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The Correlation of the Legislation on Administrative Procedures and the Legislation on Public Appeals in Belarus and Abroad

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One of the important ways to improve public administration at the present stage, which contribute to streamlining and submission to the law of activity of administrative bodies, is a detailed regulation of the procedure for administrative procedures. Belarus has actively conducted this work since 2005. Currently, there is a considerable legislative array in the field of administrative procedures.

In general, the structure of the domestic legislation on administrative procedures consists of:

- the Law of the Republic of Belarus from October 28, 2008 On the Grounds of Administrative Procedures;
- the list of administrative procedures;
- normative-legal acts regulating the procedure for implementation of certain procedures.

The key role in this system is given to **the Law of the Republic of Belarus from October 28, 2008 On the Grounds of Administrative Procedures**, which establishes the general requirements for the submission and consideration of applications on execution of an administrative procedure, the order of taking an administrative decision, and also defines the mechanism for appeal and execution of a taken decision.

The scope of the Law is limited to the taking of administrative decisions based on applications from citizens and organizations, which establish, modify or terminate the rights or obligations of the applicant. At the same time, along with the traditional exceptions (consideration of civil and criminal cases, cases on administrative offenses), there is provided a number of other exceptions to the scope of the Law. For example, the Law does not apply to the relations regulated by the banking legislation, legislation on economic insolvency (bankruptcy), the relations connected with the organization and conduct of checks by supervisory (oversight) authorities, the relations in the sphere of education, the relations connected with public procurement, etc.

The Law enshrines the requirement to the level of regulation of administrative procedures. The names of administrative procedures, the bodies that carry out them, the lists of submitted documents, terms of administrative procedures, validity of the document issued in the implementation of administrative procedures, the fee for the implementation of administrative procedures may be established only by laws, decrees and Presidential decrees and decisions of the Government of Belarus. In fact, there is a ban on departmental rule-making in this area, which allowed prevention of a series of far-fetched administrative barriers.

We should note the consolidation in the Law of a very specific principle that applies in the implementation of administrative procedures – priority of applicants' interests. Its essence lies in the fact that in the case of ambiguity or vagueness of requirements of a legal act the administrative decisions should be made by authorized bodies on the basis of the maximum favor to the interests of such persons. This principle is intended to some extent regulate the use of existing discretionary powers by authorized bodies.

Another important provision of the Law is the prohibition to reclaim the applicants' documents, which may be requested by an authorized body itself, is aimed at ensuring the implementation of the "one window" principle.

The law regulates in detail the procedure for appealing a decision taken in administrative proceedings, consolidates the traditional for the domestic law approach on the possibility of complaint to a higher organization. Due to its simplicity, accessibility and the absence of need to bear procedural costs this method remains the priority method for appealing a taken decision

The second level of legal regulation of administrative procedures and, at the same time, a specific feature of the Belarusian legislation are **lists of administrative procedures** – complex normative legal acts, which contain information about where you need to apply for the implementation of an administrative procedure, documents to be submitted, the timing of implementation of administrative procedures, the validity period of documents issued in the implementation of administrative procedures, as well as the amount of fees charged for the implementation of administrative procedures.

These lists are an example of doubling the standards in the form of accessible and standardized information that is usually fixed in other regulations, which greatly facilitates its search.

Currently, there are two such lists approved in Belarus:

- the list of administrative procedures carried out by state bodies and other organizations in relation to citizens, approved by the Decree of the President of the Republic of Belarus no. 200 from April 26, 2010,. To date, the list includes about 600 procedures, divided into respective areas. At the same time there is a ban on the implementation of procedures not included in this list in order to prevent the occurrence of unnecessary new administrative procedures;
- the unified list of administrative procedures carried out by state bodies and other organizations in relation to legal entities and individual entrepreneurs, adopted by the resolution of the Council of Ministers of the Republic of Belarus no.156 from February 17, 2012.

Belarus has not followed the path of countries that have developed regulations and standards for every administrative procedure. This decision is due to both a desire to reduce the number of normative legal acts regulating administrative procedures, simplify orientation in them and an intention to avoid duplication of existing requirements of existing lists of administrative procedures. However, understanding the complexity of certain procedures (e.g. gasification, remodeling, etc.), there is provided the need to adopt regulations that determine the sequence of actions in the implementation of such procedures.

