaeva*) and the implementation of constitutional and legal responsibility (*N.I. Yaroshenko*).

The purpose and objectives of the scientific research. The purpose of the dissertation research is a comprehensive analysis of the institution of judicial control over regulatory legal acts that establish tariffs (prices), its legal nature, as well as determination of the optimal procedural order (form) of challenging regulatory tariff prescriptions.

The achievement of the designated purpose was facilitated by the resolution of the following **objectives of the dissertation research**:

- 1) to examine the legal nature of acts setting tariffs as a subject of judicial control;
- 2) to identify objective patterns that determine the procedural order (form) of judicial control in the field of tariff regulation;
- 3) to determine and examine the current procedural order of consideration by courts of general jurisdiction of cases on challenging regulatory legal acts that establish tariffs, and to make proposals for its optimization;
- 4) to identify the procedural features of the consideration of cases by courts of general jurisdiction on challenging regulatory tariff prescriptions, namely:
 - to determine the grounds for judicial review of regulatory legal acts that establish tariffs (prices);
 - to examine the issue of the possibility of challenging invalid and not entered into force regulatory tariff prescriptions;
 - to determine the parties, participating in judicial challenging of normative legal acts in administrative proceedings;
 - designate the subject of proof in cases of challenging regulatory legal acts that establish tariffs and prices;

-demonstrate the specifics of proof and the use of certain means of proof in cases of the considered category;

- to substantiate the presence of the specifics of the content of the court decision in cases of the considered category;

- designate the possible substantive and procedural legal consequences of the recognition of the regulatory legal act establishing the tariff (price) as invalid;

- to examine the peculiarities of the execution of judicial acts in considered category of the cases;

5) to analyze the features of indirect judicial control over the regulatory tariff acts carried out by commercial courts and courts of general jurisdiction;

6) to formulate recommendations for improving legal regulation and practice of judicial challenging of regulatory legal acts that establish tariffs and prices for utilities.

The **object** of the research is the procedural legal relations that develop in the field of consideration by courts of general jurisdiction of cases on challenging regulatory legal acts that establish tariffs (prices) and standards for the consumption of communal resources (electricity, hot and cold water supply, sewerage, heat supply, etc.), as well as acts, changing or canceling these tariffs (hereinafter – *regulatory legal acts setting tariffs; tariff acts; tariff solutions; tariff prescriptions*).

The **subject** of the research is theoretical ideas about judicial control over regulatory legal acts in the field of tariff regulation, as well as legal norms regulating relations in the field of organization and functioning of judicial control over the legality of established tariffs, legal positions of higher courts and judicial practice on the implementation of regulatory control in the field of setting tariffs, a set of organizational and legal measures aimed at increasing the efficiency of judicial regulation in this area.

Research methodology. The dissertation research is carried out on the basis of scientific methods of cognition. The methodological basis of the research is a set of general scientific and private scientific methods of cognition of phenomena and processes, including: dialectical, formal logical, descriptive and historical methods,

comparative legal method, methods of generalization and abstraction. In addition, special methods were used: the method of analyzing scientific concepts, current legislation and the practice of its application, as well as methods of systemic, complex and statistical analysis (analysis of statistical data and judicial statistics).

The theoretical basis of the dissertation research. The theses of such scientists as S.S. Alekseev and V.I. Anishina, S.F. Afanasyev, D.N. Bakhrakh, O. A. Beck, A. T. Bonner, A.L. Burkov, N.V. Vitruk, R.E. Gukasyan, M.A. Gurvich, A.A. Gusev, V.V. Ershov, G.A. Zhilin, V.M. Zhuikov, S.K. Zagainova, E.K. Zamotaeva, Zakharova Zh.A., N.B. Zeider, A.V. Ilyin, A.F. Kleinman, V.A.Kirsanov, M.N. Marchenko, I.R. Medvedev, V.S. Nersesyants, S.V. Nikitin, M. S. Nosenko, G. L. Osokina, I. A. Prikhodko, I. V. Reshetnikova, P. P. Serkov, T.V. Sakhnova, A.A. Solovyev, L.A. Terekhova, V.V. Terekhov, M.K. Treushnikov, L.V. Tumanova, D.A. Fursov, N.A. Chechina, D.M. Chechot, A.N. Shmelev, V.F. Yakovlev, V.V. Yarkov, V.N. Yatsenko and others were used in the research presented.

Due to the fact that legal acts setting tariffs and prices are closely related to the activities of monopolies, and also due to the fact that tariff regulation is the subject of civil, financial and antimonopoly law, theses on state regulation of prices and tariffs were also studied in present research. Among such studies we should mention: B.C. Belykh, S.I. Vinichenko, V.E. Esipov, J.A. Zakharova, T.G. Morozova, A.N. Ryakhovskaya, I.K. Salimzhanova, S.A. Svirkov and others.

