Universal Decimal Classification 342.92

Davydov K.V.

Stages of an Administrative Procedure: a Comparative Legal Analysis

Head of the chair of administrative and financial law of the Siberian University of Consumer Cooperation, Associate professor of the theory of state and law chair of the Novosibirsk State Technical University, PhD in Law

davkon@yandex.ru

8-913-754-71-18

The article analyzes the stages of an administrative positive procedure. It is concluded that the Russian model of a positive administrative procedure is deformed due to the inquisitional nature of interaction of public administration with actors without authority, as a result of which the stage of procedure initiation received the most complete regulation and the stage of proceedings is essentially of internal organizational nature. Suggestions to improve the Russian legislation on administrative procedures, taking into account foreign experience, are formed in the article.

***Keywords**: administrative procedure, administrative procedure stage, administrative case, initiation of an administrative procedure, consideration of an administrative case, administrative act, administrative case review, execution of an administrative act.*

Positive (managerial) administrative procedures is one of the most important institutions of modern administrative law, the study of which is impossible without an analysis of its structure. At the same time the content and internal structure of administrative procedures can be disclosed from various views. So, E. Schmidt-Assmann in analyzing the European models of administrative procedures identifies the following "stages" and "elements": public hearings, data presentation, consultations, exchange of information, evidence collection, tools and mechanisms for clarification, mutual approval and decision-making[267]. It is easy to see that here it is primarily about procedural guarantees for the rights of actors without authority and the conditions for adoption of legitimate and justified administrative acts.

However, from the point of view of the Russian theory of administrative law, it is more appropriate to disclose the structure of an administrative procedure through its stages. A stage of a procedure is its *part characterized by a certain set of actors, procedural actions covered by a single legal goal and leading to a certain legal result*. Stages nature is one of the fundamental properties of an administrative procedure, reflecting its ordering and consistent nature. The scientific and educational literature point up the following "classical" general stages of administrative process:

1) initiation of proceedings on an administrative case;

2) consideration of an administrative case;

3) decision-making on an administrative case;

4) execution of the decision on an administrative case;

5) review of the decision on an administrative case[268].

This system of stages is fully applicable to administrative procedures (except that the stages of considering a case and making a decision can be combined because of their extremely close cohesion).

Also let us explain the term "administrative case". The latter is widely used (but not explained) in the legislation on administrative responsibility (Administrative Offenses Code of the Russian Federation). Russian legislation on administrative procedures does not use such a concept (although in some foreign systems of justice the latter is used quite extensively). "An

[267] Schmidt-Assmann E., Structures and Functions of Administrative Procedures in German, European and International Law, *in* Transforming Administrative Procedure, Barnes J. (ed), Sevilla, 2008. p. 49.

[268] Orokin V. D. Administrative-procedural Law. Textbook, 2nd edition, updated and revised. St. Petersburg, 2008, p. 237.

administrative case" in the scientific doctrine is disclosed primarily as *a matter referred to the competence of public administration, through the resolution of which the government establishes the rights and obligations of actors without authority*[269]. Also, an administrative case can be viewed in an objective sense – as an assemblage of documents, other materials containing information on the issue under consideration. Thus, if an "administrative case" according to the Administrative Code of the Russian Federation is an issue (and materials) about bringing a person to administrative responsibility or exempting from it, then in positive legislation the case is *a managerial conflict-free issue which is resolved by the public administration within an administrative procedure, that creates rights and obligations for its participants and is reflected in the relevant materials*.

Let us consider in more detail in this article the stages of initiation and consideration of an administrative case.

The stage of the initiation of an administrative procedure (administrative case) is the first and mandatory stage from which the administrative procedural legal relation begins. An administrative procedure is initiated either on the initiative of the public administration itself (exofficio), or on the appeals of persons without authority. As noted by Ya. Tsiko, this stage entails the following legal consequences:

1) an administrative procedure begins;

2) citizens acquire the status of participants who have corresponding procedural rights;

3) in order to avoid duplication, the same case cannot be the subject of another administrative procedure[270].

At this stage, legal facts appear that play an important role in the further development of a procedure. It is also possible here to collect evidence that justifies the position of public administration or a person without authority. Analysis of the Federal Law On the Procedure for Examining Applications from Citizens of the Russian Federation" (hereinafter referred to as the Law on Citizens' Appeals) No. 59-FL from May 2, 2006 allows us to conclude that the procedure for considering a citizen's (organization's) application can be initiated only by an

[269] Review of the various points of view on this issue, see: Popovich, S. Administrative Law. General part. Moscow, 1968. pp. 400-401.

[270] Tsicko Ya. Fundamentals of the Legislation on Administrative Procedures in Germany / / Yearbook of Public Law – 2014: "Administrative Law: Comparative Legal Approaches". Moscow, 2014. p. 363.

appeal. Further collection of materials may be carried out by an administrative body or official considering the appeal. However, the special legislation (on registration, licensing, etc.) requires the applicant to submit a certain set of documents that are minimally necessary for the adoption of the final decision.

