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Administrative Procedures: Kazakhstan and Foreign Experience

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The article is dedicated to the issues of the current status and development of administrative procedures in Kazakhstan. The author also considers difficulties which can arise in the preparation of the draft of the Law On Administrative Procedures and possibilities for implementation of foreign experience.

Keywords: *Kazakhstan, administrative law, administrative procedures.*

The main administrative and legal problematics in Kazakhstan has recently focused on three issues: administrative procedures, administrative justice and administrative violations. The vast majority of conferences, round tables and discussions, one way or another, is connected to these issues.

At that, it is interesting that many local lawyers, professional legal communities, and state structures consider attention to administrative violations as top-priority. Much less attention is paid to other various administrative and legal institutions.

It should be recognized that, in many ways due to our foreign colleagues and various projects with different level if success working in Kazakhstan, the most important issues of administrative law (administrative procedures and administrative justice) are put on the agenda, turn into draft laws and are constantly included in the programs of legal reforms.

This approach is very illustrative. For many Kazakhstani lawyers of different levels administrative law has remained a public administration right, a kind of truncheon to impact on citizens and organizations. Another purpose of administrative law is restraining of public administration, protecting the rights of citizens in the public sphere remains in the background.

That is why such a seemingly complicated from the point of view of legal technique act as the Code of Administrative Offenses has been developed and adopted in less than one year[1], but the issues related to administrative procedures and administrative justice are being discussed with varying degrees of intensity for years, and cannot be resolved.

Although if you take a formal look at the Kazakh legislation, then everything is not so bad. Fifteen years ago the Law on Administrative Procedures was adopted[2]. But, in spite of such a promising name, the very administrative procedures were given a very little space there. To date the law contains only 32 articles which refer to state bodies, their competence, functions, and the consideration of citizens' appeals. It is clear that each of these issues deserves one or several acts with tens or hundreds of articles.

Until recently, the value of the law on administrative procedures was that it was the only one in the all Kazakhstan legislation which at least from behind spoke about individual (administrative acts) of state bodies. But, as a result of the adoption of the Law on Legal Acts in Kazakhstan, issues related to individual acts were withdrawn from the Law on Administrative Procedures.

Many other issues on administrative procedures (participants, stages, types, entering into force of acts, execution of acts and etc.), which are characteristic for the laws on administrative procedures of different countries, were absent in the law On Administrative Procedures and, today, are absent in the Law on Legal Acts.

But since the procedural activities of the public administration cannot in principle remain without normative regulation, such activity has been become being regulated by laws and subordinate acts affecting various aspects of state administration: registration, licensing, control and supervision, consideration of applications, etc[3].

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[1] July 5, 2014 a new Code of Administrative Offenses was adopted in Kazakhstan. Gazette of the Parliament of the Republic of Kazakhstan. 2015. no. 18-II, article 92.

[2] Law of the Republic of Kazakhstan On Administrative Procedures from November 27, 2000. Gazette of the Parliament of the Republic of Kazakhstan. 2000. no 20, article 379.

[3] See, for example: The Entrepreneurship Code of the Republic of Kazakhstan from October 29, 2015. Gazette of the Parliament of the Republic of Kazakhstan. 2015. no. 20-II, 20-III. article 112; Law of the Republic of Kazakhstan On the Procedure for Con-

At the same time, the relevant normative legal acts are traditionally aimed at explaining the procedural actions of public administration; there is no place for the rights and freedoms of citizens, with the exception of the right to appeal, in such procedures.

A very important stage in the development of administrative procedures was the appearance of the institute of public services after taking of a decision at the political level to move the public administration to the so-called “corporate governance model”. At that, we shall note that the impulse to the development of this institute became dissatisfaction of business, and especially investors, with an excessive bureaucratization of government bodies. At a certain stage, first of all, the economic development of the country faced a clumsy state apparatus, stagnant forms of work, numerous corruption manifestations, including due to the lack of transparency in administrative activity, and the redundancy of licensing functions that were traditional for bureaucracy.

Due to the new administrative and legal institute the standards, regulations, registers for public services, quality assessment and monitoring systems for these services began to be developed. At the same time, there was no serious discussion of what shall be understood as a public service; whether it differs from a state function, and if differs by whom and with relation to whom it may be exercised.

For some time general provisions on public services were in the Law on Administrative Procedures, thus confirming that administrative procedures had to cover the procedures for the provision of public services. But, a separate Law on Public Services[4] was adopted in 2013, which removed public services from under the Law on Administrative Procedures.

To date, the register of public services includes more than 700 items the majority of which is in paper and electronic form[5].The register is very diverse and covers both completely explainable actions: issuing certificates, licenses, permits and those that cause questions:

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sideration of Appeals from Individuals and Legal Entities from January 12, 2007. Gazette of the Parliament of the Republic of Kazakhstan. 2007. No. 2. article 17; Law of the Republic of Kazakhstan On Permits and Notifications from May 16, 2014. Gazette of the Parliament of the Republic of Kazakhstan. 2014. no 9. article 51.

[4] Law of the Republic of Kazakhstan On Public Services from April 15, 2013. Gazette of the Parliament of the Republic of Kazakhstan. 2013. no. 5-6, article 29.

[5] Decree of the Government of the Republic of Kazakhstan On Approval of the Register of Public Services from September 18, 2013. Collection of Acts of the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan. 2013. no. 55, article 769.

providing a hostel for high school students, subsidizing the fee rates on loans, training private entrepreneurs, making an appointment to a doctor.

For the majority of these services, the standards and regulations of public services (approved by the Government Decree), which contain numerous administrative procedures, have been adopted. In addition to the standards and regulations there are still various departmental rules that also contain administrative procedures that are sometimes contrary to the standards and regulations. Sectoral legislation (tax, customs, antitrust) in its turn establishes its own procedural rules.

Thus, there is an obvious spontaneous process of rule-making, both at the level of laws and at the level of by-laws on the issues of administrative procedures. The general trend is that any external activity of the public administration falls under the regime of public services.

In addition to everything said, the e-government project involving contacts between the public administration and citizens solely in electronic form is gaining momentum. The project is very good: today you can register a commercial legal entity in Kazakhstan in one hour without leaving your apartment. Kazakhstan notaries – due to the development of electronic technologies – are already afraid that they will soon be out of work. But the legal support for these processes is not keeping up with the technologies.

Today there is a contradictory situation on the issue of the legal regulation of administrative procedures in Kazakhstan. On the one hand, the issues of these procedures are constantly being discussed. Everyone everywhere talks about the importance of these laws, conferences and round tables are held. On the other hand, there is already an informal opinion on the serious discontent of the state apparatus with the law on administrative procedures and resistance to its adoption. And this is quite understandable: despite all doubts about the effectiveness of good laws in the relevant political and legal environment and culture, a qualitative law on administrative procedures, in any case, will significantly change the format of relations between a citizen and the state apparatus. One can agree or disagree with such an explanation, but the adoption of a new version of the Law on Administrative Procedures (as well as the Administrative Procedure Code) is constantly being postponed.

But the process of preparing of the law, however, like any other possible development of the institution of administrative procedures, will be accompanied by certain difficulties, among which we include:

1. *Non-systematic, and in some cases, sporadic nature of the development of Kazakhstan's legislation*. There are drafts of new acts that do not fit well into the already existing system of legislation and are unpredictable in the future. For example, in Kazakhstan the draft of the Business Code, which, by the way, contains administrative procedures (whole chapters are devoted to permits and notifications, control and supervision activity), was very stormily and even somewhere badly discussed. The majority of Kazakh civil lawyers "fought to the bitter end": no such code is needed; the Civil Code and relevant laws are enough. It will make nothing but confusion. But they heard in response (from those who make decisions) some explanations why it was impossible to go without the Business Code. After a powerful onslaught of the civil lawyers, the accents in the code were shifted to public-legal issues of entrepreneurial activity: in accordance with the Code, commodity-money and other non-property relations based on the equality of business entities, as well as personal non-property relations related to property ones are regulated by the civil legislation of the Republic of Kazakhstan.

But from the standpoint of administrative law (the main public sector involved in this case) the adoption of the code has led to another loop of confusion with acts related to public administration.

We can also mention the recently adopted in Kazakhstan Law on Legal Acts. Its purpose is to regulate matters, normative and individual acts. At that, only three articles have been allotted to individual acts (legal acts of individual application) that were withdrawn from under the Law on Administrative Procedures.

2. *Excessive conservatism with respect to administrative and legal institutes even among lawyers.* The institutes of administrative law that have long become traditional are still inadequately perceived. A vivid example is administrative contracts, which are also covered by administrative procedures. Despite their real presence in law enforcement practice, the very existence of such contracts is disputed or the scope of their application is severely narrowed, especially by representatives of private-legal sectors[6].

[6] This approach is typical, in principle, in relation to other public legal contracts. See, for example: M. Suleimenov. The Method of Legal Regulation as a Criterion for Distinguishing between Civil and Tax Law. Jurist. 2013. no. 12, pp. 38-41.

3. Technologization of relations between the state and citizens. Certainly, new technologies are very convenient. But they are designed for standard situations. If you go beyond the standard the technologies are stalled. And the machine becomes the main antagonist, everyone shrugs his shoulders: the program is written so, we cannot do anything. As a response: in some legislative acts, provisions have been issued that exempt citizens from responsibility if software fails.

Interaction between citizens and the public administration is increasingly moving into the electronic environment. Of course, as the head of the State Duma Committee on Information Policy, Information Technology and Communications said, we are still far from the situation when the main user of the network will be "a granny with an iPad" [7]. But the trend is obvious and we must be prepared for a new technological format for the relationship between the public administration and a citizen. If in 2004 the number of Internet users in Kazakhstan was estimated at about 3-4% of the population[8], then in 2015 – at 71%[9].

Automation of procedures excludes the possibility of participation of a citizen who is interested in an act or action. Of course, "contactless relations" sharply reduce conditions for corruption, but the risks of erroneous or premature decisions are also sharply increased, when the opportunity to hear a citizen, get or check additional information is excluded.

In this regard, we dare to assume that the approaches developed in administrative procedures in the last century, with all the inviolability of the fundamental principles, should be revised or adjusted taking into account a completely different informational and technological infrastructure in modern public administration.

An offer for simplification of procedures (the right to challenge, the right to be heard, the presence in the consideration of a case, familiarization with the case materials) suggests itself, but with the preservation of the rights and interests of citizens.

Certainly, with the combination of procedural and technological issues, problems will arise: promptness and technological effectiveness, by principle, try to avoid procedural barriers.

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[7] http://www.aif.ru/dontknows/actual/1452269 accessed date May 24, 2017.
[8] http://inform.kz/rus/article/2698302 accessed date May 24, 2017.
[9] https://forbes.kz/stats/internet-auditoriya_kazahstana_portret_i_predpochteniya_polzovatelya accessed date May 24, 2017.

4. Judicial practice.

Respect for administrative procedures could be brought up by the courts. But, unfortunately, the courts still do not consider procedural violations significant, especially when it comes to violations committed by the public administration. Procedural deficiencies are often considered in favor of state bodies. Courts do not try to protect an initially weak side (citizen or non-governmental organization). This is very clearly manifested in cases where fiscal interests are at stake.

Some examples that may not be very successful for the topic of the article but very revealing are the provisions of the new Code of Administrative Offenses. This Code excludes the judge's right to send a protocol on an administrative offense to a correction. Judges shrug their shoulders: without a properly drafted protocol they cannot impose a penalty[10]. We just cannot wrap our heads around the very fact that procedural violations can serve as a basis for liberation from administrative responsibility. And a way to solve a problem that is not based on law has already appeared: correction of a protocol "in working order" [11].

One more acute issue, connected both with administrative procedures and with administrative justice, in respect to which we do not have the consent, in particular, with our German colleagues: the compulsory appeal of administrative acts to a higher authority before going to court. We are told: a preliminary appeal will increase the percentage of correcting mistakes and relieve the courts. We answer – only not in our politico-legal and bureaucratic culture. The interests of defending the honor of the regiment and the idea of one's own significance are much higher than the interests of restoring the due course of law. Plus some struggle against corruption, which has lost all rational bases, when an official seeing obvious violations of the law is afraid to correct them because of questions from, for example, the prosecutor's office. Therefore, the simple introduction of the institute of compulsory preliminary appeal will not become a filter for illegal acts and a tool for unloading the judicial system, but will only delay the process of considering public-legal disputes. An option of a possible and compromise solution is the creation of quasi-judicial structures in the bodies of public administration with the inclusion of representatives of the expert community, scientists and civil society.

[10] Isabayeva A. Within the Framework of the New Legislation. Juridical Gazette. 2015, March 12.
[11] Yenshina I. Eliminate Procedural Volations. Juridical Gazette. 2015, 3 April.