The regulatory framework of the dissertation was formed by international legal acts, the Constitution of the Russian Federation, federal constitutional laws, codified regulatory legal acts, federal laws and regulations.

The empirical basis of the study were the judgements and decisions of the Constitutional Court of the Russian Federation, acts of official interpretation of the Supreme Court of the Russian Federation and the Supreme Court of Arbitration of the Russian Federation (including acts that have lost legal force), judicial practice of federal courts of general jurisdiction and arbitration (commercial) courts.

Scientific novelty. This scientific research is the first comprehensive study of the judicial control over regulatory legal acts in the field of tariff regulation. The presented study is aimed to develop of general theoretical scientific provisions on judicial control over regulatory legal acts. This dissertation research made it possible to determine the legal nature of regulatory legal acts that establish tariffs (prices, consumption standards) for utilities, analyze the legal nature of a legal conflict arising in the field of tariff regulation, and also determine the most optimal procedural form for resolving conflicts in this area. On the basis of the analysis, certain proposals were formulated to optimize the procedural order (form) of court consideration of cases on challenging regulatory tariff prescriptions.

Based on the results of the study, the following positions are submitted for approval:

1. Judicial regulatory control in the field of tariff regulation is a procedural activity of courts aimed at verifying the legality of regulatory legal acts establishing tariffs (prices, consumption standards), carried out within the framework of a special procedural form (direct regulatory control), as well as carried out by courts of general jurisdiction or commercial courts when considering other cases not related to the challenge the normatively established tariffs, during which the court verifies the legality of the regulatory tariff prescriptions to be applied (indirect regulatory control).

2. The subject of judicial regulatory control in the field of tariff regulation are legal acts issued by public bodies and their officials setting or changing tariffs (prices, consumption standards) for the supplied resources or services.

Acts establishing tariffs and prices are of a regulatory nature, since they are addressed to an indefinite number of subjects and are intended for repeated application. The fact that tariff prescriptions are often set for specific organizations supplying utility resources (services) and have a certain period of validity does not affect their normative character (regulatory character).

3. In the basis of cases on challenging regulatory tariff prescriptions is a legal conflict arising in the field of public legal relations regarding the approval of tariffs

for utilities (services) by the regulatory body. The public-legal nature of this conflict, as well as the nature of the substantive legal relations developing between the participants in the proceedings, justifies the attribution of cases of the considered category to administrative proceedings.

4. The optimal procedural form (order) of proceedings in cases of challenging regulatory tariff prescriptions is a direct subsequent judicial control, which provides for a court to check the established tariff act for legality (both in form and content) and for economic validity, upon condition that the act was obligatory previously challenged before the competent administrative body.

The proposed procedural procedure is the most effective form of conflict resolution in the field of tariff regulation, since its main institutions correspond to the main elements of the legal conflict, to which the author refers: the subject of the dispute itself, which determines the legal nature of the conflict, the specifics of the sphere of legal relations in which a legal conflict arises, the subjects of disputed legal relations and their relationship, as well as the grounds for the emergence, modification and termination of disputed legal relations.

This procedural form makes it possible to effectively protect not only subjective legitimate interests, but also to protect public interests, legality and law and order in the field of tariff regulation.

5. The pre-trial procedural order for considering cases on challenging regulatory tariff prescriptions is an administrative procedure aimed at prompt and effective resolution of legal conflicts in the field of tariff regulation and timely protection of violated or disputed rights of citizens and organizations, and is considered by the dissertation candidate as a condition for the application of a judicial form of protection.

6. Evidentiary activities of the parties in cases of challenging tariff regulatory legal acts has specific features, which is conditioned by the need to include the criteria of economic feasibility in the subject of proving of the tariff as an element of the legality of the tariff content.

The necessity to include in the subject of proving the economic validity of the tariff (price) is due to the fact that the economic unreasonableness of the tariff, along with the illegality of the tariff prescription, is the basis for recognizing the regulatory legal act establishing it as invalid.

The author has identified a list of necessary (obligatory) means of proof for the considered category of cases.

7. Indirect judicial regulatory control over tariff regulations is a verification (control) activity of the court, expressed in a purposeful assessment of the tariff to be applied for its legality and economic feasibility during the litigation in a particular dispute. The grounds for control over regulatory tariff regulations in the framework of direct and indirect regulatory control coincide.

Recognition of a tariff prescription as illegal within the framework of indirect regulatory control does not exclude it from the sphere of legal regulation, does not impose on the state regulator the obligation to cancel or change an illegal tariff or adopt a substitute act. Uncertainty about the legality of the tariff to be applied when considering a particular case by a court or arbitration court indicates the need to challenge it in the order of direct judicial regulatory control.