The legal regime of initiation depends on its bases. If a procedure begins on the initiative of an administrative body, the legislation makes strict requirements both to the form and to the justification of the relevant interim administrative act. So, according to the Federal Law No. 294-FL On Protection of the Rights of Legal Entities and Individual Entrepreneurs in the Exercise of State Control (Supervision) and Municipal Control[271] from December 26, 2008, (hereinafter – the Law on the Protection of the Rights of Legal Entities), an unscheduled audit is conducted only if there are certain grounds (for example, a complaint of a person whose rights have been violated), also on the basis of a special act of the head of a supervisory authority, which, as a rule, is subject to agreement with the prosecutor's office. The principle of legality (even – of formalism) plays a decisive role here. A completely different situation develops when the procedure is initiated on the initiative of actors without authority. The fact is that both foreign and Russian legislation according to the general rule presupposes legal illiteracy of applicants. Therefore, at the stage of initiating such a procedure the principle of banning super-formalism obtains a special significance. Consequently, minimum requirements for the very appeal are set. According to part 1 of article 7 of the Law on Citizens' Appeals, a citizen in his written appeal must specify: the addressee (or the name of the state or municipal body to which the written appeal is addressed, or the surname, name and patronymic name of the relevant official, or the position of the corresponding person), his surname, name, patronymic name(if any), postal address to which the response should be sent, notice of redirection and, of course, the essence of his appeal, as well as his personal signature and date. The minimum requirements for the form mean that under the general rule any appeal is subject to review (article 9 of the Law). However, even if the public administration is not obliged to give a substantive answer (for example, in respect of swearing complaints, according to article 11 of the Law), it is still obliged to register the appeal and start the procedure for its consideration without exception.

[271] Russian Gazette from December 30, 2008.

It should be noted that the special legislation setting the criteria for refusal to satisfy an application (for example, due to the incompleteness of the documents submitted), as a rule, does not contain formal, bureaucratic obstacles to the accepting of the initial package of documents and hence the initiation of a procedure. So, according to part 14, 15 of article 18 of the Federal Law No. 218-FL On State Registration of Real Estate (hereinafter – the Law on State Registration of Real Estate)[272], the refusal to accept an application for state cadastral registration and (or) state registration of rights and documents attached to it is not allowed, except for a single case: when the identity of the applicant cannot be established (including because the situation when a person has refused to provide an identity document). However, in some cases, on the one hand, it is reasonable to assume a minimum legal awareness of the applicant, and on the other hand, to save the resources of the public administration, lest to initiate an idle procedure. Thus, according to part 8, 9 of article 13 of the Federal Law No. 99-FL On Licensing Certain Types of Activities from May 04, 2011 (hereinafter – the Law on Licensing)[273], in the event that an application for granting a license is formed in violation of established requirements, and if the package of documents is incomplete, the licensing authority within three working days from the date of receipt of the application deliver (sends) to the applicant a notice on the need to eliminate the revealed violations and (or) submit documents within thirty days; in the event of failure to eliminate the violations it takes a decision to return the application.

Another example of facilitating the form and strengthening the principle of prohibition of super-formalism is the algorithm of public administration actions in the event that an appeal has been filed in violation of the established requirements, including to a state (municipal) body not authorized for consideration of the relevant administrative case. In fact, there are two possible options here: active actions by the public administration to correct an applicant's error (including re-addressing the appeal to an authorized body with notification of the applicant) or suspension of the stage of initiating a procedure, as well as refusal to initiate the procedure. Obviously, both approaches are applicable, and the choice of a specific one depends on the specifics of legal relationship. Russian administrative legislation establishes a

[272] Russian Gazette from July 17, 2015.
[273] Russian Gazette from May 06, 2011.

general rule on the redirection of an appeal beyond the jurisdiction (part 3, 4 of article 8 of the Law on Citizens' Appeals[274]).

We note a curious paradox: the stage of initiation is one of the few traditionally detailed in administrative law stages of administrative procedure. We believe that this is due to the truncated model of the domestic stage of a case consideration. Indeed, in a situation where a case is being considered and the final decision is made in an inquisitorial regime, the only way for citizens and organizations to exercise "complete" interaction with an authorized body (official) is the maximum using of legal possibilities at the stage of initiation. Although the Law on the Procedure for considering citizens' appeals provides for an active role for state bodies (including the requesting of necessary materials), but the special legislation (on public services, licensing, accreditation, registration, etc.) is essentially based on increased requirements to legal literacy of applicants. This means that in special procedures all the necessary package of documents should be presented at the stage of initiating an administrative case. The slightest error, under a general rule, will not be corrected in the future in the course of an administrative procedure and will result in a refusal to satisfy an application. Rare modest procedural guarantees (like article 13 of the Law on Licensing) only emphasize the validity of this conclusion: after all, the stoppage of a procedure is connected to correction of formal defects (incompleteness of the list of documents, mistakes in the very application). Their substantial defectiveness will be non-correctable under the conditions of an inquisition procedure. Such "closed nature", "rigidity" and the lack of receptivity of the Russian administrative procedure to correcting defects grossly and clearly contradict to the principles of administrative procedures and modern procedural concepts of "good governance" and "natural justice"[275].