5. The issues of legal awareness and legal culture, in particular, when it comes to officials.

Officials are still focused on the interests of the state and the instructions of a superior head, rather than on the interests of citizens and laws (despite very good declarative regulations, in particular, on the principles of public service, the principles of establishing administrative procedures). In practice, this leads to the fact that in problem situations, in case of a dilemma of helping a citizen to get a requested act or to perform in strict accordance with the procedure and refuse the citizen, the refusal will take place.

6. Administrative procedures and integration formations.

In connection with the creation of the Eurasian Economic Union, there will most likely be grounds for talking about the administrative procedures for the activities of the bodies of this integration formation, which will also influence the internal administrative procedures of the states participating in the EAEU. Of course, this is an issue of the future, but now it makes sense to think about the general parameters, the principles of administrative procedures, possible conflicts of external and internal procedures.

The EAEU is often compared with the European Union. In this regard, it can be noted that researchers in administrative law in many European countries talk about the impact of European administrative law (administrative law of the EU) on national administrative and legal institutes. Moreover, some scholars speak of administrative law in Europe as a kind of legal formation and include in it:

- national administrative law – a mixture of laws, judgments and doctrine applied by public authorities in a particular European country;

- administrative law created by the Council of Europe, which is for the most part contained in numerous recommendations of the Council of Ministers, as well as in the practice of the European Court of Human Rights;

- public law of the European peoples (IusPublicumEuropeaum) – the works of administrative scientists gained from constitutional history and comparative studies of blurred content and in an uncertain framework, yet of high conceptual value.

- the administrative law of the European Union – the law created by the integration bodies of this union in order to guarantee an effective application of legal norms in the EU space.

- international administrative law, the source of which is international treaties of a public law nature[12].

We may expect that the development of integration processes in the post-Soviet space will raise many questions about the correlation of internal and "integration" administrative law.

7. Intellectual assets.

For the sake of justice, it must be said there is no so many people in Kazakhstan who can think about the issues of administrative procedures. The very global problem of the lack of administrative scientists and the consequences of reforms in legal education have an effect. With some envy we look at the number of dissertations on administrative procedures defended in Russia. In Kazakhstan, there was only one defended Ph.D. thesis on administrative procedures[13] (while dozens of works were devoted to the status of the President or the Government).

Bringing of foreign experience and institutional, intellectual and financial resources seems very important in the process of modern, norm-setting and law enforcement activity in Kazakhstan.

If we slightly disregard administrative procedures we may detect that in recent years the Kazakh legal system has experienced a growing foreign influence, and in different forms.

So, in accordance with the Law of the Republic of Kazakhstan On Public Service[14] from November 23, 2015, state bodies, by the decision of an authorized commission, may hire foreign employees in accordance with the Labor Legislation of the Republic of Kazakhstan. At that, the foreign employees cannot occupy public posts and be public officials.

In accordance with the Constitutional Law of the Republic of Kazakhstan On the International Financial Centre Astana[15] from December 7, 2015, the established law of the Centre is based on the Constitution of the Republic of Kazakhstan, and consists of, among other sources, the Centre's acts that do not contradict the present Constitutional Law, which could be based on *the principles, norms and the case law of England and Wales and (or) the standards of the world's leading financial centers* and which are taken by the Centre bodies within the powers that are provided by the present Constitutional Law.

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[12] Administrative Law in Europe: Between Common Principals and National Traditions / Ed. Matthias Ruffert. - European Administrative Law Series (7), 2013. p.3.

[13] Shishimbayeva S. S. Administrative Procedures (theoretical and legal aspects). The dissertation author's abstract for a scientific degree of the candidate of legal sciences. Almaty, 2009.

[14] Gazette of the Parliament of the Republic of Kazakhstan, 2015, article 153.

[15] Kazahstanskaja Pravda, December 9, 2015.

One may think about this foreign influence in different ways. Sometimes the borrowings from abroad deserve criticism because are brought without taking into account either the features of a country of origin or a recipient country.

But disuse of foreign experience is also wrong. And the Administrative Procedures Legislation is a very striking example of the need for such a use. Today, many solutions to the issues of the Kazakhstan managerial precedents can be found in a foreign legislation. It is significant that there is an experience of the former Soviet countries which are similar to us in the legal culture and traditions concerning the matters of legal regulation of administrative procedures. And indeed, the very acts on administrative procedures are the invention of the continental system, but not the law of England and Wales.

The content of the modern acts on administrative procedures, in particular, adopted in the post-Soviet countries obviously shows significant use of provisions of the legislation of the countries that adopted the procedural laws in the last century (maybe it is not so noticeable in the case of the Republic of Belarus). There are a few of own inventions and mostly they relate to the technologization of administrative functions. That is why, principles of administrative procedures, types of administrative acts, the power of discretion and many other classic procedural issues are transmitted from existing acts or with a high degree of certainty might be transmitted in the case of preparation of such acts in the countries where they do not exist.

Within the framework of this publication we draw attention to some problematic issues that arise during the Kazakhstani law enforcement practice and are accompanied by constant disputes and which can be resolved with the assistance of foreign experience. All this once again proves the value of foreign borrowing in this case.

1. Kinds of administrative acts. Contemporary Kazakhstan legislation presumes that acts can only be written. In accordance with paragraph 19 of article 1 of the Law on Legal Acts, a legal act is an official document in written form that contains legal rules or individual legal instructions adopted at the national referendum or by authorized bodies. Normative legal acts and non-normative legal acts (among which we also include administrative acts) are in the same manner defined in the law as written official documents.

Besides, the Supreme Court of the Republic of Kazakhstan in one of its regulatory resolution defined that a demand of a public individual or a public official, which is not in a form of decision, in particular, in a form of an oral demand, should be considered as an action[16].

The foreign legislation specifically highlights various forms of acts (written, oral, tacit ones). Apart the acts, the laws on administrative procedures specifically describe actions and inactions. There is a similar situation with insignificant acts. There are special articles describing an insignificant act and the consequences of its adoption[17]. In Kazakhstan, such acts still have been being referred and discussed only in textbooks.

2. Ground for an inaction.

Very often, in the Kazakhstan practice, the ground for inaction, bureaucracy, unwillingness of a public body or official to make a decision is a reference to the fact that the issue is unsettled by law or other normative legal act, lack of the mechanism for application, unpublished by-law, etc. Despite the existing legal possibilities, natural or legal persons may not get permission, license or resolve other issues for years because of such reference.

The foreign legislation contains the rules which state that the lack of proper regulation by law, the lack of a mechanism and other similar circumstances are not the grounds for non-application of law norms.

So, for example, paragraph 10 of article 15 of the Administrative Procedure Law of Latvia from October 25, 2001 stipulates that an institution and court do not have the right to refuse settlement of an issue on the basis that this issue is not regulated by law or another external regulatory enactment. They do not have the right to waive application of a law norm on the grounds that the law norm does not provide for an application mechanism, is imperfect or that other regulations which regulate the law norm in more accurate way have not been issued. This does not apply only to the case when an institution that has to apply the law norm or in any other way participate in its application is not created and does not operate[18]. The Latvian law calls this approach “Prohibition of legal obstruction of institutions and courts”.

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[16] Regulatory resolution of the Supreme Court of the Republic of Kazakhstan from December 24, 2010 On some Issues of Application by Courts the Norms of Chapter 27 of the Civil Procedure Code of the Republic of Kazakhstan || Newsletter of the Supreme Court of the Republic of Kazakhstan, no. 1, 2011.

[17] Articles 62 and 63 of the Law of the Republic of Armenia On the Principles of Administration and Administrative Court Proceedings from February 18, 2004 || Collection of Legislation on Administrative Procedures. – Almaty, Representation of the German Society for International Cooperation (GIZ) in Kazakhstan, 2013, p. 107.

[18] Collection of Legislation on Administrative Procedures – Almaty, Representation of the German Society for International Cooperation (GIZ) in Kazakhstan, 2013, p. 257.

3. The status of decisions of higher bodies concerning a complaint against an administrative act.

There is no single opinion, what is the status of the decision on a complaint against an administrative act, especially if the complaint is not met, in the Kazakhstan judicial practice. Relatively recently, it has become clear that both an initial decision and the decision of a higher body can be challenged in the court: in accordance with paragraph 15 of the above-mentioned regulatory resolution of the Supreme Court, at the applicant's disagreement with the decision of a higher state body, local self-government body or a higher office holder either the decision of the higher state body, the local self-government body, the higher office holder or the decision of a lower state body, local self-government body, actions (inaction) of the office holder or public official shall be subject to appeal to court.

However, in practice, there are frequent situations where state bodies or courts do not consider the decision of a higher body as an independent act.

Foreign laws on administrative procedures indicate quite clearly that a higher body's decision is also an administrative act. So, in accordance with article 202 of the General Administrative Code of Georgia from June 25, 1999, a decision on considering of a complaint taken by an administrative body is an individual administrative-legal act and shall meet the requirements to individual legal act that are established by the Code[19].

4. The right to acquaintance with an administrative procedure process

In the present conditions, when the taking of acts is being typified and technologized, the issue gets particular relevance. An addressee of an administrative act rarely has an opportunity to check the status of the issue or affect the decision by providing additional documents or explanations. After a set period of time, he receives a positive or negative response.

In our opinion, foreign acts contain very important articles or even sections on the rights of a participant of administrative proceedings to familiarize with the case materials.

Moreover, the legislations of other states contain provisions on that prior to the issuance of an administrative act the applicant must be heard. For example, in accordance with paragraph 1 of article 40 of the Law of the Republic of Estonia from June 26, 2011 On Administra-

[19] Collection of Legislation on Administrative Procedures – Almaty, Representation of the German Society for International Cooperation (GIZ) in Kazakhstan, 2013, p. 248.

tive Procedures of the Republic of Estonia, prior to the issuance of an administrative act the administrative body shall provide the process's participant the possibility of submission opinions and objections on the case in written, oral or other convenient form[20].

Paragraph 1 of article 8 of the Law of the Republic of Finland from June 10, 2003 On Administrative Procedures provides that an administrative authority, within its competence, shall provide to the interested party necessary advice in relation to decisions of administrative cases, as well as answer questions and queries regarding services[21].

5. Status and consequences of an examination.

There is a problem in Kazakhstan's practice. It is when the decisions of a state body are based on examination results. If the examination is negative, the state body states that it cannot do anything. In its turn it is impossible to appeal expert opinions because their status is not defined, as well as the status of experts or expert institutions.

For example, in accordance with paragraph 1 of the Law of the Republic of Kazakhstan from October 11, 2011 On Religious Activity and Religious Associations[22], the denial of state registration of a religious association is made in cases when the association, that is being founded, is not recognized as a religious association on the basis of religious examination results. When challenging the acts of refusal, the justice agency states that at the negative result of religious expertise it has no choice and is bound to the result of this examination. Then it offers to appeal the results. Moreover, in accordance with the appropriate Standard of public services, in cases of disagreement with the results of provided public service, the service taker has the right to go to court[23]. The courts also refuse to hear cases on challenging the results of religious examination upon the pretext that disputes connected to expert opinions are not public-legal and they do not have the right to evaluate an expert opinion for the legality or unlawfulness.

[20] Collection of Legislation on Administrative Procedures – Almaty, Representation of the German Society for International Co-operation (GIZ) in Kazakhstan, 2013, p. 430.
[21] Collection of Legislation on Administrative Procedures – Almaty, Representation of the German Society for International Co-operation (GIZ) in Kazakhstan, 2013, p. 367.
[22] Gazette of the Parliament of the Republic of Kazakhstan, 2011, no. 17, article 135.
[23] Standard of the state service "Carrying Out of a Religious Expertise", approved by the Order from the Minister of Culture and Sport from April 23, 2014. ||Informational-legal system of normative legal acts of the Republic of Kazakhstan "Ədilet".

Foreign legislation has made an approach which consists in the fact that examination results are not binding for an administrative authority in an administrative and procedural proceedings. For example, article 25 of the General Administrative Code of Georgia states that except as expressly recognized herein, the conclusion of a public expert is not mandatory for an administrative body. Failure to take into account the conclusion must be justified[24]. The administrative body shall assess the expert opinion along with the other evidences collected in the course of proceedings and eventually the act, in connection with the publication of which there was the examination, is contested.

6. Contestation of executive acts.

In Kazakhstan there is a contradictory situation with respect to contesting performed acts. In practice, performed acts are contested in courts. However, according to paragraph 11 of Regulatory Resolution of the Supreme Court from December 24, 2010 On some Issues of Application by Courts the Norms of Chapter 27 of the Civil Procedure Code of the Republic of Kazakhstan", a decision of a state body, local self-government body in the form of an individual legal act can be appealed, if such an act does not cease to have effect due to the execution of instructions (claims) contained in it.