Another part of the legislation on administrative procedures is **the acts regulating the implementation of specific administrative procedures**. As an example, we can call the Law of the Republic of Belarus from July 22, 2002 On State Registration of Immovable Property, Rights and Deals with it, the Decree of the President of the Republic of Belarus from September 01, 2010 no. 450 On Licensing Certain Types of Activity.

Along with the creation of the necessary legal basis, Belarus carries out extensive work on the introduction of the new mechanism of cooperation between the authorities and citizens in the execution of administrative procedures on the basis of the "one window" principle.

Local governmental bodies create special departments – "one window" service, which provides the possibility of filing applications in one place for the implementation of administrative procedures in various areas.

There has been created and is being developed a single portal of electronic services (portal.gov.by).

There is a unified national reference phone number concerning administrative procedures (142), where you can get information on how to implement a procedure in a particular locality.

Monitoring of administrative procedures is being conducted on an ongoing basis.

Nevertheless, it must be noted that a number of problematic issues remains in the sphere of implementation of administrative procedures. Especially we would like to dwell on the problem of the parallel operation of the legislation on administrative procedures and the legislation on appeals of citizens and legal entities.

In the USSR, the main normative legal act, which determined the order of relations between administrative agencies and the public, was the Decree of the Supreme Council of the USSR from December 04, 1968 On the Procedure for Consideration of Offers, Applications and Complaints from Citizens. After the collapse of the Soviet Union almost all the former republics adopted similar legislative acts which were largely an adaptation of the provisions of the said Decree.

These acts, as a rule, contain a small number of articles set forth in a very plain language, so that they are understandable to the general population, even without special training. Their characteristic feature is the focus primarily on the applications of citizens, the lack of consideration of the specifics of legal entities' applications.

In general, the procedure for processing applications established in such acts can be characterized as the duty of public authorities and other organizations to accept an appeal and respond to it within the prescribed time limits. At that, an exaggerated attention is paid to the issues of proceedings (registration, accounting of applications and etc.), compliance with pro-

cedural deadlines, etc., but the regulation of actions of administrative agencies to address the applicant's problems often remains on the periphery of attention of the legislator. Administrative agencies retain a considerable margin of discretion in dealing with the issues set out in the applications and an individual is not given serious levers of influence on the decisions taken by these agencies.

As a result, the most successfully the laws are applied in solving small household problems (the sphere of housing and communal services, transport, health and others), but they are not particularly effective in disputes with the authorities.

In the post-Soviet period a number of countries, including Belarus, tried to specify the mechanism for dealing with appeals, expand the scope of the corresponding legislation at the expense of distribution of its effect to the appeals of business entities. However, changes introduced to such acts were largely cosmetic, not significantly changing the "platform" on which they were based. They paid little attention to the principles of interaction of administrative agencies and the public when dealing with specific cases, which could streamline the use of administrative discretion, did not contain such right as the individual's right to be heard when making an adverse act, did not determine the manner of payment for the passage of administrative barriers, etc. As a significant gap we can consider almost complete neglect of the issue of the form and content of an act taken on the results of consideration of a case, its validity, as well as the procedure of its execution.

In contrast to the Soviet tradition, in which they were developing the legislation on citizens' applies, many European countries regulated relations between the population and administrative institutions by the legislation on administrative procedures. Its main purpose is the protection of individuals against unlawful actions (inaction) of administrative agencies when applying for the adoption of administrative acts through the enshrining of various procedural guarantees to an applicant and revealing the consequences of non-compliance of such guarantees.

After the collapse of the USSR, many post-Soviet countries under the influence of European legislation adopted acts on general administrative procedure, though the names of such acts and the range of regulated issues differed. The adoption of these acts has actualized the question of their correlation with the legislation on public appeals, which preserved in many

countries of the former Soviet Union, since the subject of these acts largely overlapped (in both cases the procedure for consideration of appeals filed to administrative agencies was described).

The analysis held on the example of the former Soviet Union, as well as Poland, Bulgaria and Serbia, shows that a common approach to the issue of correlation between the spheres of legislation under consideration was not formed (see the Annex). With a certain degree these countries can be divided into the following groups.