The stage of consideration of an administrative case and the adoption of the final decision is the second, mandatory and central stage of a procedure, the task of which is to consider all the legal circumstances of a case comprehensively, fully and objectively, as well as to

[274] Similar rules are also contained in other laws that prescribe the legal illiteracy of applicants (see, for example: part 3, article 5 of the Federal Law No. 119-FL On the Peculiarities of Granting to Citizens of Land Plots in State or Municipal Ownership and Located on the Territories of the Constituent Entities of the Russian Federation that are Part of the Far Eastern Federal District and on the Introduction of Amendments to Certain Legislative Acts of the Russian Federation (Russian Gazette, from May 02, 2016.)).

[275] On this matter, see, for example: Davydov, K.V. Principles of Administrative Procedures: Comparative Legal Research. The Topical Issues of Public Law, 2015. No. 4 (34).

adopt a lawful, substantiated and expedient final administrative act. Exactly at this stage the applicable legal norms are identified and the collection and verification of existing documents takes place, and the participants to an administrative procedure should have the opportunity to realize their legal status.

The terms of administrative procedures are, first of all, the time for consideration of a case. In the western system of justice such general terms are defined in different ways: Spanish legislation speaks of three months, Italian – 90 days, Serbian – 30 days (and, if there is a need for special investigation – 90 days)[276]. The Russian Law on Citizens' Appeals establishes a general term of 30 days (with the possibility of extension for the same period); the special legislation establishes special terms.

Legislation on administrative procedures of various foreign states allocates the following participants of the stage of consideration of a case:

1) the public administration itself that is vested with the powers to resolve an issue under consideration;

2) the addressee of an administrative act, as well as third parties who are not directly the addressees, but whose legal status may be affected by the adopted administrative act;

3) other auxiliary participants to the procedure (translators, experts, etc.).

The public administration plays an active role (obviously, this is due to the very nature of public relations; the role of the court in an administrative process is also traditionally active). It does not only examine the evidence presented, but also requests other materials that it deems necessary, helps an applicant to adjust legal determination and then adopts the final administrative act. Of course, a powerful state (municipal) body and official must be impartial. Inter alia, the institution of disqualification (self-disqualification) serves as a guarantee of impartiality.

Participants in an administrative procedure (in the procedural judicial codes similar entities are referred to as "persons participating in a case") are vested with a legal interest in the resolution of an administrative case. This means that a future administrative act can subsequently create their rights and/or obligations (also change or terminate such). Accordingly, the scope of procedural rights and guarantees of such persons is maximum: the

[276] Codification of Administrative Procedure. AubyJ.-B. (ed.), 2013. p. 24.

right to submit materials and documents, the right to participate in their study, the right to petitions and disqualifications, the right to present their position in an administrative case ("the right to be heard"), the right for notification about an adopted administrative act, finally, the right to appeal against the latter. Auxiliary participants are involved as and when needed, a set of their rights and duties is due to their role in an administrative procedure. For example, an expert having competence in certain matters requiring special knowledge has the right to get acquainted with the case materials, but only in the part necessary to draw up his expert opinion.

The Russian legislation enshrines a different model. The role of public administration depends on the type of administrative procedure. In administrative procedures initiated by the initiative of a public authority or official the activity of an authority is maximal (it is, of course, in the first place, of control and supervisory procedures). And such activity is not good for the addressee of a future administrative act invariably; the task here is to check the degree of compliance with the requirements of the law to the maximum. On the contrary, in procedures providing rights (initiated by the initiative of citizens and organizations) the public administration does not play such a "repressive" role.

The level of activity of the public administration also depends on the specifics of such a procedure. For example, the Law on Citizens' Appeals provides for the possibility of active collection of documents by the public administration. However, in a special (licensing, registration one, etc.) legislation a public authority takes a more "detached" position, examining only the materials submitted. The exception here is the documents and information, which, by virtue of a direct law prescription, must be in the databases of these state and local self-government bodies. In the latter case, the requesting of materials from citizens (organizations) is illegal; those are submitted to the administrative body or official in charge of an administrative matter by the bodies that own the databases, in the order of interdepartmental interaction.

It is noteworthy that there are no rules for ensuring the impartiality of the public administration in numerous Russian legislative and substatutory normative legal acts that contain various administrative procedures. Some (yet rather one-legged) attempts have been made in the legislation on the public civil service. It is primarily about the so-called "conflict of

interest". The prohibition on the performance of any juridically significant actions by civil servants in a situation where they can bring him an undue material or non-material benefit was originally enshrined in the Federal Law No. 79-FL On the Public Civil Service of the Russian Federation[277] from July 27, 2004, but it was really begun to be introduced into managerial practice not earlier than 2008-2009. Today, this prohibition applies not only to state and municipal employees, but also, in accordance with the Federal Law No. 273-FL On Combating Corruption[278] from December 25, 2008, to the employees of other organizations that exercise public functions. Its violation, in the absence of signs of a crime, leads to disciplinary responsibility in the form of dismissal, and the courts are gradually developing some practice in this category of cases[279]. However, it is unlikely that these norms should be considered as a panacea, if only because the bias of an official may be not only of a self-interested nature. In addition, conflict resolution procedures are internal. Deprivation the participants of an administrative procedure of the right to disqualify is another erroneous approach by the Russian legislator.