In the situations where this issue is touched, foreign laws say that an administrative act may be also contested in the case if it has already been performed or otherwise lost its effect. So, in accordance with paragraph 1 article 82 of the Administrative Procedural Law of Latvia from October 25, 2001, an administrative act that has been performed or lost its effect may be contested in the following cases:

- Decision on the legitimacy of an administrative act is needed for protection of a person's rights;
- for demand of compensation;
- for prevention of the recurrence of similar cases[25].

In addition to the problems in the field of administrative procedures, of course, there are many other. And it is hard to find the solutions in the foreign legislation. For example, when it

[24] Collection of Legislation on Administrative Procedures – Almaty, Representation of the German Society for International Cooperation (GIZ) in Kazakhstan, 2013, p. 204.

[25] Collection of Legislation on Administrative Procedures – Almaty, Representation of the German Society for International Cooperation (GIZ) in Kazakhstan, 2013, pp. 276-277.

comes to administrative acts issued by the so-called advisory bodies in circumvention of the current state bodies or by quasi-public agencies (unless you use a broad approach, as, for example, in the Act of the Federal Republic of Germany from May 25, 1976 On Administrative Procedures of the Federal Republic of Germany, where an administrative authority is seen as any institution carrying out public administration tasks[26] or in the General Administrative Code of Georgia, where an administrative authority means any person who, under the legislation, performs public functions[27]).

The laws on administrative procedures contain a lot of other provisions that are interesting and unusual for our legal reality. For example, all the laws have a requirement to substantiate an administrative act. But the Latvian law also states that *in the justification of an administrative act an institution may use the arguments given in judicial decisions and legal literature as well as in other specific literature*. The value of works of legal scholars in this approach increases[28].

Of course, certain provisions of the Acts on Administrative Procedures, despite all their progressiveness, make you think about the way they will work in our legal environment.

For example, paragraph 13-2 of article 13 of the Law of Azerbaijan Republic from October 21, 2005 On Administrative Proceedings indicates that an administrative authority must act in accordance with the established administrative practice[29]. In our view, it is a very controversial provision, given that such practice may not always be based on the law.

Summing up, we can say that, probably, there is a positive thing that Kazakhstan and Russia have not adopted still the Laws on administrative procedures. There is an opportunity to look at the experience of other countries, including those close to us in spirit, mentality, legal traditions and culture. The main thing is that we should not drag out this contemplation.

Summarizing the above, I would like to note that Kazakhstan is awaiting a difficult path of creation a modern legal institute of administrative procedures, which will include obstacles identified above and assistants, including progressive technologies, foreign experience, the works of legal scholars of various countries. Paradoxically, but the fact that Kazakhstan still

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[26] Ibid. p. 152.
[27] Ibid. p. 198.
[28] Ibid. p. 272.
[29] Ibid. p. 55.

does not have a modern Law on Administrative Procedures has a positive moment. There is an opportunity to look at the experience of other countries, including those close to us in spirit, mentality, legal traditions and culture. The main thing is that this contemplation would not have lasted long.

Universal Decimal
Classification 342.56

Jorg Pudel'ka

Discretion and Legislation on Administrative Procedures: the Experience of Germany

The judge of the Administrative Court, Berlin (Germany), the head of the GIZ representation in Kazakhstan

The article analyzes the issues of the density of judicial control over forms of administrative discretion in Germany. Special attention is paid to the problems of discretion mistakes (non-use of discretion, breach of margin of appreciation, incorrect application of discretion), on the basis of analysis of certain decisions of the Federal Administrative Court of Germany. There are given conclusions on the fundamental applicability of the German experience for the developing of legal orders.

Keywords: *discretion, legality, proportionality, administrative procedures.*

When verifying the legitimacy of administrative acts, an important role is played by the verification of application of discretionary powers, as well as the so-called vague legal concepts.

According to the principle of a constitutional state, one must proceed from the premise that all burdensome administrative acts should be based on a legal norm. However, this norm should be interpreted so that it can then be sub-summed, that is, to bring the circumstances of a case under this norm. Sometimes this can be difficult, in particular when the norm contains vague legal concepts.

Let us give the following example. According to paragraph 35 of the Law on Trade (German "Gewerbeordnung")[30], the exercise of entrepreneurial activity in case of unreliability of an entrepreneur is banned. In this case, the concept of unreliability requires interpretation. The Federal Administrative Court defines it in the permanent judicial practice as follows: the entrepreneur is unreliable if "by the general impression of his behavior and reputation does not guarantee enough that in the future he will carry out his business activities properly".[31]

At that, the interpretation of vague legal concepts follows the classical criteria of interpretation, which were actually composed by Friedrich Carl von Savigny[32]:

- grammatical interpretation;
- systematic interpretation;
- historical interpretation;
- teleological interpretation.

If the grammatical interpretation considers a text, the systematic interpretation examines the interrelations of the norm, in which the interpreted norm is. Often, being based on the norms that are before or after the interpreted norm, one can draw conclusions about the understanding of the norm. Here, basic principles, which may be set out at the beginning of the law, may also play a role. The historical interpretation wonders about the history of the origin of a norm, and, in particular, about the will of the legislator. The teleological interpretation wonders about the meaning and tasks of a norm, that is, first of all, about the goals that must be achieved with the help of the norm. If these methods lead to unambiguous or even contradictory results, the priority is usually given to the teleological interpretation.

The interpretation of vague legal concepts, as a rule, can be verified by the court in full. Therefore, the court in principle may always come to the conclusion that a norm must be understood in a different way than an administrative authority assumed it in its decision. There are exceptions to this rule related to the availability to an administrative authority of the right to a range of assessments. The latter cannot be verified by the court in full; in accordance with the practice of the Federal Administrative Court, verifications are permissible only in exceptional cases, if this is justified by the special grounds.[33] Such situations include the following cases:

[30] https://www.gesetze-im-internet.de/gewo/__35.html
[31] Compare, for example, the Decision of the Federal Administrative Court of March 9, 1994, case number 1 B 33.94.
[32] Friedrich Carl von Savigny, System of Today's Roman Law, p. 213.
[33] The Decision of the Federal Administrative Court 100, 221, 225.

- examination decisions and decisions similar to examination ones, due to the uniqueness of a specific evaluation situation at the time of examination[34];
- attestation of public servants[35];
- decisions of an evaluation nature on the part of commissions that do not depend on prescriptions and consist of experts and/or representatives of interests[36];
- predictive and evaluative decisions of an economic and political nature.[37]

Nevertheless, the recognition in these cases of an administrative body's right to a range of assessments does not mean that these cases are not generally subject to judicial review. This is possible, however, in a limited scope. Courts have the right to check such decisions only for the presence of external, formal errors, or errors that go beyond the provided range of assessment in the sense and purposes of its provision. For a group of cases associated with examination decisions, this means that the examination decisions can in any case be verified by the court for the following:

whether the substantial procedural requirements have been upheld (for example, during a group examination within one hour, one of the candidates received only one minute, when another was given the opportunity to speak for 30 minutes);

whether an administrative body proceeded from the true circumstances of a case (including whether the results of previous examinations were correctly taken into account);

whether the generally recognized evaluation criteria have been upheld (in particular, an opinion expressed in the literature or in the case law during the examination cannot be assessed as false or incorrect);

whether the decision is far from considerations not relevant to the case (for example, the most beautiful student receives a higher rating than the most ugly).

The same applies to other cases of groups associated with the assessment range. In the case of doubt, the range of assessment, taking into account the right to judicial protection in ac-

[34] Decision of the Federal Administrative Court 84, 34 – legal state examination; the Decision of the Federal Administrative Court 8, 272 – transfer to the next grade of school.

[35] The Decision of the Federal Administrative Court 97, 128, 129 – official appraisal of a civil servant by its superior.

[36] The Decision of the Federal Administrative Court 91, 211, 215 – the classification of products that demoralize minors, by the Federal censorship institution(Bundesprüfstelle).

[37] The Decision of the Federal Administrative Court 97, 203 – the need for military flights at low altitudes; the Decision of the Federal Administrative Court 82, 296, 299 – an estimate of the maximum number of licenses for a taxi in order to ensure the functioning of taxi business.

cordance with article 19 part 4 of the Basic Law of Germany should always be narrowly interpreted in the light of the principle of a constitutional state.

The phenomenon of discretion errors deserves special attention.

If the legislation grants discretion to an administrative body, the decision of the administrative body has to be also checked for the correct application of this discretion. According to paragraph 40 of the Federal Law of FRG of 1976 on Administrative Procedures (hereinafter referred to as the LAP of Germany), when an authority is empowered to act at its discretion, it shall do so in accordance with the purpose of such empowerment and shall respect the legal limits to such discretionary powers. Essential aspects, which an administrative authority should follow when applying discretion, in accordance with paragraph 39 part 1 sentence 3 of the LAP of Germany, should also be included in the justification of an administrative act. The correct application of discretion by an administrative authority can be rechecked by itself or by a higher administrative authority in the case of pre-trial appeal. The administrative authority or the higher administrative authority may, in particular, assess the appropriateness of decisions in a different way and thereby make other decisions, even if there is no doubt about the legitimacy of the original decision. In principle, this does not raise any legal problems with respect to the protection of trust, since the applicant himself by way of filing a claim prevents the entry of the administrative act into legal force, thereby impeding more difficult revocability.

A more complicated situation arises in the case of a judicial appeal against an administrative act, since the courts, by virtue of the principle of separation of powers guaranteed in the Constitution through the principle of a lawful state, have the right to verify only the legality (but not expediency) of actions by the executive branch. Therefore, as part of a process in an administrative court, the verification of discretionary decisions, in accordance with paragraph 114 sentence 1 of the Administrative Procedural Code of Germany, is limited to whether the administrative act or the refusal or omission of the administrative act is unlawful because the statutory limits of discretion have been overstepped or discretion has been used in a manner not corresponding to the purpose of the empowerment. This specifically means that only a requirement to verify the existence of the following discretion errors can be made in the court.

1. Non-application of discretion.

If the law grants an administrative body the right to exercise discretion, it also means the duty to apply this discretion. Therefore, if the administrative body does not consider the possibility of discretion (because it does not at all realize that the law provides it discretion or because, although it realizes this, but mistakenly assumes that it does not need to apply the discretion), here already an error of discretion takes place. In case of doubt, the administrative body must prove that it has applied discretion.[38] For example, the law provides the administrative authority discretion regarding the question of how to act to prevent danger. Non-application of discretion takes place if the administrative body does not understand the provided discretion at all and proceeds from a binding decision ("whenever there is a danger, it must act"), and also in the case when the public administration only abstractly allows discretion, in a particular case based on erroneous conviction that such is reduced to zero.

2. Violation of the limits of discretion (the principle of proportionality).

The application of discretion implies compliance by an administrative body with the limits of discretion established by law (paragraph 40 of the LAP of Germany). They follow from the Constitution and the legal principles enshrined in it (and also in other normative acts), including the principle of proportionality arising from the principle of a constitutional state.

So, in accordance with the Regulations on State Fees (German "Gebührenordnung") there is set an administrative fee of "up to 50 euros" for a document. If the administrative authority sets 60 euros, this is a violation of the limits of discretion.

This type of discretion error also occurs when the administrative authority choses another legal consequence than provided for in the law, either violates the principle of protection of trust, or violates fundamental rights. All these situations have a common thing that the administrative body chooses a legal consequence that is unlawful, and therefore due to the binding of the executive power by law it cannot be chosen. The principle of proportionality as an integral part of the principle of a constitutional state is also enshrined in constitutional law. No decision, including a discretionary one can be disproportionate to the purpose of a statutory legal norm.[39] In this case, the proportionality can be verified as follows:

[38] Bulletin of German Administrative Law, 1983. p. 998.
[39] The Decision of the Federal Administrative Court 65, 178.

- the existence of a legitimate goal;
- suitability;
- necessity;
- proportionality in the narrow sense.

In accordance with the proportionality test, first of all, the goal that the administrative body pursues with the measure taken should be legitimate. This takes place when it corresponds to the sense and purpose of discretion provision on the part of the legislator. The administrative body has no right to pursue other goals with its measure. If it still does this, then the measure is illegal for this reason.

For example, in accordance with the legislation on the police, in the framework of general hazard prevention, check of the identity can be conducted. If, in connection with a demonstration in which violent acts are committed, it is possible to establish the identity of persons, then the police, in choosing the persons whose identity it intends to establish, must proceed from the purpose of granting this discretion. This goal is undoubtedly in the rapid, safe, effective prevention of danger. If a policeman first establishes the identity of a beautiful blonde B, because he wants to see her privately again, instead of taking action against a less attractive but violent offender O, then this measure is illegal because the private goal, which is pursued by a policeman, is not in any connection to the purpose of providing the discretion (prevention of danger).

