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PRINCIPLES OF ADMINISTRATIVE PROCEDURES: COMPARATIVE LAW RESEARCH

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Based on the analysis of the Anglo-Saxon doctrines of "natural justice" and "due process" the author summarizes their limited applicability to the Russian rule of law. The article shows the evolution of all the basic principles of administrative procedures, limits to the scope of their action and the logic of possible evolution in the future.

It is noted that in the absence of a special framework normative legal act – the Law on Administrative Procedures – relevant principles, under the influence of the European tradition of "good governance", "sprout" out of separate laws and court decisions, develop unsynchronized.

The necessity of adoption a sustainable law on administrative procedures, backed by an adequate doctrine, is substantiated

Keywords: administrative procedures, principles of administrative procedures, "natural justice", "due process", "good administration", the principle of proportionality, legitimate expectations, the right to be heard, the justification of an administrative act, law on administrative procedures.

It is difficult to overestimate the importance of legal principles at all stages of legal regulation. Norm-setting, law-enforcement activity of public administration, as well as administrative court procedure is pierced by principles of not material, but crucially important legal "substance". The principles determine the formation of legal system, legal institutes. The principles directly operate within the analogy of law. Application of the principles of law plays a crucial role in the evaluation of other legal phenomena.

Principles of administrative procedures are intended to:

1) often preceding the adoption of certain laws, anticipating the formation of procedures, to "prepare" the rule of law for their appearance, and "hasten" the legislator;

2) to ensure the known universality of the legislation on administrative procedures; at that, it should be born in mind that the action of principles of administrative procedures can go beyond specific law, they are inherently eager to embrace the maximum range of public relations. And this desire is understandable and even fair, because we are not talking about the principles of a law, but the phenomenon that is more or less fully covers the whole system of administrative procedures of various kinds;

3) to help in establishing balance between legal and non-legal foundations of procedures;

4) to balance public and private interests, including protection of powerless persons against possible abuses of the subjects of management, and on the other hand, to shield public administration from the bad faith of citizens and organizations;

5) finally, the purpose of principles is to ensure the reality, particular regulativity of administrative procedures through the "fine-tuning of law", analogy of law and legislation, as well as in the role of means of assessing allied legal phenomena – especially discretionary administrative acts.

More than half of a century ago, a well-known Russian specialist in theory of law S. S. Alekseev put forward the concept of "legal regimes". If before Russian legal scholars delimited the sectors of national law using only two criteria – the subject and method of legal regulation, then S. S Alekseev suggested one more – principles of a branch[1].This prediction of increasing the role of principles, alas, proved to be a largely unrealized. The very system of the principles of Russian law has never been built. And their role in the mechanism of legal regulation was formulated

1 Alekseev S. S. General Theory of Law [Obshchaya teoriya prava]. Moscow: 1981, vol. 1, pp. 185, 245.

pretty conventionally. And if the experts in certain sectors of the Russian law (e.g. civil one) in alliance with the legislator tried to give the issue some attention, in the Russian administrative law the sectorial principles so largely were left unexplored.

In the case of procedural principles, the situation is more complicated. On the one hand, the principles of public and private process are well known to the Russian rule of law. At that, they quite correspond to all major international standards. So, the provisions of article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms on the right to a fair trial is fully implemented into the Russian criminal (and, to some extent, civil) process[2]. But on the other hand, the very institute of administrative procedures and, in particular, their principles and even the doctrines are still largely scantily explored and poorly understood problem for of the Russian legislator.

But before analyzing them we ask a few provocative questions, which reflect some of the challenges that face the institute of administrative procedures in foreign legal systems.

1. Do the attempts of their legalization, including in the texts of laws, correspond to their essence?

According to Julio Ponce, the development of administrative procedures is a "battle of norms and principles", a constant fight between the restrictions of formalization and informal "mobility", flexibility[3]. Skeptical assessments can be found in a slightly different context. According D. Kenneth, "Principles of legitimacy and legality are criticized by individual researchers for their excessive

2 Article 6 "The right to a fair trial":

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

b) to have adequate time and facilities for the preparation of his defence;

c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court (legal reference system Konsul'tant Plus).

3 See: Ponce, J. Good Administration and Administrative Procedures, Indiana Journal of Global Legal Studies, 2005. Vol. 12, issue 2, pp. 564-565.

extravagance; they do not work because of the wide distribution of discretionary powers" [4].

It appears that there is no an insuperable abyss. The ways of curbing discretion are, on the one hand, the mechanisms of transparency, public involvement (here the principles of administrative procedures are indispensable), and, on the other hand, proper administrative and, of course, judicial practice. It is the judicial practice is "the great leveler" of the norms and principles. If there is one the legislation on administrative procedures and their principles are not only aside from conflict, but on the contrary, harmoniously complement each other.

However, the principles of administrative procedures must have a certain legal measurement. Therefore, such pseudo-legal principles as "efficiency" are beyond the scope of this study.

2. The next problem stems from the previous and is its particular case. How promising are legislative foundations of administrative procedures in the supranational formations? Does the emergence of such structures mean the transition in the era of mere principles?

It seems that apparent "fascination" by many European researchers with the problem of exactly the principles of administrative procedures is due to the difficulties of creating a unified "classical" legal framework at European Union level. This problem is being actualized also for some post-Soviet countries, including Russia, as the development of integration processes of the Common economic space.

In our view, however, it is far from certain that the supranational level itself a priori paralyzes the idea of formalizing legal requirements. Here you can recall the work of the collective ReNUAL[5]; it is possible that the flourish of principles of administrative procedures (primarily through judicial practice) is another harbinger of emergence of a new legal array in the future. So the bias in favor of the principles – is not a threat to legislation, but a temporary phenomenon, which also allows accumulating a certain critical mass of legal material. Thus, in respect of Russian integration processes, the development of both administrative procedures and their principles is equal and urgent task.

3. The third challenge is the mobility, constant variability of administrative procedures and their principles.

Indeed, for example, the reform of German legislation on administrative procedures of 1996 greatly changed existing accents. And judicial practice often goes

4 Davis Kenneth. Discretionary Justice. University of Illinois Press, 1973, p. 31.

5 ReNEUAL Model Rules on EU Administrative Procedure, 2014. Available at : http://www.reneual.eu/publications/ReNEUAL%20Model%20Rules%202014/ReNEUAL-%20Model%20Rules-Compilation%20Books%20I_VI_2014-09-03.pdf (accessed : 10.07.2015).

even further in its experiments. However, it seems, in spite of the mobility, at its core, the principles of administrative procedures are relatively stable. Their "core" can withstand even the strongest strikes of legislator.

4. Finally, the fourth factor. According to Eberhard Schmidt-Assmann, administrative procedures gain the special role when the model of a welfare state, imposing extra high standards of protection the rights and legal interests, contributing to the assistance of population, as well as requiring a relatively efficient work of the state apparatus[6].

We can continue this thesis: the phenomena that we call the administrative procedures, modern principles of administrative procedures is primarily a product of the development of European legal systems of the past few decades, marching in parallel with economic growth in these countries. But does this mean that with the development of the economic crisis, the deteriorating of economic situation in the EU, CIS and Russia the relevance of this phenomenon will decline? Or, are the principles of administrative procedures completely unrealizable in conditions of economic crisis?

We think this question should receive negative response. In itself, the introduction of such a high standard of implementation of public administration, of course, requires a certain preparedness of law and order. However, this is hardly a matter of material development. As has been rightly noted in the draft laws on administrative procedures introduced at the beginning of the 2000s to the Russian parliament, their adoption would not require significant additional expenditures. We add here: the indirect effect could be just an opposite; organization of public administration on the solid ground of a law with a reasonable system of principles is a very positive fact from the point of view of investors (both foreign and domestic). So that administrative procedures are not a money-losing "black hole", but a factor contributing to the growth of investments.