1. Countries in which there is no law on administrative procedures. The order of consideration of appeals is determined by the law on appeals and acts governing special categories of appeals (Russia, Ukraine, Moldova, Uzbekistan, and Turkmenistan).

2. Countries in which all appeals fall under the scope of the general administrative procedural act (Bulgaria, Lithuania, Poland, Georgia, and the Republic of Estonia). Consolidating the general requirements for the content of administrative activity the legislator usually provides for a simplified procedure for the consideration of certain minor administrative cases. This simplified procedure may be either within the framework of the administrative and procedural act (Bulgaria, Poland and Georgia) or exist as a separate law (Estonia).

3. Countries in which the general act on administrative procedures and the law on public appeals regulate different categories of applications (the Republic of Belarus, the Republic of Azerbaijan, the Republic of Serbia, the Republic of Latvia, the Republic of Tajikistan, Republic of Armenia and the Kyrgyz Republic). In Serbia the corresponding law On State Management cannot be in the full sense recognized as the law on appeals, as the main subject of its regulation is somewhat different.

In the latter case, the boundary between the corresponding spheres is non-uniform. In some countries, the scope of the laws on administrative procedures is the adoption of an administrative act, as well as consideration of complaints against taken acts. Consideration of applications which do not result in adoption of an administrative act (implementation of actual actions, review of offers, comments, etc.) refers to the subject of the laws on public appeals. In other countries, the laws on public appeals apply only to the consideration of offers.

As you can see, a common approach on the issue of correlation of the institutes under consideration has not been developed, although it is possible to note a gradual narrowing of the scope of the legislation on public appeals. Nevertheless, the issue of correlation of the institutes

of legislation cannot be treated mechanically, in isolation from the goals and objectives of their development, the historical conditions in which they were born and developed. These acts are the products of different legal systems; this in many ways explains the differences between them.

The objective of laws on appeals is to establish a permanent channel of information about the weak spots of managerial system, to evaluate compliance with legislation at certain localities, the public reaction to decision taken by the State, all these should contribute to the maintenance of control of social processes and their controllability. In this approach the informational function of appeals comes at the forefront. The procedure for processing applications is very general, description of the rights and obligations of the parties is abstract, and violations when considering applications either cannot be proved due to the wide scope of administrative discretion or such violations (for example, breach of the term of consideration of an appeal) entail sanctions (a disciplinary penalty or a fine in favor of the state) from which an individual has no use.

The ideology of administrative and procedural acts is completely different –protection of a person from unlawful actions (inaction) of administrative authorities, strict legal control of these bodies, maximum binding of administrative actions to the law. The procedure for consideration of a particular case is in detail regulated, including certain framework for the implementation of administrative discretion. The applicant is not limited to filing of application and waiting for the "verdict" of an administrative body, but using provided for wide procedural powers he becomes a full-fledged party to the consideration of his case.

Detailed legal regulation of administrative procedure has one purpose – the opportunity to check compliance with corresponding formalities in consideration of a particular case, the violation of which may, under certain circumstances, result in cancellation of the decision taken. The system of administrative justice is becoming a widespread way to control administrative procedures.

The foregoing clearly shows that the adoption of administrative and procedural acts is not just a new name for an old institute, but the introduction of a fundamentally new approach to the formation of relationships between the authorities and the population.

In this situation, at first glance it seems quite logical to replace to some extent obsolete legislation on appeals by more progressive and relevant to modern realities legislation on administrative procedures (as some countries did).

However, many countries in one form or another try to preserve the legislation on public appeals. What is the reason of such an approach?

First of all, it is worth mentioning the familiarity and accessibility of the legislation on public appeals for the population, as well as for law enforcers, as opposed to the complex and casuistry terminology of administrative and procedural acts, which are not always clear, even for practitioners.

Another reason for the preservation of the parallelism of the two spheres is the crudity of basic terminology of administrative and procedural legislation. In particular, there is no clear concept of an administrative act, its features and differences from simple administrative actions.