If an administrative body pursues a legitimate goal by its measure, the measure taken should also be suitable for achieving this goal. As suitable in this case are all those measures by which the latter can be achieved. So, if a young man M is stealing cherries from a tree in the neighbor land plot, then an aiming shot of a policeman P, who wounds the hand of the young man, is suitable to keep him from continuing the theft of cherry.

At the same time the suitable measures should also be necessary to achieve the goal pursued. This means that there should not be any milder means that would equally reliably achieve this goal. A softer means is always when it interferes less with the rights of a person affected. In the above case of the cherry theft, depending on the situation, a whistle or strictly verbal warning from the police officer may be sufficient to deter the young person from continuing the theft. Since these means will infringe upon the rights of the young person to a lesser degree than

a shot from the police officer's weapon, which can lead to serious negative health consequences, the shot, although it would be suitable, is not necessary.

It is important, however, that the need remains if the softer means exist, but they will not lead to success equally reliably. That is, if in our example it is known that children regularly steal cherries in the given place and a whistle or warn cannot scare them off and if there are no milder means, then a shot from a weapon may also be necessary in this sense. In principle, there is also a rule according to which the law should not give way to lawlessness. In particular, in cases of prevention of danger, administrative authorities have the right to choose means suitable for safe and reliable, quick and effective averting danger.

The measure is proportional (in the narrow sense, that is, proportionally) always in cases where the pursued goal in its importance is not disproportionate to the degree of intervention.[40] The relevance of this idea, in a specific case, shall be determined by weighing. If, in the case of the cherry thief a whistle and a stern cry of the policeman make it impossible to keep the young man from stealing the cherry and there are no other softer means, then a shot from a service weapon would be necessary to prevent further infringement of the property right. At the same time, such a shot would ultimately be disproportionate, since the aim pursued with its use (combat against the infringement of property rights) in its significance would be disproportionate to the degree of intervention. If the policeman kills the young man, the danger to property will be reliably prevented, but the degree of infringement of the legal good of life would be so intense that it would not be proportionate to the protected legal good. In other words: the life of a person, which in this case would be completely or significantly impaired with high probability, is more significant than the relatively less significant violation of the right of property in the form of theft of several cherries.

Disproportionate decisions are unlawful. In this way they automatically lead also to the presence of an error of discretion, since disproportionate and thus wrong measures are not included in the number of measures envisaged for an administrative body's discretion. Due to its connectedness with law (article 20 part 3 of the Basic Law of Germany), it has the right to act only lawfully.

[40] The Decision of the Federal Administrative Court 50, 217, 227.

3. Wrong application of discretion.

This is the case when an administrative body applies the discretion granted to it by law not in the sense of the law, i.e. not in accordance with its purposes and regulations.[41] This may happen in the form that an administrative authority takes into account not all aspects that meet the purpose of a power (discretion deficiency) or in the form that other aspects that do not meet the objectives of the power (considerations not related to the matter of discretion) are taken into account.[42]

Discretion deficiency always occurs when an administrative body has not studied the merits of a case in full and therefore does not have all the relevant facts to make a decision. The same applies, of course, to cases when the basis for a discretionary decision was based on facts that in fact do not exist in this form, that is, when the administrative authority has studied the circumstances not completely or negligently.

Considerations are improper if they take into account aspects of a legal or factual nature that are at odds with the sense and purpose of the norm giving discretion, or contrary to other norms or general principles of law.[43] So, if two girls are quarrelling loudly at night in front of a house, and the residents call the police to stop the night disturbance of public order, then the police has the discretion both in terms of the applicable means and with regard to the choice of the addressee. If it decides to simply divide women from each other, then this measure would be legitimate and justified. But if the police decides to take one of the girls with them to the police station, guided by the criterion of appearance, then there is a discretion error. Outward appearance of the addressee as a criterion neither meets the goal of the given discretion (the goal is a quick and reliable prevention of danger, in this case to ensure the health of residents in the form of provision the peace of the night), nor the general criteria of law. Here we talk more about the case of arbitrariness and thus the contradiction with the general criteria of law (prohibition of arbitrariness for state actions).

Thus, the issues of implementing discretion are one of the most important in modern public law. The experience of German legal system is progressive because it relies on the synthesis

[41] See: *Erichsen / Ehlers*, General Administrative Law, paragraph 11, marginal note 61.

[42] See: *Kopp / Ramsauer*, Administrative Procedures Act, paragraph 40, marginal note 88

[43] The Decision of the Federal Administrative Court 82, 257; See also: *Kopp / Ramsauer*, Administrative Procedures Act, paragraph 40, marginal note 90 with further references to sources.

of doctrine, judicial practice and the will of the legislator. At that, rather laconic provisions of the Administrative Procedure Act of the Federal Republic of Germany are constantly being clarified by the administrative courts. The concept of discretion errors can represent an independent interest for various legal orders, including in the post-Soviet space.

Universal Decimal Classification 342.92

Podoprigora R.A.

Foreign Experience in Dealing with the Problematic Issues of Administrative Procedures in Kazakhstan

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The article is dedicated to some problems of the administrative procedures in Kazakhstan (types of administrative acts; grounds for inaction; status of higher body decision; the access to materials of procedures; consequences of examination; contest an executed acts) and possibilities for the implementation of the foreign experience for its solving.

Keywords: *administrative law, administrative procedures, foreign experience.*

As far as back in 2015 administrative legal scholars of Kazakhstan remained in a stew in view of the adoption of the most important sources of administrative law: the Code of Administrative Procedures and the new edition of the Administrative Procedures Act. There also were disquieting apprehensions in connection with the adoption of other normative legal acts, which would complicate the creation of system basis for administrative-procedural law.

Unfortunately, expectations came short of expectations in the first (joyful) case, and met expectations in the second (alarm) one.

The Law on Legal Acts was adopted in Kazakhstan on April 6, 2016[44]. The law defines the system of the Republic of Kazakhstan legal acts, delimitates the legal status of normative legal acts and non-normative legal acts. Chapter 14 of the Law contains three articles (there are 67 articles in the Law) devoted to the legal acts of individual application. The articles contain general provisions on such acts; requirements for their registration; questions concerning entry into effect and loss of effect. It is clear that it is impossible to embody detailed procedural provisions in relation to the so-called administrative acts, as it is presented in the laws on administrative procedures that exist in other countries, just in three articles.

Entrepreneurial Code was passed in Kazakhstan on October 29, 2015[45]. The Code contains a certain number of provisions of a procedural nature, in particular with regard to authorizations and notifications, state control and supervision.

In addition, other recently passed normative legal acts, such as the Code of Civil Procedure from October 31, 2015, the Law of the Republic of Kazakhstan On Access to Information from November 16, 2015, the Law of the Republic of Kazakhstan On Self-regulation from November 12, 2015, partially touch upon the issues of administrative procedures.

On the contrary, the adoption of the new edition of the Administrative Procedures Act and the Administrative Procedure Code is postponed indefinitely. Whereas everybody talks about the importance of these laws, holds conferences and round tables. But informally, there is a resistance to its adoption and serious dissatisfaction of the state apparatus, in particular, in respect of the Administrative Procedures Act. And this is quite understandable: despite all the doubts about the effectiveness of good laws in the relevant political and legal environment and culture, a high-quality law on administrative procedures, in any case, might significantly change the format of relations between a citizen and the state apparatus.

Today the state apparatus is stuck. Despite a quite good and progressive legislation, issues about the effectiveness of public officials, the quality of their decisions, responsibility and corruption still remain.

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[44] The Law of the Republic of Kazakhstan On Legal Acts from the 6th of October 2016. Kazahstanskaja Pravda, April 8, 2016.

[45] Entrepreneurial Code of the Republic of Kazakhstan from October 29, 2015. Gazette of the Parliament of the Republic of Kazakhstan, 2015, article 112.

There is an obvious lack of tried and tested ways of problems solution in the form of either new legislative acts, new state bodies or relatively new ones, such as e-government, e-public services, transfer of approaches adopted under corporate governance into public administration.

One of the solutions to the problems in public administration is seen as a bringing of foreign experience and resources: institutional, intellectual and financial.

If we slightly disregard administrative procedures we may detect that in recent years the Kazakh legal system has experienced a growing foreign influence, and in different forms.

So, in accordance with the Law of the Republic of Kazakhstan On Public Service[46] from November 23, 2015, state bodies, by the decision of an authorized commission, may hire foreign employees in accordance with the Labor Legislation of the Republic of Kazakhstan. At that, the foreign employees cannot occupy public posts and be public officials.

In accordance with the Constitutional Law of the Republic of Kazakhstan On the International Financial Centre Astana[47] from December 7, 2015, the established law of the Centre is based on the Constitution of the Republic of Kazakhstan, and consists of, among other sources, the Centre's acts that do not contradict the present Constitutional Law, which could be based on *the principles, norms and the case law of England and Wales and (or) the standards of the world's leading financial centers* and which are taken by the Centre bodies within the powers that are provided by the present Constitutional Law.

One may think about this foreign influence in different ways. Sometimes the borrowings from abroad deserve criticism because are brought without taking into account either the features of a country of origin or a recipient country.

But disuse of foreign experience is also wrong. And the Administrative Procedures Legislation is a very striking example of the need for such a use. Today, many solutions to the issues of the Kazakhstan managerial precedents can be found in a foreign legislation. It is significant that there is an experience of the former Soviet countries which are similar to us in the legal culture and traditions concerning the matters of legal regulation of administrative proce-

[46] Gazette of the Parliament of the Republic of Kazakhstan, 2015, article 153.
[47] Kazahstanskaja Pravda, December 9, 2015.

dures. And indeed, the very acts on administrative procedures are the invention of the continental system, but not the law of England and Wales.

The content of the modern acts on administrative procedures, in particular, adopted in the post-Soviet countries obviously shows significant use of provisions of the legislation of the countries that adopted the procedural laws in the last century (maybe it is not so noticeable in the case of the Republic of Belarus). There are a few of own inventions and mostly they relate to the technologization of administrative functions. That is why, principles of administrative procedures, types of administrative acts, the power of discretion and many other classic procedural issues are transmitted from existing acts or with a high degree of certainty might be transmitted in the case of preparation of such acts in the countries where they do not exist.

As part of this publication, I would like to draw your attention to some problematic issues that arise in the course of Kazakhstan's law enforcement practice and are accompanied by constant disputes, although the solution to the issues and help in resolving the disputes can be found in foreign legislation. All this once again proves the value of foreign borrowing in this case.

1. Kinds of administrative acts. Contemporary Kazakhstan legislation presumes that acts can only be written. In accordance with paragraph 19 of article 1 of the Law on Legal Acts, a legal act is an official document in written form that contains legal rules or individual legal instructions adopted at the national referendum or by authorized bodies. Normative legal acts and non-normative legal acts (among which we also include administrative acts) are in the same manner defined in the law as written official documents.

Besides, the Supreme Court of the Republic of Kazakhstan in one of its regulatory resolution defined that a demand of a public individual or a public official, which is not in a form of decision, in particular, in a form of an oral demand, should be considered as an action[48].

The foreign legislation specifically highlights various forms of acts (written, oral, tacit ones). Apart the acts, the laws on administrative procedures specifically describe actions and inactions. There is a similar situation with insignificant acts. There are special articles describ-

[48] Regulatory resolution of the Supreme Court of the Republic of Kazakhstan from December 24, 2010 On some Issues of Application by Courts the Norms of Chapter 27 of the Civil Procedure Code of the Republic of Kazakhstan || Newsletter of the Supreme Court of the Republic of Kazakhstan, no. 1, 2011.

ing an insignificant act and the consequences of its adoption[49]. In Kazakhstan, such acts still have been being referred and discussed only in textbooks.

2. Ground for an inaction.

Very often, in the Kazakhstan practice, the ground for inaction, bureaucracy, unwillingness of a public body or official to make a decision is a reference to the fact that the issue is unsettled by law or other normative legal act, lack of the mechanism for application, unpublished by-law, etc. Despite the existing legal possibilities, natural or legal persons may not get permission, license or resolve other issues for years because of such reference.

The foreign legislation contains the rules which state that the lack of proper regulation by law, the lack of a mechanism and other similar circumstances are not the grounds for non-application of law norms.

So, for example, paragraph 10 of article 15 of the Administrative Procedure Law of Latvia from October 25, 2001 stipulates that an institution and court do not have the right to refuse settlement of an issue on the basis that this issue is not regulated by law or another external regulatory enactment. They do not have the right to waive application of a law norm on the grounds that the law norm does not provide for an application mechanism, is imperfect or that other regulations which regulate the law norm in more accurate way have not been issued. This does not apply only to the case when an institution that has to apply the law norm or in any other way participate in its application is not created and does not operate[50]. The Latvian law calls this approach "Prohibition of legal obstruction of institutions and courts".