One of the key rights of participants to an administrative procedure is the right to participate in the consideration of an administrative case. The scope and conditions for the implementation of this procedural right depends on the type of procedure. In rule-making, law-enforcement protective procedures, as well as in formal positive law-enforcement procedures the role of actors without authority was being manifested very vividly. In general, this is relevant for the Russian legislation. However, in the case of "ordinary" positive law-enforcement procedures the situation is different. A hypothetical mention of the possibility of bringing an applicant to the procedure for considering his appeal is contained in article 10 of the Law on Citizens' Appeals, but the mechanisms for its implementation are not enshrined. Special legislation stay away from this issue by.

We emphasize: the absence of rules on the participation of powerless people in the consideration of positive administrative cases allows us to conclude that this most important stage of the Russian informal administrative procedure is of an internal nature. From the point

[277]Russian Gazette from July 31, 2004.
[278]Russian Gazette from December 30, 2008.
[279] Review of the practice of considering in 2012 - 2013 cases on disputes related to the bringing of state and municipal employees to disciplinary responsibility for the commission of corruption misconducts: affirmed by the Presidium of the Supreme Court of the Russian Federation in 30.07.2014 // Bulletin of the labor and social legislation of the Russian Federation. 2014. no. 9.

of view of the model of external administrative procedure the stage of consideration of a case is simply absent. Of course, the Russian legislation is trying to "smooth" the severity of this gap. So, a known positive function is exercised by the institution of suspension of an administrative procedure of case consideration. For example, according to article 26, 29 of the Law on State Registration of Real Estate, in case if, for example, submitted documents are not genuine or the information contained therein is unreliable the authorized body suspends registration or cadastral registration procedure with a reasonable notice to the applicant. Let us note that this mechanism is certainly expedient. However, it is not a panacea, since the suspension of, for example, the action of already issued permits (licenses, accreditations, etc.) is accompanied with very significant restrictions on the legal status of the addressee of such a decision taken in absentia (much more harmful than it is in accounting and registration procedures).

We can also recall the procedural guarantees of the Law on the Protection of Legal Entities Rights, which provide, for example, to the representatives of audited organizations an opportunity to be present at the events conducted within the framework of an inspection, to get acquainted with the final verification act, etc. Undoubtedly, the above standards substantially "ennobled" the Russian institute of control and supervisory procedures. However, these guarantees do not eliminate the general defect. The point is not only that the procedural guarantees of this law are not universal even for all state and municipal control procedures (article 1 of the law establishes an extensive list of exceptions to the subject of the law). The main problem is that control (supervision) procedures are often conjugated with other procedures. Thus, if during an audit of a higher educational institution the violation of the legislation requirements are found it may lead to, for example, the suspension of accreditation. And the procedure for such suspension is of an inquisitional nature, the addressee of the future act (in this case the higher educational institution) has no right to represent and protect its position before an administrative body, supplement the package of documents (in comparison with the set of materials that was formed as at the close of the corresponding audit). Therefore, even the most "open" control (supervision) procedures are only a way to initiate other procedures that are deprived even a sign of democratism (and, let's add, humanism).

The complex structure of an administrative procedure, in which the relations not only between the public administration and non-authoritative participants of the procedure (external element), but also between various administrative bodies, officials (internal element) are often intertwined, may be clearly seen within the stage of consideration of a case. It is extremely important to prioritize here correctly. It is obvious that the significance of externally managerial components should prevail over the internal ones. The Russian legislator is beginning to take the first steps in the right direction. Thus, according to part 6 of article 7^1 of the Federal Law No. 210-FL On the Organization of Providing State and Municipal Services from July 27, 2010 (hereinafter – the Law on Public Services), failure to submit or not timely submission by a body or organization of interdepartmentally requested documents and information cannot be grounds for refusal to provide an applicant with a state or municipal service.

The stage of consideration of an administrative case is finished, as a rule, by the adoption of the final administrative act. Legislation on administrative procedures of foreign countries in most cases regulates in detail the issues of adoption of an administrative act (as opposed to the Russian administrative law). The final part of this stage should be recognized actions to notify the addressee of the adopted administrative act. The methods of notification can be different (up to a public announcement in the Media in a given locality). The legal meaning of the notice is that it is a condition for the commencement of an administrative act. So, according to part 1 of article 43 of the Federal Law the Federal Republic of Germany on Administrative Procedures of 1976, an administrative act shall enter into force with respect to the persons to whom it is intended or whose interests it affects from the moment of its announcement to the said persons; the administrative act is valid in the content in which it was declared[280]. This procedure in Germany is regulated by an independent regulatory act – the Law of 2005 On the Delivery of Administrative Decisions" [281].

Russian legislation has a fragmented nature on this issue. In separate normative acts one can find different rules. For example, paragraph 4 of article 222 of the Civil Code of the

[280] See: Collection of Laws on Administrative Procedures. Moscow: Infotropic Media, 2016. p. 148.

[281] See: German Administrative Procedure Law [VerwaltungsrechtsschutzinDeut-schland]. Law on Administrative Proceedings; Law on Administrative Courts; Law on Administrative Expenses; Law on the Delivery of Administrative Decisions; Law on the Execution of Administrative Decisions: translated from German. V. Bergmann. 2nd arranged edition. Moscow. 2013. pp. 193-201.