Thus, we can make an interim conclusion: with all the considered contemporary challenges the institute of administrative procedures in general, and their principles in particular, preserves and even heightens its significance.

The palm of victory in the development of procedural principles belongs to the Anglo-Saxon legal system, under which there are two main concepts – the British "natural justice" and American "due process".

The term **"natural justice"** is polysemic, into Russian language it can be translated as "natural fairness", and as "natural justice". British literature sometimes

6 Eberhard Schmidt-Assmann. Structures and Functions of Administrative Procedures in German, European and International Law. Transforming Administrative Procedure, ed. J. Barnes, Sevilla: Global Law Press, 2008, p. 52.

emphasizes the connection between "natural justice" and natural-legal theories (as an antithesis to positivism) with their emphasis on inalienable legal abilities arising from the very nature of a man, not from the whim of the state, as well as with the relevant substantive requirements to such legal regulations. However, despite the reference to almost ancient Greek philosophical concepts, the actual emergence of "natural justice" refers to the XVII century. John Alder connects the beginning of its formation with the Dr. Bonham's Case of 1610, who declared the right of any person, whose rights have been affected by an official decision, on consideration of his case by an impartial court[7].

It appears we can distinguish the following main features of the British approach:

1) famous British distrust of the legislation causes the orientation not on a legal norm, but on less formalized sources – court decisions, customs, as well as legal principles. Even the existing legal provisions tend to undergo significant adjustment with reference to "the rules of natural justice" [8];

2) a pronounced procedural nature of the content of "natural justice", which means:

2.1) on the one hand, its human rights orientation

2.2.) on the other hand, connectedness mainly with judicial activity. It is symptomatic that, as noted in British literature, in recent years many British lawyers instead of the concept of "natural justice" increasingly prefer definition "procedural fairness" [9];

3) finally, we think it would be an exaggeration to claim that in the framework of "procedural fairness" a unified and harmonious system of processual (procedural) principles has been developed.

With this, as its "core" they call two basic principles: **the right to be heard and the right to review by an impartial authorized person (body)**. For the beginning let's stop at the first procedural guarantee.

The actual amount and value of this principle varies from one to another historical era. So, throughout the 19th century, its significance was being gradually declined, and during World War II, for obvious reasons, it was further reduced.

7 Alder J. General Principles of Constitutional and Administrative Law. 4th Edition, 2002, p. 388. But another researcher – Martina Kunnecke – as the first precedent provides the Bagg's Case of 1615, where the person was deprived of the house without notice and providing an opportunity to express its position (Kunnecke M. Tradition and Change in Administrative Law. An Anglo-German Comparison, 2007, p. 138).

8 "... The fact that legislation contains certain provisions that are "commensurated with some rules of natural justice" does not necessarily exclude or displace a wider application of these rules in a particular context: see: Annetts v. McCann (1990); Valley Watch Inc. v. the Minister of Planning (1994)" (see: Essential Administrative Law, 2nd edition, prof. D. Barker (ed.), Sydney, London: 2001, p. 41.)

9 Essential Administrative Law, 2nd edition, prof. D. Barker (ed.), Sydney, London: 2001, p. 26.

And the "renaissance" of procedural fairness is associated with the case of "Ridge v. Baldwin" of 1964, which, among other things, initiated the spread of procedural guarantees, which were earlier exercised exclusively by courts, and also for the activity of non-judicial bodies of public administration[10].

Of course, the right to a hearing is not absolute, it does not apply to the following cases:

1) situations involving national security (CCSU v. Minister for the Civil Service (1985));

2) need for urgent action (R. v. Secretary of State for Transport ex parte Pegasus Holdings Ltd (1988));

3) when a case affects a large number of people and the hearing is impossible. On the other hand, situations where the decision of the authorities (such as the closure of a nursing home) directly affect the interests of the people, there is a right to collective consultations, though they are not hearing on an individual case (R. v. Devon County Council ex parte Baker (1995))[11];

4) when it is expressly provided for by law;

5) when the legislation establishes specific foundations for hearing, which are exhaustive;

6) hearings are not needed in respect of preliminary decisions;

7) when the violation of "procedural fairness" does not affect the substantive correctness of decision, as well as some other cases[12].

The requirement of **"honesty" (impartiality)** is rather hardly formalized and not exclusively procedural in nature. It is used in different situations with different meaning. It is not only the removing from consideration of a case of officials who are participants' relatives or otherwise interested in the proceedings, but also about the meaningful evaluation of certain legal actions (for example, whether it was "fair" to exclude a specific competitor from participation in a contest to license)[13].

Finally, in the framework of "natural justice", such a universally recognized principle of the European continent, as **the duty of decision motivation** with great

10 Brighton's Police officer was dismissed by local police authorities in absentia (without hearing). The authorities had the power to dismiss because of the lack of conformity with set requirements. The House of Lords decided that the sacked had the right to a hearing of his case by an administrative authority for a number of reasons (dismissal not from a ordinary job, but related to the implementation of public functions; the power to dismissal was not completely discretionary, but should be linked to certain grounds specified in the law).

11 Alder, J. General Principles of Constitutional and Administrative Law. Fourth Edition, 2002, p. 390.

12 De Smith, S. A. Judicial Review of Administrative Action, 1995, p. 475-504; Kunnecke M. Tradition and Change in Administrative Law. An Anglo-German Comparison, 2007, p. 142.

13 More details on this issue see: Kunnecke M. Op. cit. pp. 143-144.

difficulty is making its way. In British law so far this requirement (as well as in Russia) has not acquired a universal nature. This situation is being actively discussed and critiqued in British literature. According to M. Kunnecke, since the decision of 1968 on the case Padfield v. Minister of Agriculture, Fisheries and Food, the courts gradually develop this principle; and the number of cases, in which the courts have recognized the lack of motivation "dishonest", "unfair", grows[14]. At the same time, as noted by Hermann Pünder, although the violation of the principles of "natural justice" can serve as a basis for cancellation of decision, but (like in the American and German theories of (hardly) significant procedural errors) the real cancellation of decision is possible only in cases when procedural violations have damaged the essence of the decision[15].

The American tradition of **"due process"** is rooted in the 5th[16] and 14th[17] amendments of the Constitution of the United States. Unlike the British concept of "procedural fairness", American principles rely also on the Law on Administrative Procedures of 1946. Like the British model, it is largely about a human rights-based approach[18], the volume of which is constantly adjusted by judicial practice.

According to H. Pünder, **the right to hearing** does not even apply to all cases of adoption of acts directly affecting the rights of powerless entities, but only to some adverse acts. At that, there is no common understanding of "adverse" act. Thus, the denial of the right of ownership is qualified as such only in cases where citizens have been granted social privileges and they are cancelled or not prolonged[19].

14 More details on this issue see: Kunnecke M. Op. cit. pp. 144-146.

15 Pünder H. German Administrative Procedure in a Comparative Perspective – Observations on the Path to a Transnational "Ius Commune Proceduralis" in Administrative Law, Jean Monnet Working Paper, NY: 2013, p. 19.

16 No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.: Constitutions of Foreign States: Study guide [Konstitutsii zarubezhnykh gosudarstv: Uchebnoe posobie]. 4th edition, updated and revised, compiler professor V. V. Maklakov. Moscow: BEK, 2002, pp. 359-360.

17 All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.: Constitutions of Foreign States: Study guide [Konstitutsii zarubezhnykh gosudarstv: Uchebnoe posobie]. 4th edition, updated and revised, compiler professor V. V. Maklakov. Moscow: BEK, 2002, p. 362.