3. The status of decisions of higher bodies concerning a complaint against an administrative act.

There is no single opinion, what is the status of the decision on a complaint against an administrative act, especially if the complaint is not met, in the Kazakhstan judicial practice. Relatively recently, it has become clear that both an initial decision and the decision of a higher body can be challenged in the court: in accordance with paragraph 15 of the above-mentioned regulatory resolution of the Supreme Court, at the applicant's disagreement with the decision of

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[49] Articles 62 and 63 of the Law of the Republic of Armenia On the Principles of Administration and Administrative Court Proceedings from February 18, 2004 || Collection of Legislation on Administrative Procedures. – Almaty, Representation of the German Society for International Cooperation (GIZ) in Kazakhstan, 2013, p. 107.

[50] Collection of Legislation on Administrative Procedures – Almaty, Representation of the German Society for International Cooperation (GIZ) in Kazakhstan, 2013, p. 257.

a higher state body, local self-government body or a higher office holder either the decision of the higher state body, the local self-government body, the higher office holder or the decision of a lower state body, local self-government body, actions (inaction) of the office holder or public official shall be subject to appeal to court.

However, in practice, there are frequent situations where state bodies or courts do not consider the decision of a higher body as an independent act.

Foreign laws on administrative procedures indicate quite clearly that a higher body's decision is also an administrative act. So, in accordance with article 202 of the General Administrative Code of Georgia from June 25, 1999, a decision on considering of a complaint taken by an administrative body is an individual administrative-legal act and shall meet the requirements to individual legal act that are established by the Code[51].

4. The right to acquaintance with an administrative procedure process

In the present conditions, when the taking of acts is being typified and technologized, the issue gets particular relevance. An addressee of an administrative act rarely has an opportunity to check the status of the issue or affect the decision by providing additional documents or explanations. After a set period of time, he receives a positive or negative response.

In our opinion, foreign acts contain very important articles or even sections on the rights of a participant of administrative proceedings to familiarize with the case materials.

Moreover, the legislations of other states contain provisions on that prior to the issuance of an administrative act the applicant must be heard. For example, in accordance with paragraph 1 of article 40 of the Law of the Republic of Estonia from June 26, 2011 On Administrative Procedures of the Republic of Estonia, prior to the issuance of an administrative act the administrative body shall provide the process's participant the possibility of submission opinions and objections on the case in written, oral or other convenient form[52].

Paragraph 1 of article 8 of the Law of the Republic of Finland from June 10, 2003 On Administrative Procedures provides that an administrative authority, within its competence,

[51] Collection of Legislation on Administrative Procedures – Almaty, Representation of the German Society for International Cooperation (GIZ) in Kazakhstan, 2013, p. 248.
[52] Collection of Legislation on Administrative Procedures – Almaty, Representation of the German Society for International Cooperation (GIZ) in Kazakhstan, 2013, p. 430.

shall provide to the interested party necessary advice in relation to decisions of administrative cases, as well as answer questions and queries regarding services[53].

5. Status and consequences of an examination.

There is a problem in Kazakhstan's practice. It is when the decisions of a state body are based on examination results. If the examination is negative, the state body states that it cannot do anything. In its turn it is impossible to appeal expert opinions because their status is not defined, as well as the status of experts or expert institutions.

For example, in accordance with paragraph 1 of the Law of the Republic of Kazakhstan from October 11, 2011 On Religious Activity and Religious Associations[54], the denial of state registration of a religious association is made in cases when the association, that is being founded, is not recognized as a religious association on the basis of religious examination results. When challenging the acts of refusal, the justice agency states that at the negative result of religious expertise it has no choice and is bound to the result of this examination. Then it offers to appeal the results. Moreover, in accordance with the appropriate Standard of public services, in cases of disagreement with the results of provided public service, the service taker has the right to go to court[55]. The courts also refuse to hear cases on challenging the results of religious examination upon the pretext that disputes connected to expert opinions are not public-legal and they do not have the right to evaluate an expert opinion for the legality or unlawfulness.

Foreign legislation has made an approach which consists in the fact that examination results are not binding for an administrative authority in an administrative and procedural proceedings. For example, article 25 of the General Administrative Code of Georgia states that except as expressly recognized herein, the conclusion of a public expert is not mandatory for an administrative body. Failure to take into account the conclusion must be justified[56]. The administrative body shall assess the expert opinion along with the other evidences collected in the

[53] Collection of Legislation on Administrative Procedures – Almaty, Representation of the German Society for International Cooperation (GIZ) in Kazakhstan, 2013, p. 367.
[54] Gazette of the Parliament of the Republic of Kazakhstan, 2011, no. 17, article 135.
[55] Standard of the state service "Carrying Out of a Religious Expertise", approved by the Order from the Minister of Culture and Sport from April 23, 2014. ||Informational-legal system of normative legal acts of the Republic of Kazakhstan "Ədilet".
[56] Collection of Legislation on Administrative Procedures – Almaty, Representation of the German Society for International Cooperation (GIZ) in Kazakhstan, 2013, p. 204.

course of proceedings and eventually the act, in connection with the publication of which there was the examination, is contested.

6. Contestation of executive acts.

In Kazakhstan there is a contradictory situation with respect to contesting performed acts. In practice, performed acts are contested in courts. However, according to paragraph 11 of Regulatory Resolution of the Supreme Court from December 24, 2010 On some Issues of Application by Courts the Norms of Chapter 27 of the Civil Procedure Code of the Republic of Kazakhstan", a decision of a state body, local self-government body in the form of an individual legal act can be appealed, if such an act does not cease to have effect due to the execution of instructions (claims) contained in it.

In the situations where this issue is touched, foreign laws say that an administrative act may be also contested in the case if it has already been performed or otherwise lost its effect. So, in accordance with paragraph 1 article 82 of the Administrative Procedural Law of Latvia from October 25, 2001, an administrative act that has been performed or lost its effect may be contested in the following cases:

- Decision on the legitimacy of an administrative act is needed for protection of a person's rights;
- for demand of compensation;
- for prevention of the recurrence of similar cases[57].

In addition to the problems in the field of administrative procedures, of course, there are many other. And it is hard to find the solutions in the foreign legislation. For example, when it comes to administrative acts issued by the so-called advisory bodies in circumvention of the current state bodies or by quasi-public agencies (unless you use a broad approach, as, for example, in the Act of the Federal Republic of Germany from May 25, 1976 On Administrative Procedures of the Federal Republic of Germany, where an administrative authority is seen as any institution carrying out public administration tasks[58] or in the General Administrative Code of

[57] Collection of Legislation on Administrative Procedures – Almaty, Representation of the German Society for International Cooperation (GIZ) in Kazakhstan, 2013, pp. 276-277.
[58] Ibid. p. 152.

Georgia, where an administrative authority means any person who, under the legislation, performs public functions[59]).

The laws on administrative procedures contain a lot of other provisions that are interesting and unusual for our legal reality. For example, all the laws have a requirement to substantiate an administrative act. But the Latvian law also states that *in the justification of an administrative act an institution may use the arguments given in judicial decisions and legal literature as well as in other specific literature*. The value of works of legal scholars in this approach increases[60].

Of course, certain provisions of the Acts on Administrative Procedures, despite all their progressiveness, make you think about the way they will work in our legal environment.

For example, paragraph 13-2 of article 13 of the Law of Azerbaijan Republic from October 21, 2005 On Administrative Proceedings indicates that an administrative authority must act in accordance with the established administrative practice[61]. In our view, it is a very controversial provision, given that such practice may not always be based on the law.

Summing up, we can say that, probably, there is a positive thing that Kazakhstan and Russia have not adopted still the Laws on administrative procedures. There is an opportunity to look at the experience of other countries, including those close to us in spirit, mentality, legal traditions and culture. The main thing is that we should not drag out this contemplation.

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[59] Ibid. p. 198.
[60] Ibid. p. 272.
[61] Ibid. p. 55.

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The Code of Administrative Court Proceedings of the Russian Federation – the Appropriate Legal Basis for an Administrative process and Effective Legal Protection

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The article deals with controversial questions related to clarifying the procedural and legal potential and the legal significance of the Code of Administrative Court Proceedings of the Russian Federation (2015) in the structure of Russian procedural legislation, in the mechanism for implementing judicial power in the country, the creation of a system of adequate protection of rights, freedoms, legitimate interests of individuals and organizations.

Keywords: *administrative law, administrative procedural legislation, administrative court proceedings, the Code of Administrative Court Proceedings of the Russian Federation.*

The Code of Administrative Court Proceedings of the Russian Federation (hereinafter referred to as the CACP of the RF) entered into force on September 15, 2015 is assessed very positively by some scholars and lawyers, while others assess it extremely negative. Several articles have been published in which not only certain procedural legal provisions (norms, institutes) contained in the CACP of the RF but also the very fact of the adoption of

this administrative procedural legislative act are thoroughly criticized[62]. Both theoreticians of procedural law and practicing lawyers (judges, officials of administrative bodies and municipal employees) evaluate and characterize procedural norms of the CACP of the RF differently. The started discussion has not been finished yet; "irreconcilable" disputes on the designation of this procedural law, on the "natural" interrelation between the structure and content of the CACP of the RF with the CPC of the RF (Civil Procedure Code of the Russian Federation) and the APC of the RF (Arbitration Procedure Code of the Russian Federation) (civil process), on the legal significance of administrative procedural legal norms that ensure proper procedure for reviewing and resolving of administrative cases continue.

The well-known novelty of the legislation on administrative court procedure, the numerous (since the end of the last century) discussions about the designation, purpose and the sectorial procedural affiliation of administrative justice, the obvious (and, sometimes, extremely tough) criticism of the regulations contained in the CACP of the RF, the need to improve the order of administrative court proceedings – all this, undoubtedly, will help to attract the attention of the scientific community, lawyers, legislator to the topic of consideration by the courts of general jurisdiction of public-law disputes and the improvement of Russian administrative procedural legislation. If in the simplest way we generalize some critical statements of highly respected fellow critics of the CACP of the RF, then, from their point of view, we can even talk about the appropriateness and appropriate justification for repealing this procedural law.

This paper shows separate judgments that can be included in the discussion on the meaning of the administrative procedural legislation, the form of which has become the CACP of the RF.

From our already expressed and well-argued point of view[63] the CACP of the RF contains a potential that can exert a powerful influence on improving the quality of the judici-

[62] See, for example: *Bonner, A.T.* Administrative Court Proceedings in the Russian Federation: a Myth or Reality, or a Dispute between a Proceduralist and Administrative Legal Scholar. Journal "LAW", 2016. no. 7. pp. 24-51; *Bonner A.T.* Administrative Court Proceedings in the Russian Federation: a Myth or Reality (Or a Dispute between a Proceduralist and Administrative Legal Scholar). Bulletin of a Civil Process, 2016. No. 5. pp. 11-53; *Sakhnova T.V.* Administrative Court Proceedings: Problems of Self-identification. Arbitration and Civil Process, 2016. no. 9. pp. 35-40; no. 10. pp. 45-48.

[63] See, for example: *Starilov Yu.N.* Code of Administrative Court Proceedings of the Russian Federation: Importance for Judicial and Administrative Practices and the Problems in Arrangement of Teaching a Training Course. Administrative Law and Process, 2015. no. 7. pp. 9-14; *Starilov Yu.N.* Administrative Procedures, Administrative Court Proceedings, Administrative and Tort Law:

ary, strengthening the rule of law in the implementation of administrative actions and adoption of administrative acts and on establishing guarantees for the legal protection of citizens and organizations.

The adoption of the CACP of the RF is the most important stage in improving the structure of modern Russian justice, giving it the proper form and procedural order that meets the *standards* for ensuring the rights, freedoms, legitimate interests of individuals and organizations.

The CACP of the RF, of course, is aimed at ensuring the formation of a complete system of administrative and procedural regulation of relations related to challenging decision and actions (inaction) of public authorities and their officials in court. The system of judicial protection against illegal actions or decisions that violate the rights and freedoms of citizens that has been acting since 1993, a partial (very superficial) and recent regulation in the CPC of the RF and the APC of the RF of the relevant cases consideration order obviously could not be considered from the standpoint of *impeccability* and *proper legal formation* of the system ensuring effective protection of the rights, freedoms, legitimate interests of citizens and organizations. In our opinion, this procedural and legal system that was accidentally established in the Soviet practice could not be considered appropriate from the point of view of the unity of the subject matter, the logic of interaction of material and procedural legal regulation of the order for resolving administrative and legal disputes that arose in *the sphere of public legal relations*, that is *in the sphere of administrative law enforcement*.