Is it acceptable, for example, to recognize apostilization on a document, auto-introducing of a subject to a register on the basis of a submitted application without a separate decision and issue of a confirming document as an administrative act? An illustrative example in this regard is the situation with the responses of government agencies, primarily tax ones, that contain legislative interpretations. Are these responses administrative acts? May they be a subject of an appeal? In Belarus so far, despite the Constitutional Court's decision[240], the possibility of appealing against the relevant interpretations is very ambiguously considered in case law.

In this situation, the parallelism of these institutes to some extent is a forced solution, in which the legislation on appeals performs the functions of a spare procedural order for those appeals that, for whatever reasons, do not end with an administrative act.

After all, the preservation of the law on public appeals is supported by the fact that many administrative and procedural acts contain a very complicated procedure, which is much like the judicial ones (record-keeping, participation of witnesses, plea in abatement, etc.). Such complexity is not justified in all categories of cases. It is one thing to issue a building permit, licenses, providing a land plot, etc., and quite another thing is providing of reference information, consideration of different thanks, suggestions, comments, messages to the "hot" line,

[240] Decision of the Constitutional Court of the Republic of Belarus N P-383/2009 On Judicial Appeal against the Decisions of State Bodies on Taxation (clarification of tax legislation) from December 10, 2009 || http://pravoby.info/bel/27/897.htm

etc. These appeals do not require a detailed procedural form; it is much faster and more efficient to consider them through a simplified procedure.

Such a simplified procedure may exist as a separate part of a general act on administrative procedures (for example, a separate chapter devoted to the consideration of offers and calls in Bulgaria), and as a separate act. Such an act in most cases may be represented by the law on public appeals. However, in the latter case, in order to ensure the unity of approaches in the relations between administrative agencies and the population, subsidiary application of the legislation on administrative procedures, primarily embodied in it basic principles of management activity, seems appropriate. Otherwise, we will always be faced with oodles of procedural regimes of relationships between the population and administrative agencies that will be unified neither by common goals nor principles; as a result there will be different standards of serving visitors at administrative institutions.

In conclusion, it should be mentioned that the development of any, even the most perfect legislation, should not be construed as a guarantee of a sharp improvement in the sphere of work with the population. At present, the level of fulfillment of laws on administrative procedures is far from ideal. There are examples where such laws are not noticed by practice. Therefore, without strong political will to subordinate administrative activity to law, virtually self-limitation of power, such acts might pretty much just remain on paper.

Appendix

Country	General Act on Administrative Procedures	General Act on Consideration of Appeals by Citizens and Legal Entities	Correlation of spheres under consideration
Republic of Belarus	Law of the Republic of Belarus of On Grounds of Administrative Procedures from October 28, 2008.	Law of the Republic of Belarus On Appeals of Citizens and Legal Entities from September 30, 2011.	These acts regulate different categories of applications and complaints. Administrative Procedure Law regulates the processing of applications on the issue of adoption of administrative acts entailing the establishment, modification or termination of rights or obligations of the applicants, as well as complaints against such acts. In its turn, the Law on Appeals deals with those appeals that do not entail administrative acts.
Republic of Azerbaijan	Law of the Republic of Azerbaijan On Administrative Proceedings from October 21, 2005.	Law of the Republic of Azerbaijan On Public Appeals from September 30, 2015.	These acts have a different subject of regulation, by analogy with the approach taken in Belarus.
Georgia	General Administrative Code of Georgia from June 25, 1999	In connection with the adoption of the General Administrative Code the Law of Georgia from December 24, 1993 On the Order of Consideration of Applications, Complaints and Appeals to State Bodies, Enterprises, Institutions and Organizations (irrespective of their organizational-legal form) declared invalid.	Consideration of all the appeals is regulated by the General Administrative Code. At the same time there are three kinds of administrative proceedings: simple, formal and public.
Republic of Kyrgyzstan	Law of the Republic of Kyrgyzstan no. 210 On the Principles of Administration and Administrative Procedures from July 31, 2015	Law of the Republic of Kyrgyzstan no. 67 On the Procedure for Consideration of Public Appeals from May 4, 2007	From the date of entry into force of the Law On the Principles of Administration and Administrative Procedures the Law On the Order of Consideration of Public Appeals has been valid only in respect of the consideration of public appeals not related to the implementation of administrative procedures. Thus, these acts regulate the different categories of appeals.
Republic of Latvia	Administrative Procedure Code of the Republic of Latvia from November 14, 2001	Law of the Republic of Latvia On Applications from October 11, 2007. The applications refer to requests, complaints, suggestions and questions.	The mentioned laws do not contain a clear answer on the issue of their correlation. However, based on the sequence of their adoption, and considering that the Law On Applications does not apply to requests, complaints, suggestions and questions for which, according to the law, there is