18 Ponce, J. Good Administration and Administrative Procedures. Indiana Journal of Global Legal Studies, 2005. Vol. 12, issue 2, p. 576.

19 At that, the "denial" is more obvious in a situation where a person has already received a benefit, and then the decision is cancelled. On the contrary, if a person has not received benefits yet, the denial is less obvious.

Decision motivation (in accordance with § 555 (e) of the LAP of the United States, 1946) shall take place only in cases where a written request of the person concerned is rejected; US legislation does not apply this requirement to all other types of administrative acts. At that the rule on decision motivation is usually derives from the right to hearing. Position of the American legislator proceeds from the fact that the main task of the motivation is to make sure that the circumstances used in the final act have been examined during the hearing.

Despite the fact that the practice of American courts gradually extends the procedural guaranties[20], the American approach, like the British, to a certain extent limits the scope and amount of procedural guaranties, i.e. the principles of administrative procedures, while avoiding any exhaustive their regulation.

If the Anglo-Saxon legal orders were initially based on judicial procedures, gradually extrapolating judicial principles on the activity of public administration, then the recent decades in the EU countries the concept of **"Good Administration"**, initially created for the field of public administration, has received a wide spreading. According to Schmidt-Assmann, "good administration" is a set of common procedural standards, applicable both to the activities of supranational administration of the EU and national European legal orders[21]. Hans Peter Nehel was one of the first who stressed in European research literature that the principles of "good administration" are mostly of a procedural nature; substantive-legal basis here is secondary[22]. Notable the thesis of Jorge Agudo Gonzalez: procedural guaranties "good administration", which have now become so natural for European countries, is the result of "alloy" of continental-legal doctrines and the concept of "natural justice". Moreover, according to the specified author, the acts of supranational bodies (European Commission, Court of Justice of the EU) that created the legal framework of "good administration" often were taken under the pressure of American business and American antitrust legislation[23].

It seems that here we see the debates on the protection of legitimate interests that have reached its logical peak in the provisions of the Law on Administrative Procedures of FRG of 1976 on revocation of legitimate favorable and cancellation of illegal favorable acts (to which we will return later).

20 H. Pünder. Op. cit. pp. 13-15.

21 Eberhard Schmidt-Assmann. Structures and Functions of Administrative Procedures in German, European and International Law. Transforming Administrative Procedure, ed. J. Barnes, Sevilla: Global Law Press, 2008, pp. 62-63.

22 H. P. Nehel. Good Administration as procedural right and/or general principle? in: Legal Challenges in EU Administrative Law. Towards an integrated Administration, ed. H. C. H. Hofmann, A. H. Türk, Cheltenham, UK, (Northampton, USA), 2009, p. 323; H. P. Nehel. Principles of Administrative Procedure in EC Law, Oxford: Hart Publishing, 1999, p. 15.

23 J. A. Gonzalez. The Evolution of Administrative Procedure Theory in "New Governance". Key Point, 2013. Review of European Administrative Law, Vol. 6, no. 1, pp. 82-84.

What is "good governance"? Of course, on the one hand, we can talk about the right of citizens to "good administration" [24], on the other hand, about a certain integral principle. However, it seems to us that there is a more equitable position that "good governance" is considered not as something syncretic, but as a system of principles, procedural rights and guarantees[25].

What does form the legal basis for "good governance"? Some European States have enshrined certain procedural principles even in the texts of their constitutions. A very interesting example of Italy: here the legislator in article 97 of the Constitution of 1947 (i.e. long before the birth of the Pan-European doctrine of "good governance") obliged the executive bodies ("agencies") to observe impartiality and "buon andamento". As noted by J. Ponce, the latter term is deciphered by Italian scientists exactly as the duty of "good governance" ("buona ammistrazione"). The practice of the Italian Constitutional Court puts different content in this phenomenon: proper organization of public administration, formation of procedures required for the implementation of relevant public functions, as well as taking right decisions by gathering and preliminary analysis of all the relevant information[26]. You can also find other examples of attempts to consolidate, at least, separate elements of "good governance" in the texts of national constitutions[27].

However, the emergence of "good administration" as a relatively holistic legal structure have to be associated not so much with the individual and poorly coordinated experiments of national legislators as with the activity of European supranational bodies.

Firstly, we are talking about several fundamental acts of the Council of Europe. Indeed, it is difficult to overestimate the importance of the resolution of the Council of Europe from September 28, 1977 "On The Protection Of The Individual In Relation To The Acts Of Administrative Authorities". This Act rightly stressed the tendency of increasing role of public administration, procedures of adoption administrative acts. At the same time there has been made a logical conclusion:

24 According to J. Ponce, one of the first cases of the Court of First Instance, which dealt with verification of (and at the same time – consolidation for the citizens) the right to "good governance", can be considered Case T-54/99, Max. Mobil Telekommunikation Service GmbH v. Commission (2002) (for more detail see: J. Ponce. Op. cit. pp. 585-586).

25 See for example: Swedish Agency for Public Management, Principles of Good Administration in the Member States of the European Union, 2005 (www.statskontoret.se).

26 J. Ponce. Op. cit. p. 556.

27 Here we can recall articles 31, 103 of the Spanish Constitution of 1978, according to which the public administration must act objectively and impartially, in accordance with the principles of effectiveness, economical efficiency, coordination and prohibition of arbitrariness.
Article 21 of the Constitution of Finland of 1999 provides for that the rules relating to publicity of process (procedures), including – the right to be heard, the right to receive a reasoned decision and the right to appeal, as well as other guarantees of fair trial and "good administration", should be established by law.

in such a situation, it is necessary to strengthen the position of citizens in their relations with the authorities and, consequently, to strengthen their procedural rights and guarantees. The Resolution proclaimed the following five principles:

1) the right to be heard;
2) the right of access to information;
3) the right to legal assistance and representation;
4) justification of an administrative act (its motivation);
5) specifying of remedies (appeal).

As noted in research literature, this resolution became an important step in the formation of legal basis for the main procedural principles that form the "core" of the right to "good governance" [28]. Here we can mention the Recommendation of the Council of Europe (adopted by the Committee of Ministers on March 11, 1980) "Concerning the Exercise of Discretionary Powers by Administrative Authorities". The resolution, among other principles, gave a particular attention to:

1) impartiality and objectivity;
2) equality and prohibition of discrimination;
3) maintaining a balance between the legitimate purposes and restrictions on the rights and freedoms of citizens;
4) taking a decision within a reasonable period of time[29].

The next step in juridization of "good governance" should be the Charter of Fundamental Rights of the European Union of 2000, which enshrines in article 41 the positions on the right to "good governance" (to the analysis of which we will return later) [30].

However, although article 41 of the Charter is considered (quite deservedly) as the main "pillar" and the principles of "good governance", the logical continuation and at the same time – "the crown" of all the above-mentioned resolutions, this procedural concept has got another "pillar" – "Code of Good Administrative Behaviour" [31]. The European Ombudsman, in his time, has taken an attempt to counteract antithesis of "good administration" – "maladministration". The emergence of this document (approved, by the way, by the European Parliament in 2001) is due to the need to clarify too general prescriptions of article 41 of the Charter. At that, as it is highlighted both in the research literature[32] and even in the preamble to the "code", we are not talking about any specified "classical" binding legal norms.

28 Swedish Agency for Public Management, Principles of Good Administration… p. 11.
29 https://wcd.coe.int/ViewDoc.jsp?id=678043 (accessed : 10.07.2015).
30 http://www.europarl.europa.eu/charter/pdf/text_en.pdf (accessed : 10.07.2015).
31 http://www.ombudsman.europa.eu/en/resources/code.faces#/page/1 (accessed : 10.07.2015).
32 Swedish Agency for Public Management, Principles of Good Administration… pp. 91-92.