The CACP of the RF is the final stage in the development of the Russian procedural legislation in which legal institutes and traditional for the judicial authority procedures for resolving administrative and other public-law disputes have emerged. Here we can once again focus on the formation of a new *administrative procedural form*, the elements and signs of which appeared with the entry into force of the procedural law that is being analyzed. A new type of court proceedings – administrative ones – is simultaneously a new

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the Three Main Directions of Modernization of the Russian legislation. Yearbook of Public Law 2015: Administrative Process. Moscow: Infotropic Media, 2015. pp. 299-331; *Starilov Yu.N.* The Code of Administrative Court Proceedings of the Russian Federation is an Appropriate Basis for the Development of an Administrative Procedural Form and the Formation of a New Administrative Procedural Law. Journal of Administrative Proceedings, 2016. no. 1. pp. 29-38; *Starilov Yu.N.* Legal Thinking on the Benefits of Administrative Justice. Administrative Court Proceedings in the Russian Federation: the Development of Theory and the Formation of Administrative Procedural Legislation. series: Anniversaries, Conferences and Forums. Issue 7, Editor in chief Yu.N. Starilov, Voronezh: Publishing House of Voronezh State University, 2013. pp. 9-24.

stage in the development of not only the administrative procedural legislation (administrative procedural law), but also the further adequate development of *general administrative law*. Totidem verbis, with the adoption of the CACP of the RF, the *specialized* procedural legal regulation (that is, in the particular procedural law) of the judicial order for resolving administrative and other public disputes actually took place.

The operation of the CACP of the RF and the application by the courts of general jurisdiction of procedural norms and principles contained in it provide an opportunity for the formation of both the latest scientific generalizations concerning administrative justice and, in general, the theoretical model of administrative process as *judicial*.

Undoubtedly, the CACP of the RF is a *progressive* legislative act that creates a proper procedural legal regulation of judicial settlement of disputable relations arising in the sphere of public law. We can recall the words of G.F. Shershenevich: "Often the same law will be backward in relation to the views of the advanced part of society and at the same time excessively progressive in relation to the views of the most retarded part of it"[64].It seems that the CACP of the RF is a modern procedural law that any part of the Russian society needs, because it meets the interests of the society and the entire population; the adoption of the CACP of the RF is a kind of "juridical" progress. It may only be assumed that a rigorous judicial evaluation of administrative acts adopted by the executive branch of public authority and, consequently, the need to strengthen the action of the principles of administrative procedures in administrative practice, the very improvement of administrative discipline among officials can to a certain extent form skeptical judgments and assessments in the first stages of action of the new procedural legislation among state and municipal employees, because the administrative court proceedings with the legislation on administrative procedures are dedicated to ensure the legality of administrative actions and proper law and order in *the sphere of administrative and other public relations*.

After the adoption of the CACP of the RF the Russian model of administrative justice received a correct, adequate and proper implementation of the mentioned codified administrative procedural law in procedural orders. From my point of view, the history of development of administrative justice and the very administrative court proceedings in Russia begin

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[64]*Shershenevich G.F.* Selection. A Word Comes in. contributor P.V. Krasheninnikov. Moscow: Statute, 2016. p. 452.

on May 30, 1917, that is, from the moment when the Provisional Government approved *the Provision on Administrative Courts* which established that "the judicial power for administrative matters belongs to: administrative judges; district courts and the Governing Senate". At that it was determined that "the grounds for protests and complaints may be: 1) irregularities, consisting either in violation of a law or binding instructions of authorities, or in the exercise of powers in violation of the purpose for which they were granted; 2) evasion from execution of an action prescribed by law or binding instructions of authorities; 3) slowness. A complaint can be set by those persons, societies and institutions whose interests or rights have been violated by order, action or omittance".

Thus, the scientific ideas about the nature and purpose of administrative justice prevailing in the early XX century were embodied in a legal document which at that time was highly appreciated. What is different about it is that in the circumstances that were formed in that historical period *the Provision on Administrative Courts* did not actually prevail. It should be emphasized that *the first major scientific discussion* on administrative justice in Russia (late XIX - XX centuries) culminated in the adoption of this Provision. However, also the second discussion on the designation of administrative justice (late 90s of the XX century - the beginning of the XXI century), not less significant in its characteristics and acute in its nature, also received its positive culmination with the adoption by the State Duma of the CACP of the RF. Only with the appearance in the text of the Constitution of the Russian Federation of part 2 article 118 the attention to administrative court proceedings becomes completely different, and it becomes to be looked upon as one of the most important *types of Russian court proceedings* and as *a special form of realization of the judicial power* in the country. And further a question arises: within what procedural forms can administrative court proceedings be implemented: within the framework of the civil and arbitral procedural process that was in effect at the time, or can it be allocated to a separate branch of justice? The idea of adopting *the Code of Administrative Court Proceedings* won. Consequently, a new procedure for considering administrative cases in courts of general jurisdiction appeared[65]. Accordingly, a new procedure for considering administrative cases in the courts of

[65] About the History of Development of Administrative Justice and Administrative Court Proceedings in Russia, see,: Panova I.V. Development of Administrative Court Proceedings and Administrative Justice. *Law. Journal of Higher School of Economics*, 2016. no. 4. pp. 54-69; 2017. no. 1. pp. 32-41.

general jurisdiction appeared. Unfortunately, the development of administrative justice in Russia has not lead to the establishment of administrative courts, but, in spite of this, the very fact of accepting the CACP of the RF is an outstanding result of judicial reform at this historic stage of modernizing legal proceedings and procedural law. As Zorkin V.D. writes, "the whole world follows the path of specialization of courts: if not the judiciary, but the judges. We are still underestimating this trend"[66].

In the final stage of the formation of the current system of administrative court proceedings, a discussion arose about *a Unified*[67] *Civil Procedure Code of the Russian Federation*[68]. At its very beginning, the structure of the project under discussion included administrative court proceedings which seemed highly controversial for the country's administrative legal scholars. Such a decision would contradict the desired unification of the procedural legislation, first, from the point of view of the constitutional legal provisions for the organization of court proceedings and judicial power in the country, and secondly, from the position of delimitation between public-legal and private-legal disputes and determining the procedural forms for their resolution, and, thirdly, from the point of view of ensuring effective judicial protection of the subjective public rights of citizens.

The Concept of the Unified Civil Procedure Code of the Russian Federation developed before the adoption in February 2015 of the CACP of the RF excluded the need to adopt the Code of Administrative Court Procedure; it was suggested to take as a basis the norms of the two existing procedural codes (CPC of the RF two heads of the APC of the RF). In the opinion of the authors of this concept, such an approach should be supplemented by eliminating the gaps and contradictions revealed in judicial practice concerning cases arising from public legal relations, the proceedings on which the concept refers to a kind of

[66] *Zor'kin V.D.* The Constitutional Court of Russia in the Judiciary. *Journal of Constitutional Justice*, 2017. no. 2 (56). p. 3.

[67] See: The Concept of a Unified Civil Procedure Code of the Russian Federation. *Bulletin of the Civil Process*, 2015. no. 1. pp. 265-271.

[68] See: *Sakhnova T.V.* On the Concept of a Unified Civil Procedural Code of Russia (notes on). *Bulletin of the Civil Process*, 2015. no 1. pp. 9-27; *Yarkov V.V.* Problematic Issues of the Regulation of Competence in the Draft Code of Civil Procedure of the Russian Federation. *Ibidem*. pp. 28-45; *Latyev A. N.* The Concept of a Unified Civil Procedural Code of Russia: a view from another side. *Ibidem*. pp. 46-70; *Khisamov A.Kh.*, *Shakiryanov R.V.* Some Issues of Systematization the Norms of Civil Procedural Legislation in the Context of its Unification. *Ibidem*. pp. 71-87; *Shamanova R.A.* Prospects for the Creation of a Unified Code of Civil Procedure. *Prospects for Reforming Civil Procedural Law*: collection of articles by the materials of International scientific-practical conference (Saratov, February 21, 2015) ed. by Isayenkova O.V. Saratov: Publishing house of FSBEI HPO Saratov State Law Academy, 2015. pp. 347-348; *Alekseeva N.V.* Reforming of Public Court Proceedings. *Ibidem*. pp. 20-24; Simonyan S.L. Administrative Court Proceedings as a Form of Protection the Rights and Freedoms of Citizens. *Ibidem*. pp. 273-276; *Storozhkova E.Ch.* On the Issue of Administrative Court Proceedings in the Russian Federation. *Ibidem*. pp. 287-290.

civil court proceedings[69]. It was supposed that "the future code of civil court proceedings will become a worthy successor to the current CPC of the RF and APC of the RF" [70]. At the same time, as it may seem, scientists, who sometimes justifiably criticized certain provisions of the draft of the CACP, do not at all deny the need for the existence and operation of the Code of Administrative Court Proceedings of the Russian Federation. We can agree with the opinion of colleagues that "the structure and content of the CACP of the Russian Federation have formed under the influence, first of all, of the norms of the Civil Procedure Code of the Russian Federation. At the same time, the CACP of the RF provided for many novelties unknown to civil procedural legislation" [71].

During the operation of the CACP of the RF the legislator has already adopted 9 federal laws that have introduced amendments and additions to it[72]. It can hardly be said that these laws radically changed the system and structure of administrative court proceedings, or contributed to a conceptual revision of its main provisions. As a rule, legislative novelties were more of a précising or detailing nature; they partly developed guaranties and principles for the organization and functioning of courts of general jurisdiction dealing with administrative matters. A brief review of the amendments made to the CACP of the RF is as follows: 1) the chapter of the CACP of the RF on the representation in court was added; article 55 of the CACP of the RF, which establishes that as representatives in an administrative court, other than lawyers, may also act other persons with full legal capacity, who are not under tutelage or guardianship and who have a higher legal education, has changed; 2) the use of the potential of the information and telecommunication network "Internet" has been strengthened in the administrative legal proceedings; the possibility of submitting administrative suits, applications, complaints, submissions and other documents to the court in electronic

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[69] See: The Concept of a Unified Civil Procedure Code of the Russian Federation. *Bulletin of the Civil Process*, 2015. no. 1. pp. 265.

[70] Interview with Doctor of Law, Professor of the Department of Civil Procedure of the Faculty of Law of the Moscow State University of M.V. Lomonosov Kudryavtseva E.V. *Legislation*, 2015. no. 1. p. 9. See also: Kudryavtseva V.P, Malyushin K.A. Unification of Procedural Legislation. *Arbitration and Civil Procedure*, 2015. no. 1. pp. 52-59.

[71] *Civilistic Process of Modern Russia: Problems and Prospects: Monograph* / Bonner A.T., Gromoshina N.A., Dokuchaev T.B. [and others]; Editor Gromoshina N. A. Moscow: Prospekt, 2017. p. 121.

[72] Code of Administrative Court Proceedings of the Russian Federation: Federal Law No. 21-FL from March 8, 2015: as revised on June 29, 2015; No. 190-FL from December 30, 2015; No. 425-FL, No. 18-FL from February 15, 2016; No. 103-FL from April 5, 2016, No. 169-FL from June 2, 2016; No. 220-FL from June 23, 2016; No. 223-FL from June 28, 2016; No. 303-FL from July 3, 2016. *Collection of Legislative Acts of the Russian Federation*, 2015. no. 10. article 1391; no. 27. article 3981; 2016. no. 1 (Part 1). article 45; no. 7. article 906; no. 15. article 2065; no. 23. article 3293; no. 26 (Part 1). article 3889; no. 27 (Part 1). article 4156, 4236.

form has been provided; the procedure for the execution of judicial acts in the form of an electronic document has been determined, 3) judicial procedures for filing an administrative claim for awarding compensation for violating the right to criminal proceedings within a reasonable time or the right to execute a judicial act within a reasonable time have been specified; 4) the CACP of the RF is supplemented by a new chapter (31-1) containing rules establishing the judicial procedure for protecting the interests of a minor or incompetent person in the event of the refusal of the legal representative of medical intervention necessary to save life; 5) the list of administrative cases subordinate to the courts of general jurisdiction has been expanded by including in it cases on the challenging of acts containing explanations of the legislation and possessing regulatory features; in this connection, the title of chapter 21 of the CACP of the RF has been changed, and it has been supplemented by a new article (217-1) detailing the procedure for consideration of administrative cases on challenging acts containing explanations of the legislation and possessing regulatory features; 6) there has been established the jurisdiction of administrative cases to magistrates of the peace, and proceedings on administrative cases on the issuance of a court order (the new chapter 11-1 of the CACP of the RF) have been included into the system of administrative court proceedings.