			established another procedure for consideration, it can be assumed that the Law On Applications applies to applications the results of which is not an adoption of an administrative act.
Republic of Lithuania	Law of the Republic of Lithuania On the Public Administration from July 17, 1999	Resolution of the Government of the Republic of Lithuania no. 875 On the Rules of Consideration of Citizens' Petitions and their Processing by Agencies and Institutions of Public Administration, as well as by other Subjects of Public Administration from August 22, 2007. The petition is an appeal to a subject of public administration with a request to take an administrative decision or carry out other actions specified in the legislation, which is not related to the violation of rights or legitimate interests of a person.	The Law of the Republic of Lithuania On the Public Administration covers all the activities of administrative bodies, including the consideration of appeals, providing information, as well as administrative services. However, in detail the Law regulates only the administrative procedure for dealing with complaints and infringement reports. Although consideration of appeals that are not connected with the infringement of the rights of citizens and organizations, as well as with the issuance of documents confirming legal facts (for example, offers on improving the work of an institution, reports on offensive or illegal actions not related to violations of specific individual legal interests and rights, on the violations of attention to a specific situation where other people apply to authorities, and others) is covered by the general concept of public administration and is subject to the principles of the Law, but it is regulated not by law but by the specified Resolution of the Lithuanian Government on number 875 from August 22, 2007.
Republic of Armenia	Law of the Republic of Armenia On the Principles of Administration and Administrative Proceedings from February 18, 2004	Law of the Republic of Armenia On the Procedure for Consideration of Offers, Applications and Complaints of Citizens from December 22, 1999	After the entry into force of the Law On the Principles of Administration and Administrative Proceedings the Law On the Procedure for Consideration of Offers, Applications and Complaints of Citizens has been valid only in the part of citizens' offers.
Republic of Kazakhstan	Law of the Republic of Kazakhstan On Administrative Procedures from November 27, 2000	Law of the Republic of Kazakhstan On the Procedure for Consideration of Appeals of Physical Persons and Legal Entities from January 12, 2007	Procedures for consideration of citizens appeals on implementation of their rights, as well as procedures of administrative protection of the rights and legitimate interests of citizens are recognized as a form of administrative procedures. However, the Law of the Republic of Kazakhstan On Administrative Procedures regulates only the order of submission and consideration of

			complaints against the actions (inaction) of officials, as well as against the acts (decisions) of state bodies. Other categories of appeals are regulated by the Law of the Republic of Kazakhstan On the Procedure for Consideration of Appeals of Physical Persons and Legal Entities. In addition, currently the Ministry of Justice of Kazakhstan developed the concept of the draft Law of the Republic of Kazakhstan On Administrative Procedures (revised)[241] where it is noted that the adoption of the proposed draft law will require changes and additions to the Law of the Republic of Kazakhstan On the Procedure for Consideration of Appeals of Physical Persons and Legal Entities (in the terms of exclusion the procedures for consideration of applications and complaints from its subject of regulation).
Republic of Moldova	absents	Law of the Republic of Moldova On Petitioning from July 19, 1994. A petition is understood as any application, complaint, suggestion or appeal filed to competent authorities, including a preliminary statement, which contests an administrative act or failure to consider an appeal within a statutory period. Overall this Law is little by volume (there are 23 articles), contains a small number of procedural rules, and many of the issues (principles, administrative act, its execution, and others.) have not received regulation.	
Republic of Tajikistan	Code of the Republic of Tajikistan On Administrative Procedures from March 5, 2007.	Law of the Republic of Tajikistan On Public Appeals from December 14, 1996	There are no clear provisions on the procedure for correlation of these acts in the legislation. Proceeding from the time of adoption of the acts and the level of such acts, it can be assumed that the Law On Public Appeals is applied to those appeals, the result of which will not be the adoption of an administrative act or the examination of a complaint against an administrative act.