Theoretical significance of the research. The conclusions set out in the dissertation research can contribute to the expansion of scientific ideas about the institution of judicial control over regulatory legal acts and become the basis for further research of judicial regulatory control in the field of tariff regulation. The dissertation contains theoretical provisions that allow a systematic and comprehensive approach to the development of issues of legal regulation of the procedure for judicial control over regulatory tariff prescriptions, as well as the study of problems arising in law enforcement practice in the consideration of cases of this category by the courts.

The conclusions, theoretical provisions and proposals for improving the legislation in the field of tariff regulation, proposed in the dissertation, can be used in law-making activities when making changes to the current legislation.

Theoretical conclusions, made in present dissertation, can be used in the educational process in the programs and guidelines for teaching special courses in higher legal educational institutions in the discipline «Administrative proceedings», the special course «Challenging regulatory legal acts in administrative proceedings», as well as in the preparation of educational and practical manuals on the named disciplines.

Practical value of the research. A number of practical proposals were made, aimed at improving the quality of legal regulation of legal proceedings in cases of challenging regulatory legal acts setting tariffs and prices for utilities (resources), as well as increasing the efficiency of the courts of general jurisdiction when considering cases of this category.

The following proposals were made in the dissertation research, substantiating its practical significance:

1. The author substantiates the need to legislate a mandatory pre-trial procedure for challenging regulatory tariff decisions as a condition for going to court and refer the primary consideration of disputes on setting tariffs (prices) to the jurisdiction of the relevant specialized divisions of the Federal Antimonopoly Service. The purpose of securing a mandatory pre-trial procedure is to exclude clearly indisputable cases from judicial jurisdiction, and, as a result, to reduce the burden on the judicial system, as well as to optimize administration in the field of approving utility tariffs.

2. It is proposed, at the level of explanations of the highest judicial instances, to recommend to the courts, when considering cases of challenging regulatory tariff acts, to appoint a forensic examination on the issue of the economic validity of the tariff.

The possibility of involving a specialist in the case for consultations on the economic feasibility of the tariff and other issues requiring special knowledge in the field of tariff regulation is also substantiated.

3. It is necessary to involve a representative of a regional and/or federal regulatory body to participate in the proceedings in cases of challenging regulatory

acts establishing the tariff, along with the prosecutor, to participate in the case as an concerned person and to give an opinion on the case.

4. The norms established by the substitute act adopted by the regulatory body in connection with the recognition of the tariff prescription by the court as invalid can only be applied to relations that have arisen after its adoption. The cost of the resource for the period preceding the adoption of the substitute act should be determined by the court on the basis of the conclusions contained in the court decision, by which the regulatory legal act was recognized as invalid.

5. The procedure for the execution of a judgement on invalidating a tariff act in terms of its publication should provide for specific terms and procedure for the court to send a judgement that has entered into legal force to a print publication or for posting on official websites on the Internet.

It is necessary to legislate the obligation of an authority or it's official, whose regulatory legal act has been declared invalid, to notify the court in writing about its cancellation and the adoption of a substitute act within the period established by law.

6. It seems appropriate that the court, which indicated in the reasoning part of the judgement on the illegality of the tariff prescription to be applied in a particular case, send a copy of the judgement that has come into force to the address of the regulatory body that adopted (issued) such a tariff prescription, with an explanation of the need to bring the tariff prescription in accordance with the current legislation, as well as to the prosecutor's office in order to initiate a procedure for challenging the tariff act within the framework of the procedure for direct regulatory control.

Approbation of research results. The dissertation was discussed and approved at a meeting of the Department of Civil and Administrative Judicial Proceedings of the Russian State University of Justice (Moscow).

The main results of the dissertation research are set out in the articles of the author published in scientific publications recommended by the Higher Attestation Commission of the Ministry of Science and Higher Education of the Russian Federation:

1. Usoltseva Z.A. Several legal consequences of recognition as invalid of a normative legal act establishing tariffs for communal resources // Administrative law and proceedings. 2022. № 4. – pp. 81-84.

2. Usoltseva Z.A. Indirect judicial control over legal acts setting tariffs (prices) // Arbitration and civil process. 2022. № 3. – pp. 28-31.

3. Usoltseva Z.A. Execution of court decisions on the recognition of regulatory tariff prescriptions invalid // Russian Justice (the Higher Attestation Commission review). 2021. No. 10. – pp. 53-58.

4. Usoltseva Z.A. On the issue of the possibility of challenging in court the regulatory tariff prescriptions that have ceased or have not entered into force // Administrator of the Court (the Higher Attestation Commission review). 2021. No. 4. – pp. 23-27.

5. Usoltseva Z.A. Pre-trial procedure for considering disagreements and disputes arising in the sphere of tariffs (prices) regulation // Russian Justice (the Higher Attestation Commission review). 2020. No. 3. – pp. 21-28.