Russian Federation provides for the possibility, in the event when the person who carried out an unauthorized construction was not identified, of a public announcement by making public the announcement of planned demolition of the unauthorized building (in local official Media, on the Internet, on an information board within the boundaries of the corresponding land plot). However, the consequences for violation of this rule are not defined. In the Russian administrative legislation a clear link between the notification of an addressee and the entry into force of an administrative act is established only in protective procedures. According to article 31.1 of the Administrative Offenses Code of the Russian Federation, a decision on a case of an administrative offense is generally shall be enforceable after the expiration of the period for appeal, and the term for appealing the decision starts to flow from the moment of its delivery (part 1 of article 30.3 of the Administrative Offenses Code). Positive administrative procedures do not disclose the legal meaning of the delivery of an administrative act.

The development of an administrative procedure as a legal relationship easily may end at the stage of consideration of an administrative case. Such situation occurs if an administrative act is adopted and it does not imply an independent execution (for example, in account and registration procedures), with the assumption that the administrative act is not appealed. The stage of an administrative case review is, as we know, of optional nature. However, such a characteristic of the legal nature does not detract from the significance of this stage, because the main task of the review is to correct mistakes and violations of legislation made by the public administration at the previous stages. The stage of review is initiated both by the public administration itself and by interested persons without authority. In the first case, it is a matter of adjusting the administrative act by the body or an official that adopted it, (as an option, by a higher authority); in the second – an appeal takes place.

Review of an administrative act by the public administration on its own initiative is an internal organizational procedure; that is why it is not regulated by the legislation on administrative procedures. However, here, foreign systems of justice apply material norms of laws on administrative procedures dealing with administrative acts, including the conditions for the abolition of lawful and unlawful, favorable and unfavorable acts. It is within the

framework of this procedure the role and significance of the principle of trust is maximally clearly manifested[282].

Appeal is an externally-managerial version of a review procedure. In foreign systems of justice it is usually regulated by laws on administrative procedures. However, in the German legislation, in view of the fact that administrative appeal is an obligatory precondition for a court appeal, this stage of the procedure is regulated in the German Law of 1960 On Administrative Courts. The Russian administrative law has taken an attempt to formulate a general (framework) appeal procedure in the Law on Citizens' Appeals. It is noteworthy that the latter does not contain procedures just for appealing. However, the general model of the procedure for consideration of an appeal that is enshrined in this law applies to this. Special provisions on appeal are contained in many normative legal acts (including legislation on the provision of public services).

The object of appeal is an administrative act. The European doctrine, legislation and law-enforcement practice proceed from the fact that exactly the final (resolving the matter on the merits) administrative acts are subject to appeal. Intermediate actions, decisions, additional administrative acts are appealed only simultaneously with the main administrative act. Other should be expressly provided for by law. As a rule, it is possible to appeal an interim act that obstacles further consideration of a case (for example, refusal to accept documents) independently[283].

In the Russian legislation the ban on independent appeal of interim acts was implemented in the administrative court proceedings. Judicial practice consistently defends this rule (which is understandable, because otherwise would lead to an even greater overload of courts)[284]. In the case of administrative appeal, this issue has not been settled by the Russian legislation. At the same time, the scientific literature expresses a viewpoint on the

[282]Here we can recall paragraphs 48, 49 of the Federal Law the Federal Republic of Germany on Administrative Procedures of 1976 (see: Collection of Laws on Administrative Procedures . Moscow. Infotropic Media, 2016. pp. 150-153).

[283]Here we can recall a similar approach in the Russian protective legislation. According to part 4 of article 30.1 of the Administrative Offenses Code of the Russian Federation, the judgment on refusal to initiate a case on an administrative offense is appealed under to the rules of chapter 30, i.e. under the general rules on the review of provisions (decisions) on cases of administrative ofences.

[284]As an example we consider the contesting of the acts adopted within the procedure of public hearings. Judicial practice allows an independent appeal of not the results of public hearings, but of the final administrative act of an authority.
For more details on this issue, see: Burov V. Procedure of Public Hearings. EZH-Jurist. 2012. no. 28. p. 6.

admissibility of extrajudicial appeal of any (including interim) acts and actions of the public administration[285].

An important element of the characterization of a stage of an extrajudicial appeal is the issue of its correlation with the judicial contesting. As J. Deppe points out, "an administrative decision appealed by a citizen in many legal systems is firstly considered by the body that has taken it (the right to independent amendment of a decision taken). This approach has unquestionable advantages (the possibility of self-control for administration bodies, re-decision on the merits, unloading of courts) and at the same time it contains some shortcomings (late legal protection, sometimes prejudicial attitude on the part of the body, etc.). The answer to the question whether these advantages will outweigh these shortcomings depends not only on the specific legal development of an appeal procedure, but also on the self-awareness and legal culture of the officials of the administrative body"[286].

It is obvious that a deep distrust towards administrative bodies and their officials remains in the Russian legal system. The reasons for this mistrust are rooted in the Soviet era, in which the institution of judicial appeal of administrative acts was essentially absent until the late 1980s. The introduction of administrative prejudice (i.e. mandatory non-judicial appeal before going to court) is considered as infringement of the constitutional right to judicial protection. However, in some cases, as an exception, administrative prejudice is gradually being introduced into the Russian public law, evidently with a view to the partial unloading of courts[287]. Such restraint of the domestic legislator on this issue deserves approval.