On the contrary, even the very term "code" is used with a certain degree of conventionality; this set of recommendations, some "horizontal principles"; "soft law" of administrative procedures of the EU.

Thus, both article 41 of the Charter and the Code of good governance are not traditional legal sources[33]. It seems quite logical, taking into account the very nature of legal principles – this changeable, elusive and "immaterial" "soul" of written law.

Therefore, a great role in the formation and development of the principles of "good governance" was played by judicial practice[34] that develops, in addition to the above mentioned, a number of relatively new principles of: proportionality, protection of legitimate interests (expectations), etc.

So, what are the principles that constitute the "body" of "good governance"? It is difficult, if at all possible, to give an exact answer to this question. Various studies, as though competing, provide the growing varieties; in some analytical documents we can find mention of 26 or even 44 principles[35].

As "traditional" and the most common we list the following "principles", requirements, rights and guarantees:

1) fair and impartial consideration of a case within a reasonable time (part 1 article 41 of the Charter; article 8 of the Code of good governance);

2) the right to be heard before the adoption of an act capable to cause adverse consequences for a person (part 2 article 41 of the Charter; article 16 of the Code);

3) the right of access to a case file, in case if a taken measure may affect the legal status of a person (part 2 article 41 of the Charter);

4) duty to motivate taken decisions in writing (part 2 article 41 of the Charter, article 18 of the Code);

5) the right of access to documents (article 42 of the Charter);

6) legality (article 4 of the Code);

7) prohibition of discrimination (article 5 of the Code);

8) principle of proportionality (article 6 of the Code);

9) duty of service orientation (article 12 of the Code);

33 This thesis is supported by practicians and research scientists; see: Swedish Agency for Public Management, Principles of Good Administration… p. 15; Eberhard Schmidt-Assmann. Structures and Functions of Administrative Procedures in German, European and International Law. Transforming Administrative Procedure, ed. J. Barnes, Sevilla: Global Law Press, 2008.

34 See, for example: Pünder H. German Administrative Procedure in a Comparative Perspective – Observations on the Path to a Transnational "Ius Commune Proceduralis" in Administrative Law, Jean Monnet Working Paper, NY: 2013, p. 23.

35 See detailed review: Swedish Agency for Public Management, Principles of Good Administration… p. 12.

10) prohibition of abuse of law (article 14 of the Code);

11) duty to indicate the remedies to persons with the right to appeal (article 19 of the Code);

12) duty to notify individuals about a taken decision (article 20 of the Code);

13) duty to document, record, protocol procedures (articles 23, 24 of the Code).

Each position plays its role and enriches the system. However, amidst all this diversity, I think, we can distinguish two basic principles – the right to be heard and the duty to justify administrative acts. Let's consider them in detail.

1. *The right to be heard*.

This requirement has started in different legal orders with unequal speed, its volume is changing (as well as the system of exceptions to its actions); methods of legalization (enshrining) of this principle are also different. Thus, in France, as noted by D. Captain, the first decisions of State Council, formalizing appropriate guaranties, began to emerge in 1945, they were given constitutional status by the Constitutional Council of France in 1990 (judgment on the case of the Finance Law of 1990), in parallel there were taken efforts for their inclusion in the texts of certain normative legal acts[36]. However, in most European countries (and now in many other countries around the world), the principle of hearing on an administrative case is "entrenched" in the specialized legislation on administrative procedures. Of course, its volume depends on the type of procedural relations: its maximum development it obtains in formal procedures (like planning). But even for informal procedures there is a certain minimum standard. It seems that part 4 paragraph 43 of the Law on Administrative Procedures (hereinafter – LAP) of Austria can serve as a classic example of such phenomenon: "Each party, in particular, should be given the opportunity to provide and to prove all aspects relating to the case, to ask questions to the witnesses and experts, as well as to speak openly and on the discussed facts that have been provided by other parties to the procedure, witnesses and experts, on other petitions and on the results of official presentations" [37].

Of course, this principle is not absolute. So, parts 2, 3 paragraph 28 of the FRG LAP of 1976, establishes that a hearing may be cancelled if:

36 See: Kapitan D. Principles of Administrative Process in Russia and France [Printsipy administrativnogo protsessa v Rossii i vo Frantsii]. Administrativnye protsedury i kontrol' v svete evropeiskogo opyta – Administrative Procedures and Monitoring in view of European Experience, under edition of T. Ya. Khabrieva and Zh. Marku, Moscow: Statut, 2011, pp. 222-223.

37 Collection of Legislation on Administrative Procedures [Sbornik zakonodatel'nykh aktov po administrativnym protseduram]. Almaty: 2013, p. 23.

1) there is a need to take action immediately because of the risk of delaying the procedure or on the basis of the interests of society;

2) the hearing could put into question the observance of a reasonable deadline for taking a decision;

3) discrepancies with the actual information, which has been provided in petition or explanation of a party, are unambiguously in his favor;

4) administrative body intends to issue a general directive or identical administrative acts in a large numbers or publish them with help of automated means;

5) there is a need to take measures for execution through an administrative procedure;

6) the hearing is not held, if it goes against the need to respect the interests of society[38].

However, sometimes the restrictions are formulated so vaguely that the efficiency of the principle becomes unobvious. In particular, according to part 2 article 34 of the Law on Administrative Procedures of Finland, the decision on a case could be taken without hearing the parties, if:

1) the claim was declared inadmissible or immediately rejected as unfounded;

2) the case concerns employment or voluntary education or training;

3) the case concerns providing material benefits, based on the personal qualities of the applicant;

4) the hearing may constitute a threat to the goals pursued by the decision on this case, or delay in the consideration of the case associated with the hearing of the case is linked to a serious threat to human health, public safety or environmental risk; either

5) the claim not relating to other parties was met; or it's obviously clear that there is no need for a hearing for other reason[39].

2. *Duty of the subject of administration to justify administrative act*.

According to the just remark of H. Maurer, this principle (requirement) aims the following objectives. Firstly and mainly it forces administration to analyze their own position more attentively and more carefully refer to the legislation and the facts of the case. Secondly, it gives citizens the opportunity to better familiarize themselves with an act and make a decision – to challenge it or not. Finally, thirdly, provision of motives facilitates the work of appeal administrative and

38 Collection of Legislation on Administrative Procedures [Sbornik zakonodatel'nykh aktov po administrativnym protseduram]. Almaty: 2013, p. 165.

39 Ibid p. 373.

judicial bodies[40]. The requirement of justification in itself is quite abstract. So, you can welcome the attempts by some lawmakers to concretize the provisions that can be actually considered as justification. As a successful example we may consider part 2, 3 article 61 of the LAP of Azerbaijan: "In justification, there should be noted factual and legal circumstances of a case, evidence confirming or rejecting the given circumstances, as well as laws and other normative-legal acts to which references have been made in making an administrative act. In case of adoption an administrative act within the framework of discretionary powers, the administrative authority shall accurately and clearly justify its views" [41].

However, like any other procedural principle the requirement to justify an act has limits. So, according to part 2 p 39 of the LAP of FRG, justification is not required if:

1) administrative body meets the petition or the will, and the administrative act does not affect the rights of third parties;

2) the person, who is an addressee of the administrative act or whose interests it affects, already knows the opinion of administrative body about the factual and legal circumstances of the case, and this opinion is known to him without grounds;

3) administrative authority issues identical administrative acts in large quantities, or publishes administrative acts by using technical means, and justification is not required in each particular case;

4) it is provided for by a legal norm;

5) general order is publicly announced[42].