[241] http://www.adilet.gov.kz/ru/node/105298

Republic of Uzbekistan	absents	Law of the Republic of Uzbekistan On Appeals of Individuals and Legal Entities from December 03, 2014	
Russian Federation	Administrative Procedure Act is absent. There is the Federal Law On the Procedure for Providing State and Municipal Services from July 27, 2010	Federal Law On the Procedure for Consideration of Public Appeals of the Russian Federation Citizens from May 02, 2006	Correlation between these acts is quite debatable. However, the provisions of the Federal Law establishing the procedure for dealing with complaints about violations of the rights of citizens and organizations in the providing of public and municipal services shall not apply to the relations regulated by the FL no. 59 On the Procedure for Consideration of Public Appeals of the Russian Federation Citizens from May 02, 2006.
Ukraine	Administrative Procedure Act is absent. There is the Law of Ukraine On Administrative Services from September 6, 2012. The draft Law of Ukraine On Administrative Procedure[242] is posted for public discussion On the website of the Ministry of Justice.	Law of Ukraine On Public Appeals from October 02, 1996	The draft Law of Ukraine On Administrative Procedure provides for instructions to the Cabinet of Ministers to present the Law On Public Appeals in a new version in order to regulate the offers and recommendations of citizens. Thus, it seems that the developers refer consideration of all applications and complaints to the subject of legislation on administrative procedures.
Turkmenistan	Absents	Law of Turkmenistan On Public Appeals and the Procedure for their Consideration from January 14, 1999	
Republic of Estonia	Law of the Republic of Estonia On Administrative Proceedings from June 06, 2001. Administrative proceedings – activity of an administrative body when issuing regulations or administrative acts, in the commission of an action or at the conclusion of an administrative contract.	Law of the Republic of Estonia On Replies to an Internal Memorandum, Petitions for Clarification and on Submission of a Collective Appeal from November 10, 2004. Internal memorandum is an appeal of a person which is used for: 1) offer for an organization of work of an institution or a body, or for decision-making in the development of a field of activity; 2) provision to addressee information associated with public life and state administration. Petition for clarification is an	The law On Replies to an Internal Memorandum, Petitions for Clarification and on Submission of a Collective Appeal provides that administrative proceedings, provided for in this Law, is conducted in accordance with the Law on Administrative Proceedings unless otherwise provided by the law On Replies to an Internal Memorandum, Petitions for Clarification and on Submission of a Collective Appeal. This approach is apparently aimed at allowing a subsidiary application of the Law On Administrative Proceedings norms for consideration of internal memorandums, petitions for clarification and collective appeals.

[242] Message on promulgation of the draft Law of Ukraine On Administrative Procedure ||http://old.minjust.gov.ua/discuss

		appeal of person in which he: 1) seeks information from the addressee, which implies analysis, synthesis of information at the disposal of the addressee or gathering of any additional information; 2) seeks providing of legal clarification.	
Republic of Bulgaria	Administrative Code (2006). The Code regulates the issues of contesting and performance of administrative acts and judicial decisions on bylaws, consideration and resolution of messages and offers from citizens and organizations, consideration of petitions on the use of administrative powers to perform or refrain from certain action, and others.	absents	Previously there operated Administrative-Procedural Code and the Law On Offers, Complaints and Applications. The last was declared invalid after the entering into force of the Administrative Code. Nevertheless, nowadays a separate regulation as part of the Code (compared with the procedure of adoption of an administrative act) is devoted to offers and warnings (about various abuses, corruption, illegal actions, and others).
Republic of Poland	Code of Administrative Proceedings	absents	Code of Administrative Proceedings regulates both cases that lead to adoption of administrative acts and the issuance of certificates, as well as consideration of complaints and suggestions. At the same time consideration of complaints that are not related to the adoption of administrative acts, as well as offers is governed by a separate chapter of the Code and essentially is very similar to that order of consideration of appeals which existed in the Soviet period.
Republic of Serbia	Law of the Republic of Serbia On General Administrative Procedure	Law of the Republic of Serbia On Public Administration (Article 81) (provides for a 15-day deadline to respond to the complaints to state authorities concerning their work or inappropriate behavior of employees).	The law On Public Administration applies to the complaints that do not fall under the Law On General Administrative Procedure.