The terms for appeal depend on a number of circumstances. Thus, the Law of the Federal Republic of Germany of 1960 On Administrative Courts connects the terms, firstly,

---

[285]See: Luparev, E.B. Some Problematic Issues of Extrajudicial Contesting of State Administrative Acts. Administrative Law and Process. 2015. no. 9. (Reference Legal System – ConsultantPlus).

[286]Deppe J. Some Isues in Connection with the Reform of Administrative Law in the CIS Countries. Administrative Justice: to develop a scientific concept in the Republic of Uzbekistan. Materials of the International Conference on the theme: "Development of Administrative Law and Legislation of the Republic of Uzbekistan in the Conditions of Modernization of the Country", March 18, 2010. Editor-in-chief L.B. Hwang. Tashkent, 2011. p. 26.

Also on this issue, see: Hartwig M. Preliminary Proceedings – the Arguments for and against. Public Law Yearbook-2014: "Administrative Law: Comparative-Legal Approaches". Moscow, 2014. pp. 338-341; Ksalter E.V. Challenging of an Administrative Act in the Pre-trial Order. Ibidem. pp. 342-347.

[287]According to part 2 of article 138 of the Tax Code of the Russian Federation, "acts of tax authorities of non-normative nature, actions or inaction of their officials (with the exception of acts of non-normative nature adopted on the basis of consideration of complaints, appeals, acts of an abnormal nature of a federal executive authority, federal executive body in charge of control and supervision in the area of taxes and levies, actions or inaction of its officials) can be appealed in court only after their appeal to a higher tax authority in the manner provided for by this Code".

with the moment when an administrative act is declared to the addressee (in this case, according to article 70 of the law, the administrative act may be appealed within a month from the date of the announcement), secondly, with the observance of the requirements for the content of the administrative act (it must state the procedure for its appeal). Violation of any of the described requirements (i.e., non-indication of the procedure for appealing, as well as non-delivery of the administrative act to the addressee) entails an extension of the terms of appeal to one year (article 58 of the law)[288].

Russian legislation does not contain limitations period for administrative appeals against administrative acts. Consequently, any action, decision can be appealed without regard to when the relevant interested person has learned (or should have learned) about the violation of his rights and legitimate interests. Is the Russian legislator right in this case? We believe that the answer to this question depends on whether the administrative prejudice is enshrined. If an administrative appeal is a prerequisite for a judicial appeal, then the time limits for the out-of-court appeal are necessary (otherwise the terms for judicial appeal also become vague). However, if the procedure for an extrajudicial appeal is of an independent nature, then it can be limited to fixing only the terms for a judicial appeal. The statute of limitations for administrative appeal may not be established (as it actually happens in the current Russian legislation). However, they can be provided for, but just for the prevention of abuse of right (so that a citizen does not complain about administrative acts committed many years before the complaint was filed). But the consolidation of obligation of the public administration to inform in writing the addressee of an administrative act about the procedure of its contesting is necessary. As possible consequences of its violation, we propose to extend the time for judicial appeal.

Terms for appeal should be distinguished from the terms for the very appealing procedure. Such ones are provided in the Russian legislation. The general terms under the Law on Citizens Appeals is 30 days, special laws provide for other rules. For example, according to

[288]The German approach has spread in some CIS countries. Thus, in the legislation of the Republic of Azerbaijan the failure to specify the terms and procedure for appealing an administrative act in its very text entails an extension of the terms of appeal from three to six months.
On this issue, see, for example: Mamedov, M. The Requirements for the Form and Justification of Administrative Acts, as well as the Consequences of Mistakes Regarding these Requirements under the Law of Azerbaijan on Administrative Proceedings. Yearbook of Public Law-2014: "Administrative Law: Comparative Legal Approaches". Moscow, 2014. p. 410.

article 11.2 of the Law on Organization of Provision of State and Municipal Services, a complaint about violation of the procedure for providing such services should be considered within 15 days from the date of its registration.

The next important element of the characterization of the legal meaning of an appeal stage is related to the consequences of filing a complaint. Often the legislation of foreign countries provides for the suspension of the execution of an administrative act in connection with its appeal (the so-called "suspensive nature of a complaint"). Russian administrative legislation does not regulate this issue. In such conditions one should obviously proceed from the absence of suspensive nature of an administrative complaint.

The subject authorized to file a complaint is a participant of previous stages of an administrative procedure (for example, the applicant) which has legal interest, as well as another person whose legal status is affected by an adopted administrative act. Russian legislation on special complaints generally supports this particular model. However, the Law on Citizens' Appeals on this issue takes a special position. Any person may apply to the public administration, regardless of whether he has a legal interest in resolving the case or the future act does not create any legal consequences for him. This is particularly clearly seen through the example of such a type of appeal as a proposal (however, an application can also serve to satisfy "curiosity"). In the case of a complaint the article 4 of the said law mentions such as a way of responding to a violation of not only the rights of the complainant, but also of other persons.