It is easy to see: like in the British rule of law the continental European tradition largely comes from derivation of the principle of justification of an act out of the right to be heard. At that, it seems possible to find another parallel: there is a close genetic relationship between the duty of the justification of an act and the possibility of its appeal. If an administrative act cannot be challenged (for example, an intermediate act that does not affect the further course of the procedure), it seems to us it does not need to be justified. On the contrary, an act resolving a case on its merits or preventing its further consideration (e.g., denial of application, cessation of proceedings on the case, refusal to refer a case to a competent person), under a general rule, must be justified.

40 Cit. by: Kunnecke M. Tradition and Change in Administrative Law. An Anglo-German Comparison, 2007, p. 149-150.

41 Collection of Legislation on Administrative Procedures [Sbornik zakonodatel'nykh aktov po administrativnym protseduram]. Almaty: 2013, p. 71.

42 Op. cit. pp. 171-172.

So, "good governance" – a collection of primarily procedural requirements that are not of the same level and not always homogeneous. On the one hand, their volume is very different: from ones that are relatively "large", rich in content (such as the right to a hearing), up to discrete ones, "small" (for example, the duty of record-keeping within the framework of an administrative case). On the other hand, the degree of their formalizability also varies. From relatively legally oriented (requirement to provide information and documents to parties), up to the provisions seemingly lacking legal content (for example, service orientation). Legal framework of "good governance" originated at the supranational level, but, as seems, largely for this reason the Pan-European requirements so far are extremely abstract. Their specifically legal content is documented by judicial decisions and national legislators.

At that, the very methodology of designing the concept of "good governance" is remarkable: inductively, from private to general the legislator and law enforcer for decades, like a designer, have been making a sophisticated model from relatively simple elements. What is more, not all of them can be considered as principles; rather, we are talking about some "basic legal units" (requirements) that are usually of strictly practical nature. But at the same time it shows the amazing strength and flexibility of Good Administration. We think in this case we are dealing with an unlikely conscious application of the laws of general theory of systems, in particular, the "law of hierarchical compensations" of E. A. Sedov[43]. This technique through varying the original variables allows one to build an arbitrarily complex system, including a legal one. It seems that this experience can be very promising for the Russian law and order, including – in the formation of the institute of administrative procedures.

Speaking of European legal traditions of administrative procedures and their principles, we have to, at least briefly, mention about German legal tradition.

A somewhat paradoxical situation in respect of principles remains here. On the one hand, the latter are not summarized in the LAP of FRG of 1976 (although at least certain provisions, of course, are enshrined in various articles); thus, the principles and some of their elements are "scattered" throughout the text of the law. Here is an obvious influence of the historical specificity of the emergence of

43 "Law of hierarchical compensations" (E. A. Sedov) records that "the actual increase in diversity at the highest level is ensured by its effective limitation at the previous levels" (Sedov E. A. Information and Entropy Properties of Social Systems [Informatsionno-entropiinye svoistva sotsial'nykh system]. ONS – Social Sciences and Modernity, 1993, no. 5, p. 92). If it is extremely simplified, the meaning comes down to the fact that the construction of a complex system is possible from simpler elements. And the simpler the original elements, the more complex a new system may emerge.

German legislation on administrative procedures – its secondariness, derivation from judicial practice[44].On the other hand, the absence of relevant provisions in the general part of the law does not prevent their real existence in law-enforcement practice. As noted by I. Deppe, "In Germany… the principles were derived by lawyers and jurists from the Constitution. They are more important than any law, and often decide the outcome of a case when private and public interests come in conflict" [45].

Above, within the analysis of Good Administration, there has already been considered a number of fundamental principles of administrative procedures. Briefly let's look at some different principles, the development of which in the European legal system owes exclusively (mostly) German law and order.

1. Prohibition of formalism.

The inadmissibility of absolutization of form over content is a problem that requires an independent study. It should be noted here: in our opinion, it is expedient to expand the content of this principle; its value to some extent is underestimated. This, for example, is about a response to the abuse not only by officials but also by citizens. Moreover, K. Eckstein's recommendations appear true: in case of abuse it is necessary not only to deny the meeting of demands on the merits of a case but also, for example, place the burden of costs on unfair participants, as well as to deny individual procedural means and possibilities (such as delaying effect of a complaint), etc.[46] It seems that a number of other principles characterized as independent ("greater includes the lesser", "prohibition arbitrariness", etc.) is just some facets of this general principle.

2. The principle of protection of legitimate expectations.

Legitimate expectations are a phenomenon long known to the German public law[47]. It was developed in the 19th century in the practice of the Higher Administrative

44 Actually, in due time, there were very seriously debates on the possibility of adopting a unified LAP in Germany (see: H. Pünder. Op. cit.). Apparently, there is still some caution to codification.

45 Deppe I. Towards the Reform of Administrative Law and the Draft Law "On Administrative Procedures" [K reforme administrativnogo prava i zakonoproektu «Ob administrativnykh protsedurakh»]. Administrativnaya reforma v respublike Uzbekistan: opyt i problemy pravovogo regulirovaniya. Materialy Mezhdunarodnogo simpoziuma 29-30 sentyabrya 2007 g. – Administrative Reform in the Republic of Uzbekistan: Experience and Problems of Legal Regulation. Proceedings of the International Symposium, 29-30 September 2007, Tashkent: 2008, p. 27.
Similar statements can be found in works of other German researchers (see, for example: Eberhard Schmidt-Assmann. Op. cit. pp. 51-53).

46 See: The Federal Law "On Administrative Procedures": initiative project with developers' comments [Federal'nyi zakon «Ob administrativnykh protsedurakh»: Initsiativnyi proekt s kommentariyami razrabotchikov]. Prolusion of K. Eckstein, E. Abrosimov, Fund "Constitution", Moscow: Kompleks-Progress, 2001, p. 184.

47 Thomas R. Legitimate Expectations and Proportionality in Administrative Law. Oxford, 2000. P. XI.

Court of Prussia[48]. As is known, the principle of prohibition of violations of legitimate expectation is that a person whose rights have been affected by a decision should not suffer from sudden change of opinion or policy of a public authority, the rights of such a person should be compensated. The doctrine of legitimate expectations applies in situations where an available norm, previous administrative practice or other circumstances (for example, a body's promise) allows a faithful person to rely on certain legal effects[49]. It seems that these requirements are comprehensively reflected in the part 2 paragraph 48 (cancel of an unlawful favourable act), as well as in parts 2, 3 paragraph 49 (revocation of a lawful positive act) of the LAP of FRG of 1976. However, this principle is somewhat broader, for example, in Germany they presume that in the event when an administrative body changes its previous practice individuals must be given the opportunity to state their position in hearings[50], as well as such decisions are subject to a mandatory written justification[51].

3. Finally, another creation of German law and order the principle of proportionality.

According to Armin von Bogdandi and Peter M. Huber, constitutionalization of the administrative law largely started with this principle. Being founded in the Prussian police law, over time it "escaped" to freedom, covered the whole administrative law (including, of course, administrative procedures), and then began its victorious march in other public sectors, as well as entered in the dogmatics of fundamental rights; through the European Convention on Human Rights and the practice of European courts it was transferred to other European legal orders[52]. Perhaps, today, the principle of proportionality can be attributed to one of the most important "cross-cutting" principles, including in the application of administrative procedures. It is a synthesis of the principles of legality and feasibility (reasonableness). If judicial practice is a "great conciliator" between the law norm and principles, then proportionality is a universal balancer of all the major legal phenomena, including the principles of procedures in relation to each other.

48 Singh M. P. German administrative law in common law perspective. New York: 2001, pp. 150-161.

49 See, for example: Mel'nichuk G. V. Valuation Standards of Discretionary Acts in Administrative Law of Germany [Standarty otsenki diskretsionnykh aktov v administrativnom prave Germanii]. Zakonodatel'stvo – Legislation, 2011, no. 10, p. 88.