6. Usoltseva Z.A. Extrajudicial order for the collection of compulsory payments and sanctions // Russian Justice (the Higher Attestation Commission review). 2019. No. 6. – pp. 25-31.

7. Usoltseva Z.A. Some problems in determining jurisdiction of cases on challenging regulatory legal acts // Russian Justice (the Higher Attestation Commission review). -2010. No. 3 – pp. 43-48.

Works published in other publications:

1. Judicial control over regulatory legal acts setting tariffs and prices as a means of ensuring the rule of law in the legislative activities of public bodies and officials in the economic sphere // Actual problems of entrepreneurial, corporate, environmental and labor law: monograph: in 2 volumes. I / hole ed. S. D. Mogilevsky, Yu. G. Leskova, O. A. Zolotova, O. V. Sushkova. - Moscow: RG-Press, 2019. - 640 pages (§ 2.1.19 chapter 2 - pp. 299-311).

2. The legal nature of regulatory legal acts that establish tariffs (prices, consumption standards) // Legal acts and legal contracts: problems of theory and

practice: materials of the XV International Scientific and Practical Conference / Ed. V.N. Vlasenko. - M., 2021. 470 p. - pp. 290-298.

The main provisions and conclusions of the dissertation were also set out in the reports made at international and all-Russian scientific and scientific-practical conferences, among which the following can be noted:

1. Report on the topic: «Features of the execution of court decisions in cases on challenging regulatory legal acts, setting tariffs (prices, consumption standards)» at the all-Russian Scientific and Practical Conference «Theoretical and Practical Problems of Intersectoral Interaction of Private and Public Law» (April 27, 2021). CF FGBOUVO Russian State University of Justice, Voronezh)

2. Report on the topic: «The legal nature of regulatory legal acts that establish tariffs (prices, consumption standards)» on XV International Scientific and Practical Conference «Legal Acts and Legal Agreements: Problems of Theory and Practice» (April 20-22, 2021, FGBOUVO Russian State University of Justice, Moscow city);

3. Report on the topic: «The legal nature of an administrative claim challenging a regulatory tariff prescription» at the IV International Scientific and Practical Conference dedicated to the 90-th anniversary of SUI-SGLA (October 3, 2020, FGBOUVO SSLA Saratov);

4. Report on the topic: «Pre-trial administrative procedure for the settlement of disputes related to challenging regulatory legal acts setting tariffs (prices)» at the conference with international participation «Lazarev Readings – 2020» (February 11. – 2020 IGP RAS, Moscow city);

5. Report on the topic: «Judicial regulatory control over the acts setting tariffs (prices) for utilities, as a guarantee of legality in the field of tariff regulation» at the all-Russian scientific and practical round table «Constitutional framework of the organization and activities of public authorities» (December 11 2019, FGBOUVO Russian State University of Justice, Moscow);

6. Report on the topic: «Legal consequences of invalidation of a regulatory legal act establishing tariffs (prices) for utilities» at the VII all-Russian scientific and practical conference with international participation «Limits of legal regulation of

public relations: general theoretical and sectoral aspects» (October 31 - November 1, 2019, Kazan);

7. Report on the topic: «On the legal consequences of recognizing a regulatory legal act as invalid» at the all-Russian correspondence scientific and practical conference «Actual problems of justice in the modern world» (April 29, 2019, UF FGBOUVO Russian State University of Justice, Chelyabinsk);

8. Report on the topic: «Judicial control over a regulatory legal acts setting tariffs and prices as a means of ensuring the rule of law in the legislative activities of public bodies and officials in the economic sphere» at the Scientific and Practical Conference «The 1993 Constitution: Russia's Challenge and the Image of the Future», Dedicated to the 25th anniversary of the Constitution of the Russian Federation (December 5, 2018, Russian Academy of National Economy and Public Administration under the President of the Russian Federation);

9. Report on the topic: «The importance of certain legal positions of the Constitutional Court of the Russian Federation for the practice of consideration by courts of cases on challenging regulatory legal acts» at the all-Russian scientific and practical round table «25 years of the Constitution of the Russian Federation and the main directions of development of the Russian legislation» (December 19, 2018, FGBOUVO Russian State University of Justice, Moscow);

10. Report on the topic: «Problems of judicial challenging of regulatory legal acts that have lost legal force at the time of consideration of the case in court» at the International Scientific and Practical Conference of Students and Postgraduates «Constitutional Framework of Civil Procedure: Current State and Ways of Improvement» (2011, FGBOUVO SSLA, Saratov).

The research results were used by the author in the process of teaching on the course «Administrative Procedure», «Civil Procedure», «Arbitration Procedure» and «Workshop on Civil Law Disciplines» at the Russian State University of Justice (Moscow).

The structure of the dissertation research. The study consists of an introduction, 3 chapters, including 10 paragraphs, conclusion, bibliography and 2 appendices.