The determination of a body authorized to consider a complaint depends on the objectives and the model of this procedure. So, if the main purpose of appeal is providing the public administration an opportunity to correct mistakes on its own (which, as a rule, involves prejudice) the authorized body will be the same body that adopted the appealed administrative act. When the legislator, on the contrary, is skeptical of an extrajudicial appeal, consciously admits (or even presumes) the partiality of the body (official) that adopted the administrative act, the prohibition on sending a complaint to such a body (official) is enshrined. It is noteworthy that the Russian legislation simultaneously reflects both approaches. Thus, the Law on Citizens' Appeals in its article 8 prohibits the sending of a complaint to the state (municipal) body, official, who took the appealed administrative act. However, in article 11^2 of

the Law on Public Services reflects an opposite concept: a complaint is submitted to the body that provides a state (municipal) service and is considered by an official which have the authority to handle complaints. Obviously, in the latter case the legislation treats to an administrative appeal more loyal, considering it not so much as a sign of a deep and intractable conflict between a citizen and the public administration, but rather as a means of improving the quality of rendering public services.

The structure and content of an appeal procedure, as a rule, are similar to the procedure for considering an administrative case; the role and legal status of participants in these stages of the procedure are almost identical. This means that the specificity of procedural rights and guarantees of formal and informal procedures is maintained at the appeal stage (i.e., a complaint against the first involves more detailed research, with the participation of persons concerned).

This conclusion is also quite applicable to the Russian administrative law, albeit in a somewhat unexpected aspect. The rules on appealing (as, indeed, the rules on positive administrative procedures in general) do not that explicitly prohibit the participation of non-authoritative persons in the consideration of a complaint. They usually just do not mention such an opportunity, while retaining defacto their internal organizational nature. The inquisitiveness of consideration of a complaint is supposed to be, although the legislator avoids direct indication of this. However, article 140 of the Tax Code of the Russian Federation unequivocally enshrines this rule: “A higher tax authority reviews the complaint (appeal), additional documents submitted during the consideration of the complaint (appeal), as well as materials submitted by a lower tax authority, without the person who filed the complaint (appeal)”. An exception is provided for complaints on bringing to responsibility for committing a tax offense; in this case, the person who filed the complaint takes part in its consideration (clause 2, part 2, article 140 of the RF Tax Code).

The outcome of a complaint consideration procedure is an independent administrative act. As a rule, such decisions either satisfy a complaint or deny its satisfaction. Here arises an important question: is it possible, on the basis of review of an administrative case, to aggravate the position of the addressee of the administrative act? Legislation of foreign countries allows for various options. Russian legislation on positive procedures does not directly regulate this

issue. However, it is obvious that in relatively simple, relatively certain administrative procedures (for example, on the rendering of public services) this question is not relevant: the complaint is submitted by an applicant; consequently, the worst that awaits him is a refusal to satisfy it. The problem becomes more complicated in a situation when an adopted administrative act affects the rights of third parties (for example, the issue of a land plot may affect the rights of owners of neighboring land plots). In this case, theoretically, the complaint of such a third person may deprive the addressee of the administrative act of the provided benefits. However, in the Russian legal system such disputes are considered primarily by the courts.

Finally, we emphasize: the procedure for appealing against the provision of public services received independent legal protection in the Russian legislation. Part 3 of article 5.63 of the Administrative Offenses Code of the Russian Federation establishes administrative responsibility for violation by an official authorized to examine complaints on violations of the procedure for provision a state or municipal service the procedure or deadlines for considering a complaint, an unlawful refusal or evasion of the said official from accepting it for consideration.

The stage of execution of an administrative act logically completes a legal relation on the implementation of an administrative procedure and emphasizes the effectiveness, the reality of the public administration, its orientation towards the final transformation of social relations. However, as has already been noted above, this stage is mandatory only for certain administrative procedures (usually involving the use of state coercion). On the contrary, account and registration, licensing procedures are completed by the adoption of an administrative act and the making of corresponding records in state registers. However, consideration of this stage as an integral part of administrative procedure is generally justifiable. It is not surprising that such is regulated precisely in laws on administrative procedures in the legislations of a number of states. It must be said that, for example, in the German legislation the procedure of execution is enshrined in an independent normative act – the Law of the FRG of 1953 On the Execution of Administrative Decisions" [289]. Naturally, the

[289]German Administrative Procedure Law [VerwaltungsrechtsschutzinDeut-schland]. Law on Administrative Proceedings; Law on Administrative Courts; Law on Administrative Expenses; Law on the Delivery of Administrative Decisions; Law on the Execution of Administrative Decisions: translated from German. V. Bergmann. 2nd arranged edition. Moscow. 2013. pp. 203-212.

absence of relevant provisions in the law on administrative procedures (adopted, incidentally, in 1976, that is 23 years later than the law on the execution of administrative decisions) does not mean the exclusion of the relevant relationship from the model of administrative procedure. The German concept of the implementation of administrative acts (as, by the way, the legislation on administrative procedures in general) had a significant impact on the various systems of justice, including the CIS countries[290]. Let us name its main features.