50 Singh M. P. Op. cit. p. 150.

51 This rule, for example, is directly enshrined in part 3 article 45 of the LAP of Finland (see: Collection of Legislation on Administrative Procedures [Sbornik zakonodatel'nykh aktov po administrativnym protseduram]. Almaty: 2013, p. 376).

52 A. von Bogdandi, Khuber P. M. State, Public Administration and Administrative Law in Germany [Gosudarstvo, gosudarstvennoe upravlenie i administrativnoe pravo v Germanii]. Daidzhest Publichnogo Prava – Public Law Digest, 2014, no. 1 (3), p. 46.

What of the above mentioned traditions is more applicable to the law of administrative procedures of the CIS countries, including Russia? We will not be original with the answer: of course, the tradition of continental Europe. Here some conceptual issues arise.

The first one: is there a need to consolidate the principles of administrative procedures in a special legislation, or to concentrate solely on judicial practice? We think the answer is obvious. As rightly noted in the research literature, the experience of the vast majority of European countries is based on the "legalization" of the principles of procedures by relevant laws[53]. There is a profound meaning, because exactly the legislator can put "the last point" in lengthy and not always constructive discussions about whether, for example, the constitutional duty of motivation applies only to judicial decisions or also to administrative acts (as it was, for example, in Italy) [54]. In General, it is the legislative framework is the most preferable from the point of view of the interests of citizens, which are not always able to understand the nuances of judicial practice[55]. Let us add: even if they immediately became experts in jurisprudence, references to judicial precedents would not be convincing for officials-norm makers.

For Russia and other post-Soviet countries it is even more relevant, given the fact that here the formation of legislation on administrative procedures goes, if one is fortunate, in parallel with judicial practice (and often precedes the latter). One can agree not only with the thesis on the feasibility of legislative consolidation of principles[56], but also with the fact that these must be maximally specified not only in general provisions, but also in other, special, articles of laws. More specifically they are reflected, the higher probability of their practical implementation[57].

In our opinion, such a formalization of the principles should include the following elements:

1) range of subjects of this principle;
2) general content of the principle;

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53 Swedish Agency for Public Management, Principles of Good Administration… pp. 72-74.

54 Guido Corso, Administrative procedures: twenty years on. Italian Journal of Public Law, Vol. 2, no. 2/2010, pp. 274-275.

55 Swedish Agency for Public Management, Principles of Good Administration… p. 77.

56 See, for example: The Federal Law "On Administrative Procedures": initiative project with developers' comments [Federal'nyi zakon «Ob administrativnykh protsedurakh»: Initsiativnyi proekt s kommentariyami razrabotchikov]. Prolusion of K. Eckstein, E. Abrosimov, Fund "Constitution", Moscow: Kompleks-Progress, 2001, p. 9.

57 See: Pudel'ka I., Deppe I. General Administrative Law in the States of Central Asia – a Brief Review of the Current Status [Obshchee administrativnoe pravo v gosudarstvakh Tsentral'noi Azii – kratkii obzor sovremennogo sostoyaniya]. Available at : http://ruleoflaw.en/wp-content/uploads/2014/01/130708-Pudelka-Deppe-study_r.pdf (accessed : 10.05.2015).

3) order of application (unless, of course, it is possible to describe);

4) exclusion from the action;

5) consequences of violation.

Of course, the applicability of this algorithm is inversely proportional to the abstractness of the principle; therefore, the less it is applicable the more general, fundamental the principle is (e.g., the principle of justice). On the other hand, for private "principles" (procedural requirements) like motivation of an administrative act or the principle of transparency, prohibition of abuse of rights, this model is adequate. However, of course, any attempts to formalize principles should take into account objective obstacles. Firstly, even the most perfect system of principles cannot be exhaustive. As rightly stressed, for example, in the developed under the leadership of K. Eckstein draft of the relevant federal law, procedures must be based on the procedural guarantees provided for in the RF Constitution, international agreements, as well as the generally recognized principles of law and constitutional state that are enshrined in the legislation, developed by science and formulated by judicial practice; their enumeration in a law shall not be interpreted as impairing of other principles[58]. Secondly, despite the fact that in the Russian legal order the initial impulse, as a rule, is given by the legislator, it would be too naive to overly rely on the potential of law norm in regulating such a particular legal matter as principles. The role of law-enforcement practice here simply cannot be overstated.

Analysis of the principles of administrative procedures in various post-Soviet legal orders shows multidirectional trends. There are frankly failed examples. As, for example, the experience of Uzbekistan, where, it seems, they have formed a national tradition to discuss various projects of LAP in order then don't adopt them. Moreover, at some stage of discussions of such projects, the principles of administrative procedures were simply deleted, that caused a fair criticism of the expert community[59].

It seems that Belarusian approach is quite representative. The LAP of Belarus enshrines in article 4 a set of principles (legality, equality of interested persons before the law, priority of the interests of interested persons, transparency of administrative procedures, promptness and availability of administrative procedures,

58 The Federal Law "On Administrative Procedures": initiative project with developers' comments… p. 36-37.

59 See, for example: Starilov Yu. N. Administrative Procedures as a Remedy for Ensuring the Rule of Law in Public Administration [Administrativnye protsedury kak pravovoe sredstvo obespecheniya zakonnosti publichnogo upravleniya]. Iz publikatsii poslednikh let: vospominaniya, idei, mneniya, somneniya…: sbornik izbrannykh nauchnykh trudov – From Recent Publications: Memories, Ideas, Opinions, Doubts...: collection of selected scientific papers, Voronezh: publishing house of Voronezh State University, 2010, p. 490.

declarative one stop principle and cooperation in the implementation of administrative procedures)[60]. However, the latter are not always "fit" specific articles of the law. However, the analysis of the LAP allows us to find a number of guarantees of Good Administration:

1) duty of motivation of an administrative act (part 2 article 26);

2) duty of notification of interested parties about a taken act (article 27);

3) right to familiarization with documents (article 10)[61].

However, the LAP of Belarus upholds traditional for post-Soviet legislation inquisitorial, absentee nature of proceedings. Such a fundamental principle as the right to be heard cannot be found here. Moreover, the procedures for consideration of a case are not regulated at all. And this is not just a gap of the law, but a conceptual defect of the very concept of administrative procedures.

Finally, at the post-Soviet space you can find exemplary LAPs, with flawless (or almost flawless) legislative technique of procedural principles. So, the LAP of Azerbaijan does not only formalize procedural guaranties of "good governance" (they are enshrined in chapter III of the law: the right to petition; the right to participate in the proceedings; the right to familiarize with the administrative proceedings files, and so on), but also tries to allocate more general principles. In chapter II of the law in the best German traditions they enshrine the principle of protection of confidence, the principle of proportionality, prohibition of the abuse of formal requirements, "the principle of coverage of larger by less", the principle of reliability, and finally, they even have attempted to determine the order of exercise of discretion powers[62]. The named directives also harmonize with the special norms of the law. And there is still an open question concerning the extent of effectiveness of administrative procedures' principles, their credibility for law enforcers.

What is the situation with the principles of administrative procedures in Russia?

The absence of a special law is a tragic and slowly recovered gap that undermines the very concept of administrative procedures. It is not only the fragmentation of legal sources (the vast majority of which is formed from by-laws – the so-called administrative regulations of executive bodies), but also the continuing self-isolation of the Russian legal order. The principles of "good governance" (as well as "natural justice") smash through with great difficulty.

60 Collection of Legislation on Administrative Procedures [Sbornik zakonodatel'nykh aktov po administrativnym protseduram]. Almaty: 2013, pp. 129-130.