Thus, the legal novelties of the CACP of the RF relate to that part of its norms that should have changed (or reappeared) in connection with the need to bring the text of the procedural law in line with the already established legal standards of judicial activity on cases arising in the field of implementation of administrative and other public relations. That is, it can not be said that the amendments and additions made to the CACP of the RF were dedicated to eliminate the "forgetfulness" of the legislator who adopted the CACP of the RF in 2015 or to overcome its "incompetence". The novelties complementing the text of the CACP of the RF develop its administrative-procedural form, give the Code a modern look, a consistent structure, they form and strengthen the usefulness of its content. As is known, even now the Supreme Court of the Russian Federation is developing a draft law on the introduction of amendments and additions to the CACP of the RF on the basis of generalized judicial practice on the consideration of administrative cases.

The Supreme Court of the Russian Federation has prepared and adopted three decisions of the Plenum: Decision of the Plenum of the Supreme Court of the Russian Federation No. 36 from September 27, 2016 On Certain Issues of Application by the Courts of the Code of Administrative Court Proceedings of the Russian Federation[73]; Decision of the Plenum of the Supreme Court of the Russian Federation No. 15 from May 16, 2017 On Certain Issues Arising in the Consideration by the Courts of Cases on Administrative Supervision of Persons Released from Places of Deprivation of Liberty[74]; Decision of the Plenum of the Supreme Court of the Russian Federation No. 21 from June 13, 2017 On the Application by the Courts the Measures of Procedural Coercion in Consideration of Administrative Cases[75].

The most important legal target-oriented and substantive guideline for judicial practice in administrative cases was Decision No. 36 of the Plenum of the Supreme Court of the Russian Federation from September 27, 2016 On Certain Issues of Application by the Courts of the Code of Administrative Court Proceedings of the Russian Federation"[76]. As follows from the title of the decision, the Plenum of the Supreme Court of the Russian Federation explained only some of the most complex issues of implementation administrative court proceedings. Of course, from the point of view of the significance and relevance of the decision for courts, it is necessary to confirm the timeliness of this issue consideration, since the main purpose of the explanations contained therein is to ensure *the uniformity* of the practice of application by general jurisdiction courts of the legislation on administrative court proceedings. Many complex issues of judicial enforcement have been properly specified; the contradictory procedural and legal regulation has been explained from the standpoint of the procedural and legal standards of consideration administrative cases that have been developed in practice; legal accents have been made on the public law peculiarities of administrative and legal disputes considered by courts. Totidem verbis, this decision of the Plenum of the Supreme Court of the Russian Federation became timely and useful for the formation of a proper judicial practice in administrative cases.

[73] See: Bulletin of the Supreme Court of the Russian Federation, 2016. no. 11. pp. 2-15.
[74] URL: http://www.vsrf.ru/Show_pdf.php?Id=11398.
[75]URL: http://www.vsrf.ru/Show_pdf.php?Id=11442.
[76]See: Bulletin of the Supreme Court of the Russian Federation, 2016. no. 11. pp. 2-15.

However, this decision contains, in my opinion, certain controversial points. The decision of the Plenum of the Supreme Court of the Russian Federation gives an explanation of part 4 of article 1 of the CACP of the RF which determines that cases arising from public legal relations and referred by the federal law to the competence of the Constitutional Court of the Russian Federation, constitutional (statutory) courts of the constituent entities of the Russian Federation, arbitration courts or subject to consideration in another judicial (procedural) order in the Supreme Court of the Russian Federation and courts of general jurisdiction must not be considered under the procedure established by the CACP of the RF. Plenum of the Supreme Court of the Russian Federation excluded some *public-law disputes* from the practice of the CACP of the RF. For example, disputes on invalidating (adjudication illegal) acts of state bodies and local self-government bodies should not be considered under the procedure established by the CACP of the RF if their execution has led to the appearance, change or termination of civil rights and obligations (part 4, article 1 of the CACP of the RF; part 1, article 22 of the Civil Procedure Code of the Russian Federation; article 8 of the Civil Code of the Russian Federation). The Plenum of the Supreme Court of the Russian Federation placed *service disputes*, including cases related to the access and passage of various types of state and municipal service, to this group of disputes. Thus, courts are recommended not to consider disputes arising in the sphere of public law, namely legislation on public service, under the procedure provided by the CACP of the RF. The main problem here seems to be, as can be supposed, that the legal nature of public-service legal relations has been misunderstood. As is known, the recent 15 years in Russia have become the period of formation of public service law (legislation on public service), which in fact "ousted" from this sphere the operation of the norms of labor legislation. Thus, the public-legal characteristics of relations arising upon admission to and during the passage of public service, in principle, make it possible to include service disputes into jurisdiction of general jurisdiction courts. Otherwise, the logic of public-law regulation of relations in the public service is violated; while service-legal disputes arising from administrative relations are, for unknown reasons, recommended not to be considered according to the rules of the CACP of the RF.

The provision contained in the resolution of the Plenum of the Supreme Court of the Russian Federation on the exclusion of economic disputes from the practical application of

the CACP of the RF and the prohibition on considering other cases related to the performance of entrepreneurial and other economic activity (that are referred to the competence of arbitration courts in accordance with paragraph 1 of Chapter 4 of the Arbitration Procedure Code of the Russian Federation) are indisputable. There is also no doubt concerning the statement that cases (not related to the implementation of public powers) on internal corporate disputes arising between lawyers and lawyers' chambers, notaries and notary chambers, mediators and a permanent collegial governing body of a self-regulated organization of mediators, as well as between members and management bodies of other self-regulated organizations, which are subject to review by bringing an action, are not subject to consideration under the procedure provided for by the CACP of the RF.

If we return to the analysis of critical judgments of scientists about the modern legislation on administrative court procedure, then we can speak of two "types" of such criticism. On the one hand, the very fact of the adoption of the CACP RF raises criticism; on the other hand, some procedural and legal provisions or norms contained in the administrative court procedure system are subjected to criticism. Critical judgments on the CACP of the RF are expressed mainly by scientists – representatives of the science of civil and arbitration processes, that is, by experts in the field of civil and arbitration processes. However, one can also find a negative attitude towards this law on the part of processualists. Finally, some doubt about the high practical importance of the CACP of the RF is also expressed (albeit informally) by the judges. But the most critical judgments are, of course, expressed by representatives of the science of civil procedural law.

It is also difficult to understand the logic of opponents of the CACP RF, when they directly state the absence of any legal value of the CACP of the RF; it is virtually impossible to understand and accept the very fact that the colleagues do not recognize the uniqueness of the system, structure and special purpose of the administrative court procedure codified in the CACP of the RF, including from the constitutional legal point of view. After all, it can be assumed that the role of this code is extremely great both in the judicial system of the country and in the legal system in general. To some extent, I understand their "non-acceptance" of the CACP RF, if we take into account the "civil procedural nature" in the formation and development of administrative court procedure. And I have the deepest respect for the opin-

ion of my colleagues on this issue.[77] At the same time, I can assume that over time and with the increase in the array of judicial practice on administrative cases in courts of general jurisdiction, the "degree" of criticism will certainly decrease. A new idea on the purpose of the CACP RF in the judiciary and the judicial system of the country will be formed. Right now one can find the opinion that in the matters of legal regulation of the procedure for considering cases arising from public relations the CAS RF is not better than the CPC or the APC.[78] I think that setting of a global question of comparing the CACP with the CPC or the APC is, of course, possible, and maybe even useful. However, on the other hand, it is hardly possible to compare the first full and extensive codification of administrative procedural legislation with the procedural array of norms included in the CPC at a certain stage of the development of civil procedural legislation, but in connection with the adoption of the Law of the Russian Federation No. 4866-1 On Appealing to the Court of Actions and Decisions that Violate the Rights and Freedoms of Citizens from April 27, 1993. Thus, the CPC's "increment" with new procedural and legal material concerning the procedure for considering by the court of "a citizen's complaint against the actions of a state body, public organization or official" occurred due to the entrenched historical conditions in the early 90's of the last century. Consequently, the CPC of the RF, due to the excluding from its structure the chapter on the judicial procedure for examining administrative cases, will not become less significant; on the contrary, it will become more perfect, as it will become freed from institutions, concepts and norms that are extrinsical for the civil procedural form and non-traditional for it. That is, it is hardly possible to expect the effect of a simple comparison of different codes designed to resolve different types of legal disputes. CACP and CPC have obviously different purposes in the system of implementation of the judiciary. Nowadays it would be more useful and productive for the development of the theory and practice of administrative court procedure to talk about substantive implementation of the part 2 of article 118 of the RF Constitution in the procedural norms of the CACP RF.

[77] See: *Bonner A.T.* Administrative Court Procedure in the Russian Federation: a Myth or Reality, or a Dispute between a Processualists and an Administrativist // The magazine "LAW", 2016. no. 7. pp. 24-51; *Bonner A.T.* Administrative Court Procedure in the Russian Federation: a Myth or Reality, or a Dispute between a Processualists and an Administrativist // Herald of the Civil Process, 2016. no. 5. pp. 11-53; *Sakhnova T.V.* Administrative Court Procedure: Problems of Self-identification // Arbitration and Civil Process, 2016. no. 9. pp. 35-40; no. 10. pp. 45-48.

[78] See: Arbitration Practice for Lawyers, 2016. no. 12. p. 22.

Sometimes there is the opinion of administrative scientists who, from my point of view, substantiate the modern structure of the Russian administrative process from the wrong methodological positions. For example, already at the time of the CACP RF operation, it is possible to find a statement, according to which "the structure of administrative process is predetermined with article 10 of the Constitution of the RF that has established on the basis of the theory of separation of powers that the state power in Russia is a triunity of legislative, executive and judicial power. Each of them for its implementation requires a certain activity regulated by the relevant substantive and procedural rules of law".[79] Further, it is concluded that the administrative process includes numerous procedures and proceedings, which, in fact, predetermines the implementation of public administration, which is the designation of the executive power; here it is stated the "servicing" role of the administrative process in relation to the executive power.[80] As is very well known, this is how the structure of the administrative process was announced in the distant Soviet years. Administrative process is not created for the implementation of executive power and public administration; its essence is concluded in the legal mechanisms for solving by courts administrative cases, which arise in the sphere of organization and functioning of the executive power and public administration. The main difference in the approaches to the definition of administrative process, if we take into account the above-mentioned opinion of scientists, is that, in their opinion, administrative court procedure is *an independent type of administrative process*[81], and in our opinion, it is *one-of-a-kind administrative process* spread in the sphere of realization of the judicial power. All the rest, which have "procedural" characteristics in the field of executive power implementation, refer to "administrative procedures", "administrative proceedings" and other institutes that are in a certain legal "movement" and "legal change".

Despite these very simple statements, it is hardly necessary to simplify the situation with the understanding of administrative process, judicial process and process in public administration.[82] One can agree with I.V. Panova, who writes with regret that today "there are

[79] Administrative Process of the Russian Federation: Textbook / Editor in chief *L.L. Popov*. Moscow: Original-maket, 2017. pp. 26-27.
[80] See: Ibid. p. 27.
[81] See: Ibid. p. 332.
[82] See: *Ponkin I. V.* The Concept of "Process" in Law and in Public Administration // Herald of the Civil Process, 2017. no 2. pp. 11-30.

no legal definitions of the basic concepts: “administrative process”, “administrative-jurisdictional case”, “administrative dispute”, “administrative justice”, “administrative court procedure”, etc.”[83] Therewith, we can welcome the fact that at present administrative scientists are trying to uphold the idea long ago offered in the theory of administrative law that administrative process refers to the implementation of the judicial power through the establishment of a judicial procedure for the resolution of administrative cases.[84] If we recall briefly the theory of the administrative process created at the turn of the 19th century and the beginning of the 20th century, the administrative process was considered as a complex process with unclear legal nature (“much more complicated than both criminal and civil ones”[85]). At the same time, there was being stated the powerful influence of administrative process on the formation of advanced and corresponding to the principles of a rule-of-law state procedural forms, restating the usual vision of administrative law. M.D. Zagryatskov wrote that even “some eclecticism of administrative process does not prevent the ability of application procedural norms in the exploration of administrative acts to “ennoble” administrative law”.

As a rule, experts in the field of civil process consider as the main arguments the following: “CACP of the RF is a copy of the CPC of the RF”; “CACP of the RF is somewhat edited text of the CPC of the RF and the APC of the RF. At that, almost all the basic principles, some of the most important institutes of static nature (competence, subjects, evidence, time limits, expenses, notices, interim measures, etc.), as well as dynamic institutes reflecting the process movement from stage to stage, have in this project a solution that is uniform with the CPC of the RF and the APC of the RF and are cross-sectorial in nature”.