Firstly, the possibility of compulsory execution of an administrative act, under the general rule, arises after its entry into force (article 6 of the law on the execution of administrative decisions); the rules of the latter are detailed enough. Secondly, there is an enshrined need for prior warning of future coercion with the appointment of a term for voluntary execution (article 13 of the law). Thirdly, under the general rule, the subject of execution is the administrative body that adopted the administrative act. Fourthly, three main measures are distinguished: replacement of execution by a third person, (administrative) fine and direct compulsion of the addressee (articles 9-12 of the law). Fifthly, the possibility of redirecting execution is legislatively enshrined (articles 9, 10 of the law). Sixthly, the repeated use of coercive measures is allowed (article 13). Finally, the seventh, coercive measures, as well as a warning on the application of such measures (note – in the latter case we talk about an interim act) may be subject to independent appeal (article 18).

Russian administrative law is lucky: despite the absence of a law on administrative procedures the rules for the implementation of administrative acts are regulated in sufficient detail in the Federal Law No. 229-FL On Enforcement Proceeding from October 2, 2007[291]. The "charm" of detailed regulation of the implementation of administrative acts went to administrative law almost "accidentally", because the above-mentioned law, first of all, is focused on the execution of judicial acts. Here, administrative procedures have become an optional object of legal regulation, a kind of "makeweight" to judicial proceedings. At the same time, the Russian model of executive procedure has both similarities and significant

[290] See, for example: articles 162-176 of the General Administrative Code of Georgia of 1999; articles 78-79 of the Law of the Republic of Armenia On the Fundamentals of Administration and Administrative Proceedings of 2005; articles 81-88 of the Law of the Republic of Azerbaijan On Administrative Proceedings of 2005; articles 70-87 of the law of the Kyrgyz Republic On the Basics of Administrative Activities and Administrative Procedures of 2015.

[291] Russian Gazette from October 06, 2007.

differences with the German one. Firstly, like in German legislation the Russian law provides for compulsory enforcement after the entry of an act into force (according to articles 21, 31 of the law, such execution is possible within two years from the date of entry of an act). However, let us recall an important problem: Russian administrative legislation does not establish general rules on the procedure for the entry into force of administrative acts. Secondly, as in the German law, it is necessary to notify the addressee of compulsory execution (article 24), with the establishment of a period for voluntary execution (according to article 30, 5 days are provided for that). Thirdly, under the general rule, the subject of execution is the officials of the Federal Bailiff Service, as an exception, in cases directly stipulated by law – other entities, for example, banks (articles 5-9 of the law). Fourthly, coercive measures are reduced primarily to direct coercion. It is also possible to bring the participants of enforcement proceedings to administrative responsibility (articles 17.14, 17.15 of the Administrative Offenses Code of the Russian Federation); an independent property sanction is the collection of an executive fee (article 112 of the law on enforcement proceedings). Fifthly, Russian legislation does not allow redirection of execution. Sixth, coercive measures can be combined, until the enforcement proceedings are discharged by performance (or for other reasons). Finally, seventhly, the applied compulsory measures can be subject to an independent complaint, within the framework of the executive procedure itself (articles 50, 121 of the law).

Is it expedient to completely copy the German procedure for the implementation of administrative acts by enshrining the rules on the performance of administrative acts by the administrative bodies and officials who have accepted them? It seems that this question should be answered in negative. The fact is that as a result of domestic administrative reforms only public services (registration, accounting, licensing, permissive activity) remained in the competence of the public administration. We repeat: these, as a rule, do not require independent execution. Control (supervision) plays the main role among public functions. Here, an independent compulsory execution requiring additional efforts on the part of the public administration is carried out primarily in the context of bringing to administrative responsibility. And this protective procedure is regulated by the Administrative Offences Code of the Russian Federation (chapters 31, 32). Thus, compulsory execution of non-jurisdictional

administrative acts by administrative bodies themselves is not always characteristic for the modern Russian managerial system. This is an objective result, on the one hand, of the policy of deregulation, and on the other hand, of increasing the role of the courts[292].

In conclusion we note that the structure of a positive administrative procedure existing in Russian public law has a paradoxical nature. The initial (initiation of an administrative case) and the final stage (execution of an administrative act) are regulated in detail. However, the key stage, the "core" of the procedure, where procedural guarantees of the rights of its participants without authority must be implemented – the stage of the consideration of a case – is still mostly intra-organizational in nature. It is difficult to recognize this situation as normal. Moreover, the Russian protective administrative legislation (Administrative Offenses Code of the RF) has long consciously enshrined relevant procedural rights to participate in the consideration of a case, to present materials, study them, etc. It is obvious that the modernization of legislation on positive administrative procedures is impossible within the framework of the established paradigm (especially – sublegislative regulation by administrative provisions of executive bodies). A new powerful effort of the legislator is needed to radically transform Russian administrative law, taking into account the best achievements of the Russian legal system and foreign experience.

[292]It must be said that recently the opposite trend is beginning to manifest itself. So, according to paragraph 4 of article 222 of the Civil Code of the Russian Federation, the decision to demolish an unauthorized construction became to be taken not by court, but by a public authority. However, it is better to entrust the implementation of such decisions to special entities – Federal Bailiff Service officials, who are endowed not only with special competence, but also with relevant material resources (including special equipment).