61 The mechanism of its realization in the very law, however, is absent.

62 Ibid, pp. 54-59.

So, the first steps in this direction were made by the Constitutional Court of the RF that in several of its decisions formulated a number of the principles of a constitutional state. Among these were considered the principles of equality and justice, and on their basis – the requirements of certainty, clarity and unambiguousness of law norms[63] (which are apparently addressed more to the legislator rather than to the law enforcer). Because of their excessive abstractness, these principles are at best indirectly influence on administrative procedures, and at worst – do not play for them any significant role.

An important step in creating relatively universal requirements to administrative procedures in Russia has become the Federal Law No. 210-FL from 27.07.2010 "On the Organization of the Provision of State and Municipal Services"[64]. The principles formulated by it (legality of provision state (municipal) services; declaratory order of request; legitimacy of levying duties; transparency in activity of agencies and organizations that provide state (municipal) services; availability of provision public and municipal services, including for persons with disabilities; the possibility of obtaining state and municipal services in electronic form) are rather local, at least due to the limitation of the subject of the law. Also, these principles are not always specified in its special provisions.

However, at least some requirements of "good governance", we can find here. Thus, a number of articles of the law (e.g., article 7) prohibit require submission of documents and information that by virtue of the legislation are in possession of bodies (organizations) directly providing state (municipal) services or others. I think here we can talk about the particular case of the principle of prohibition of abuse of rights, prohibition of super formalism (that, alas, is very relevant for Russian legal order). According to article 8 of the aforementioned law, written requests sent to an unaccredited body are not returned to the applicant but forwarded to a competent authority (and again, we can talk about the private aspect of the ban on administrative chicanery).

The principle of procedures coordination[65], on the one hand, is partly reflected

63 See: Decision of the Constitutional Court of the Russian Federation No. 11-P from 15.07.1999 [Postanovlenie Konstitutsionnogo Suda RF ot 15.07.1999 № 11-P]; Decision of the Constitutional Court of the Russian Federation No. 9-P from 27.05.2003 [Postanovlenie Konstitutsionnogo Suda RF ot 27.05.2003 № 9-P]; Decision of the Constitutional Court of the Russian Federation No. 8-P from 12.05.2008 [Postanovlenie Konstitutsionnogo Suda RF ot 12.05.2008 № 8-P]; Decision of the Constitutional Court of the Russian Federation No. 15-P from 13.07.2010 [Postanovlenie Konstitutsionnogo Suda RF ot 13.07.2010 № 15-P]; Decision of the Constitutional Court of the Russian Federation No. 19-P from 18.07.2012 [Postanovlenie Konstitutsionnogo Suda RF ot 18.07.2012 № 19-P].

64 Rossiiskaya gazeta – Russian Gazette, 2010, July 30.

65 The Federal Law "On Administrative Procedures": initiative project with developers' comments... pp. 65-67.

in article 7[1] of the law of 2010 (establishing requirements to inter-ministerial informational interaction in the provision of public and municipal services), and on the other hand, the so-called multifunction centers (MFC) contribute its implementation. However, even here we can talk only about the infancy of this principle, since the process of genuine "binding" departments in the implementation of administrative procedures is reduced only to private cooperation concerning individual documents. The creation of holistic administrative procedures is "stuck".

Separately, we emphasize: introduction of the relevant requirements (principles) of the law of 2010 entails administrative responsibility under article 5.63 of the RF Code on Administrative Offences, what at its time was an unprecedented step for the Russian legislator[66].

The principle of impartiality, which is so familiar to the Russian judicial process, is being integrated in the system of administrative procedures little by little, "from the inside". We are talking primarily about the so called "conflict of interests". Ban on committing any legally significant actions by public servants in situations where they can bring him an illegal tangible or intangible benefit was originally enshrined in the Federal Law No. 79-FL from 27.07.2004 "On Public Civil Service of the RF"[67], but actually became incorporated into management practice not earlier than in 2008-2009. Currently it applies not only to state and municipal servants, but also, in accordance with the Federal Law No. 273-FL from 25.12.2008 "On Combating Corruption" [68], to workers of other organizations that implement public functions. Its violation, in the absence of signs of corpus delicti, brings disciplinary responsibility in the form of dismissal, and courts gradually develop practice on this category of cases[69]. But so far in Russia this principle has not been formed as a general rule for administrative procedures.

66 The history of development of appropriate tort norms see: Davydov K. V. Administrative Responsibility of Public Servants for Violation of Administrative Procedures of Execution Public Functions and Provision of Public Services [Administrativnaya otvetstvennost' gosudarstvennykh slu-zhashchikh za narushenie administrativnykh protsedur ispolneniya gosudarstvennykh funktsii i predostavleniya publichnykh uslug]. Aktual'nye problemy administrativnoi otvetstvennosti: materialy vserossiiskoi nauchno-prakticheskoi konferentsii – Actual Problems of Administrative Responsibility: materials All-Russian scientific-practical conference (Omsk, May 19, 2011), under edition of Solovey, Omsk: Omsk Law Institute, 2011, pp. 127-134.

67 Rossiiskaya gazeta – Russian Gazette, 2004, July 31.

68 Rossiiskaya gazeta – Russian Gazette, 2008, December 30.

69 Review of consideration cases for 2012-2013 on disputes concerning cases on bringing public and municipal servants to disciplinary responsibility for committing corruption offenses: approved by the Presidium of the Supreme Court of the Russian Federation 30.07.2014 [Obzor praktiki po rassmotreniyu v 2012 - 2013 godakh del po sporam, svyazannym s privlecheniem gosudarstvennykh i munitsipal'nykh sluzhashchikh k distsiplinarnoi otvetstvennosti za sovershenie korruptsionnykh prostupkov: utv. Prezidiumom Verkhovnogo Suda RF 30.07.2014]. Byulleten' trudovogo i sotsial'nogo zakonodatel'stva RF – Newsletter of the Labour and Social Legislation, 2014, no. 9.

The entire normative legal acts are devoted to the principle of glasnost' (openness), including the Federal Law No. 8-FL from 09.02.2009 "On Providing Access to Information about Activity of Public Authorities and Local Self-government Bodies" [70]. However, the content of this principle is understood in quite a specific way: we are talking about the placing certain information on the websites of departments, the access of citizens to the meetings of collegial bodies, etc. These norms do not confer on the executive authorities such a duty, which is so natural from the perspective of the concept of Good Administration, as notification of citizens about taking administrative acts affecting their legal status. It is symptomatic that even higher courts do not recognize such a citizens' right. At least outside the jurisdictional relations, as well as relations on implementation of justice. Let's consider the following case as an example. Resolution of the Government of Transbaikal region No. 156 from 12.04.2012 approved the procedure for granting subsidies to peasant (farmer) enterprises. However, there was set a duty of notification of citizens only about refusal to register their enterprises. The Prosecutor's Office, appealing this act, among other things, pointed to the lack of responsibility of the regional executive body to notify individuals about the inclusion of their peasant (farm) enterprises in the register of beneficiaries of subsidies, which, in its opinion, created legal uncertainty and unwarranted discretion. The Court of First Instance and then the Supreme Court of the Russian came to the opposite conclusion[71], thus limiting the requirement to inform citizens about taken decisions only to adverse acts[72].

The duty to justify administrative acts, as mentioned above, is one of the fundamental procedural principles of Good Administration, gradually penetrating also in Anglo-Saxon legal orders. Its volume varies, but the greatest distribution was given to the German approach of justification of primarily negative (adverse) acts.

In the Russian legislation this principle is not recognized as a general, whereas in some of the federal normative acts we can find its traces. So, according to article 14 of the Federal Law No. 99-FL from 04.05.2011 "On Licensing of Certain Activities" in the event of a decision to refuse to grant a license the licensing body, within

70 SZ RF – Collection of Laws of the RF, 2009, no. 7, article 776.

71 Ruling of the Constitutional Court of the Russian Federation No. 72-APG12-10 from 12.12.2012 [Opredelenie Verkhovnogo Suda RF ot 12.12.2012 g. № 72-APG12-10]. Konsul'tant Plus. Professional version [Electronic resource], Moscow: 2015.

72 On the one hand, such a limitation is common for many European legal orders. Here we can recall, for example, article 54 of the LAP of Finland (Collection of Legislation on Administrative Procedures [Sbornik zakonodatel'nykh aktov po administrativnym protseduram]. Almaty: 2013, p. 379). On the other hand, it seems more appropriate for the post-Soviet legal orders to use an expansive approach, where the duty of notification applies also to favorable acts (Collection of Legislation on… p. 71)

three working days from the date of this decision, gives or sends to the license applicant through the post with advice of delivery the notification of refusal to grant a license with a reasoned justification of the reasons for refusal, and with reference to specific provisions of normative legal acts and other documents that are the basis of such refusal[73].

However, the lack of consistency in the management of principles of administrative procedures even here plays a cruel joke with the Russian legal order. If the Federal legislator gradually embeds the requirement to justify administrative acts (at least towards negative acts), the legislation of the subjects of the Russian Federation, municipalities, as well as law enforcer do not rush to recognize such a procedural rule for citizens. Let's give as an example the following case. Resolution of the Novosibirsk Mayor's Office from 27.10.2010 approved the procedure for the preparation of legal acts of Novosibirsk Mayor's Office on the providing of land for construction in the territory of the city of Novosibirsk. However, this act did not establish the duty of the Mayor's Office to justify the denial of providing a land plot. The prosecutor appealed to the Court of First Instance with the demand to enshrine this duty. However, the Courts of First and Second Instance refused to meet the demand of the prosecutor on the following grounds. Firstly, the Russian procedural legislation does not provide the courts powers to bind state and municipal authorities to make amendments in normative legal acts. However, the relevant provisions could be recognized contrary to the legislation (e.g., on combating corruption, as urged by the prosecutor's office). However, here the courts made the following assertions: the duty of motivation of each act is superfluous, since the contested normative legal act set an exhaustive list of grounds for refusal (this is a very weak argument, taking into account at least the abstractness of such grounds as "non-conformity of an alleged object placement with town-planning and other terms of use of territories"). Finally, the advice of Cassation Instance[74] to demand for familiarization the minutes of meetings of commissions with reference to article 29 of the Russian Constitution of 1993, the Federal Law "On Information, Information Technologies and Protection of Information" and the Federal Law "On the Order of Consideration Requests of the Citizens of the Russian Federation" looks frankly sarcastic (if only because there is no guarantee of unambiguous formulation in these protocols of the final position with all necessary arguments, not to mention the fact that these protocols can be corny absent).

73 Rossiiskaya gazeta – Russian Gazette, 2010, May 6.

74 See: Cassational Ruling of the Novosibirsk Regional Court from March 15, 2010 on the case No. 33-1990/2012 [Kassatsionnoe Opredelenie Novosibirskogo oblastnogo suda ot 15.03.2012 g. Po delu №33-1990/2012]. Konsul'tant Plus. Professional version [Electronic resource], Moscow: 2015.

Principle of protecting trust that had emerged in the judicial practice of Germany did not received full enshrining in the Russian administrative legislation (unlike, for example, civil legislation establishing, among other things, restrictions on the application of new legal norms to civil relations already existing at the time of their introduction).

On the other hand, the practice of the Constitutional Court of the Russian Federation is gradually introducing this principle in the Russian legal system[75]. However, its scope covers mainly norm-setting. Even if law enforcement administrative acts are verified, it is, as a rule, a parallel process, within the framework of judicial norm-control. But even here the courts are quite careful.

So, citizen Agayev M. Sh. O., having used an opportunity provided by the regional legislation, filed an application for the providing him a land plot. The application was satisfied by the Barnaul Mayor's Office, there was made an act of choosing an appropriate land plot for construction. During the processing of documents for construction of a store the Russian Federation legislation changed, all such operations with land began to be carried out only at auction. And when the citizen requested in the executive body of the subject (management of property relations of the Altai territory) with a application on the preliminary agreement of the store placement on the specified land plot, he was denied. The courts of all instances (up to the Supreme Court of the Russian Federation)[76] being based on priority of public interest refused to recognize the citizen's right to the protection of trust. And although changes in the legislation should be recognized progressive, such approach, in our view, still seems quite questionable.

Finally, the principle of proportionality, having constitutionally legal basis in the Russian Federation (article 55 of the Constitution of the Russian Federation 1993)[77], at present is mostly applied not so much in regulatory managerial

75 Decision of the Constitutional Court of the Russian Federation No. 8-P from 24.05.2001 [Postanovlenie Konstitutsionnogo Suda RF ot 24.05.2001 g. № 8-P]; Ruling of the Constitutional Court of the Russian Federation No. 89-O from 4.04.2006 [Opredelenie Konstitutsionnogo Suda RF ot 4.04.2006 g. № 89-O]. Konsul'tant Plus. Professional version [Electronic resource], Moscow: 2015.

76 Ruling of the Supreme Court of the Russian Federation No. 51-G11-28 from 12.10.2011 [Opredelenie Verkhovnogo Suda RF ot 12.10.2011 № 51-G11-28]. Konsul'tant Plus. Professional version [Electronic resource], Moscow: 2015.

77 Part 3 article 55: The rights and freedoms of man and citizen may be limited by the federal law only to such an extent to which it is necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defence of the country and security of the State. The Constitution of the Russian Federation of 1993 [Konstitutsiya RF 1993 goda]. Konsul'tant Plus. Professional version [Electronic resource], Moscow: 2015.

legal relations, but more in jurisdictional administrative ones, and the Russian doctrine of that principle is still in its infancy[78].

So, the Russian legal order is not "hopeless". Within the framework of the legislation and judicial practice (primarily, the Constitutional Court of the Russian Federation) we can see a gradual rooting of certain principles of Good Administration like prohibition of formalism, the principle of proportionality, etc. However, such principles and guarantees of citizens' rights in administrative procedures as the motivation of administrative acts, the right to be heard (i.e., all that what constitutes the "core" of "good governance") have not yet found their legal reflection. At that, the analysis of judicial practice does not inspire an excessive optimism. It is pointless to hope that Russian courts, in the absence of special legal norms, can formulate appropriate legal positions obligating the administration. Therefore, the further stage in the evolution of administrative procedures and their principles will be associated primarily with the will of the legislator. And only then – with the position of law enforcers.

78 See, for example: Tolstykh V. L. Constitutional Justice and the Principle of Proportionality [Konstitutsionnoe pravosudie i printsip proportsional'nosti]. Rossiiskoe pravosudie – Russian Justice, 2009, no.12, pp. 47-56; Sherstoboev O. N. The Principle of Proportionality as a Prerequisite to the Expulsion of Foreign Nationals outside the Country of their Stay: the Limits of Right Constraint [Printsip proportsional'nosti kak neobkhodimoe uslovie vysylki inostrannykh grazhdan za predely gosudarstva ikh prebyvaniya: predely pravoogranicheniya]. Rossiiskii yuridicheskii zhurnal – Russian Legal Journal, 2011, no. 4, pp. 51-59; Sherstoboev O. N. The Theory of Interests in Administrative-legal Dimension: through the Example of Expulsion Foreign Nationals Outside the Host State [Teoriya interesov v administrativno-pravovom izmerenii: na primere vysylki inostrannykh grazhdan za predely prinimayushchego gosudarstva]. Rossiiskii yuridicheskii zhurnal – Russian Legal Journal, 2014, no. 3, pp. 99-108.

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