At some points, the question arises: did judicial jurisdiction lose its integrity, systemic nature and effectiveness after the exclusion from the Code of Civil Procedure of the Russian Federation of procedural rules establishing the procedure for resolving administrative and legal disputes? Have the civil process seen better days? Of course not. As before, civil court

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[83] *Panova I.V.* Development of Administrative Court Procedure and Administrative Justice // Law. Journal of Higher School of Economics, 2017. no 1. p. 39.

[84] See: *Starostin S.A.* Administrative Process as a Branch of Public Law // Administrative Law and Process, 2017. no. 4. p. 20.

[85] *Zagryatskov M.D.* Administrative Justice and the Right of Complaint in Theory and Legislation // Administrative Justice: End of XIX – early XX century: Chrestomathy. Part 2 / Editor in chief Yu.N. Starilov. Voronezh: the publishing house of Voronezh State University, 2004. p. 293. .

procedure remains an incredibly complex and demanded procedural legal mechanism for resolving legal matters in accordance with the standard of civil procedural form that has developed over many decades. However, distinguished colleagues call the exclusion of proceedings on cases arising from public legal relations *the disintegration of the civil process*.[86] And further here it is concluded that “cases arising from public legal relations are considered under the civil court procedure, cannot be attributed to administrative court procedure”.[87] But the legislator, having accepted the CACP of the RF, decided to do everything in this sphere conversely. Still, it can be assumed that he had grounds for adopting a special law establishing an appropriate procedural form of administrative cases. Surprisingly, but can all the efforts to create a special administrative procedural legislation aimed at justification of a special administrative procedural form and ended with the adoption of the CACP be regarded as some kind of technical innovations that do not mean anything for judicial practice!? As if the adoption of the CACP RF “strengthened” the civil and arbitration process, and at the same time, administrative law did not receive any significant result and factors of powerful development. And this despite the fact that there are two most important operating constitutional and legal norms on *administrative court procedure* as a special *form of exercising judicial power* and on *administrative procedural legislation*, the main form of which is *administrative justice*.

If we recall the history of the development of administrative justice in the country, then during the Soviet period administrative court procedure was denied for understandable reasons; the deterrent impact on the development of specialized justice of the then functioning political system also had an effect; there was a significant reluctance of the political elite to provide for citizens with legal means a procedure for judicial review of both individual administrative acts and normative legal acts taken by administrative bodies; finally, the goals and objectives of administrative court procedure contrasted with the purpose of the operating *administrative system* in those years. At the same time, it must be recognized that in fact in the Soviet era there were no developed (from the point of view of current views) *administrative law*, *administrative and administrative procedural legislation*. Consequently, in the absence of a full-fledged system of administrative law, the deepest gaps in administrative and

[86] See: *Sakhnova T.V.* The Course of Civil Process. The 2nd updated and revised edition, Moscow: Statute, 2014. p. 559.
[87] Ibid.

legal regulation were also explained by the fact of non-recognition of administrative justice (or administrative court procedure) in the legal system. Obviously, there was a "disparaging" attitude toward the development of administrative law and the administrative process in Soviet times; moreover, at that time administrative court procedure could not be effectively developed. In fact, throughout the entire Soviet period, the "bourgeois" idea of the formation of administrative justice in the USSR was being denied; the models of "bourgeois"[88] administrative justice that were operating in the world were critically assessed; there were written articles entitled "There can Be no Administrative Action in the Soviet Law".[89] I would not want the current "struggle" against the CACP of the RF to be a logical continuation of the critical analysis of the "bourgeois system" of administrative justice.

But at the same time, at some stage of the development of constitutional and administrative law, when relations in the field of judicial protection of the subjective public rights of citizens began to take shape, a question arose: what procedural form can be used to ensure the rights and legitimate interests of citizens entering administrative-legal relations with public authority and its representatives? It turned out that it was almost impossible to create quickly a new procedural form "from scratch". What was there left to do? Only to include in the system of civil procedural legislation the emerged norms on the court appeal of unlawful actions, decisions that violate the rights and freedoms of citizens. There was virtually no other way. Thus, here it is necessary to emphasize the fact that the legislator almost "accidentally" distributed the procedure for resolving administrative cases into the civil legal proceedings system. That is, the simplest administrative and legal conflicts and the disputes themselves had to be resolved in some way in court; that's why they were "embedded" into the structure of *the civil procedural form*, the role and significance of which for the sphere of public legal relations currently seem to be obviously *overestimated* by the scientists in the field of civil process. Here we can use the accurate expression of N.S. Bondar', according to which (though slightly changing its text), the legislator had to take a decision "proceeding from the fact that the absence of a necessary (legislatively established) mechanism cannot suspend the implementation of the rights and legitimate interests of citizens arising from the

[88] See, for example: *Bonner A.T.* Bourgeois Administrative Justice // Jurisprudence, 1969. no. 1. pp. 99-108.
[89] See: *Abramov S.N.* There can Be no Administrative Action In Soviet Law // Soc. Legality, 1947. no. 3. c. 8.

Constitution".[90] Thus, for the present discussion there are also historical roots that are in the underdevelopment of administrative and legal relations in the Soviet era. Consequently, the emergence of a special administrative procedural law (CACP of the RF) is in fact the only correct way out of the current rather vague situation concerning the identifying the location of the procedure for resolving administrative cases in *the structure of Russian procedural legislation*.

An attempt to reveal the roots of negative assessments of the very fact of adoption of the CACP of the RF leads to the conclusion that even before the adoption of this code some scientists in fact considered "consolidation the category "administrative court procedure" as a type of process in article 118 of the Constitution of the Russian Federation" erroneous.[91] In the opinion of colleagues, the adoption of CACP o the RF is "a barrenness of the idea of a conceptual
"rupture" of civil court procedure and administrative court procedure taken in the CACP o the RF".[92] Very serious claims are made to the very concept of legislative establishment of the order of administrative court procedure; the main reasons here are proposed to be considered, firstly, "the absence of its own legislative concept" and, secondly, the presence of "ontological errors of the legislator which, unfortunately, received a legal enshrining".[93] It is almost impossible to imagine that in modern conditions an absolutely new procedural code (CACP RF) may be developed, discussed and adopted by the legislator without a formed "own legislative concept". As a result, a general conclusion about "inefficiency of the CACP methodology" is made.[94] It is unlikely that a year after the entry into force of the CACP of the RF they may state the absence of the desired effect from the new procedural code without proper analysis of the judicial practice in administrative cases and conducting a large-scale study of the practical operation of administrative procedural rules. It is impossible to agree with judgments when the content of the "special legislative concept" is included

[90] *Bondar' N.S.* Legislative Gaps – the Category of Constitutional and Legal Defectology: the Methodology of Research and the Practice of Overcoming // Journal of Constitutional Justice, 2017. no. 3 (57). p. 6.
[91] See: *Sakhnova T.V.* The Course of Civil Process. The 2nd updated and revised edition, Moscow: Statute, 2014. p. 558.
[92] *Sakhnova T.V.* Administrative Court Procedure: Problems of Self-identification // Arbitration and Civil Process, 2016. no. 9. p. 36.
[93] Ibid. p. 37.
[94] *Sakhnova T.V.* Administrative Court Procedure: Problems of Self-identification // Arbitration and Civil Process, 2016. no. 10. p. 47.

“a change in the source of normative regulation, automatic transfer of procedures from one normative act to another”.[95] Finally, the idea, according to which the CACP of the RF did not create a “new procedural form” in comparison with the CPC of the RF, is being questioned; “the categories of cases, and procedures for their consideration, and the basic provisions on the principles and other common institutions, and even the legislative algorithm itself”[96] have been also transferred to the CACP of the RF. A new procedural (administrative procedural) form, from our point of view, appears already when a codified procedural act regulating the procedure for resolving disputes (administrative cases) arising in the framework of special (public) legal relations enters into force. All the institutions and procedures of a new law, even though at some stage of the development of the legal system they were fixed in another procedural law, are “adjusted” to a single public legal regime of ensuring legality in the sphere of public administration. Of course, here one can speak about the achievements, omissions of the legislator in creating a new procedural form, the contradictions that have crept into its content (which, incidentally, constitute a sufficient number in procedural forms that have been used in practice for decades). It is impossible to imagine a new procedural law without any transfer (use) of traditional for litigation process terms, principles, and procedures. Finally, constitutional-legal provisions in the field of organization and functioning of the judiciary also have an impact on the legislator seeking to regulate the judicial procedure for the consideration of many categories of disputes (cases) arising from administrative and other public legal relations. In the literature, there is an opinion, according to which “the need for the existence in our country of effective methods of protection from unlawful normative legal acts arising from the Constitution of the Russian Federation requires a real reform of proceedings on contesting normative legal acts through the lens of the principles and achievements of civil procedural law”.[97]

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[95] *Sakhnova T.V.* Administrative Court Procedure: Problems of Self-identification // Arbitration and Civil Process, 2016. no. 9. p. 39.

[96] Ibid. p. 39.

[97] *Il’yin A.V.* The Constitutional Grounds for the Implementation of Compliance Check in the Civil Process and the Subject of Judicial Activity // Herald of the Civil Process, 2017. no. 2. p. 45.

Experts in the field of civil process are analyzing the problems of procedural legal regulation of certain provisions contained in the CACP of the RF or entire institutes.[98] Despite the assertion that the CACP of the RF contains today "the greatest number of contradictions and lacks of regulation"[99], the authors try to bring into it, from their point of view, useful amendments or additions. Such form of critical comprehension of the legislative constructions of the CACP of the RF will undoubtedly contribute to improving the administrative procedural form itself.

The representatives of the science of administrative law also give the most general criticism of the CACP of the RF. For example, there is an opinion that with the adoption of the CACP of the RF, the simplest "reformatting" of "a part of civil procedural norms into administrative procedural ones"[100] occurred. However, they do not offer any of their own ideas extracted from the theoretical depths of administrative legal science; at that they simply repeat the arguments or statements made by scientists known for their works in the field of civil or arbitration process. For example, "procedural forms of administering justice on "administrative cases" and nowadays respectively corresponding "to administrative and procedural activity" appeared after "the enhancement of the forms of legal proceedings borrowed from civil procedural legislation".[101] Unfortunately, such repetition in the argumentation criticism of the CACP of the RF, in fact, exactly the same as the claims of the procedural scientists, is unlikely to form the basis for the development of the administrative procedural form potential. Finally, one can ask the question: did the past enshrining in the CPC of the RF of a chapter on the procedure for judicial appeal against unlawful actions and decisions that violate the rights and freedoms of citizens become "a reformatting" of the relevant administrative and procedural norms into civil procedural ones?

If we take into account the *"procedural and legal"* factor in the system and the structure of administrative legislation and the sphere of relations in which administrative and legal norms operate, then here we are talking about *administrative procedures*, *administrative*

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[98] See: *Tarasov I.N.* On Some Problems of Legislative Constructions of the Code of Administrative Court Procedure // Arbitration and Civil Process, 2016. no. 11. pp. 42-44.

[99] Ibid. p. 11.

[100] *Kaplunov A.I.* Legislation on Administrative Court Procedure and its Impact on the Further Development of the Theory of Administrative Process and the Formation of Administrative Procedural Law as a Branch of Law // State and Law, 2016. no. 10. p. 25.

[101] The Topical Issues of Administrative and Administrative Procedural Law // State and Law, 2016. no. 11. p. 121.

court procedure and *proceedings on cases of administrative offenses*. But the administrative process in the proper sense of the word is still one – this is an *administrative court procedure*. It is unlikely that the activity of public administration authorities in the sphere of executive power functioning should automatically be called "administrative process", proceeding only from the name of the field of legal relations, where this type of activity is carried out.

Administrative procedures and proceedings on administrative offenses cases, of course, have "*procedural"* content and *"procedural potential"*. But these types of state activity should be called differently, that is, as it is now established by the legislator in the Code of Administrative Offenses of the Russian Federation with reference to "proceedings on cases of administrative offences".[102] Unfortunately, administrative procedures in Russia have not received their legislative setting and normative regulation yet.[103] Actually, in practice of legal regulation in many countries these terms differ from administrative court procedure (administrative process). It is unlikely that the Russian Federation should be dominated by other terminology in relation to the theory and practice of administrative process, administrative procedures, administrative-tort legislation.

It is also appropriate to propose an addition to part 2 of article 118 of the RF Constitution. Unfortunately, in the text of the Constitution of the Russian Federation there was no place for establishing the most general legal regulation of *activity on the consideration of cases of administrative offences*. Surprisingly, but one of the most important codes of the country – the Code of Administrative Offenses of the Russian Federation – does not actually have its constitutional and legal "roots". The RF Constitution does not even mention "*proceedings on administrative offenses cases*". Consequently, there is no constitutional legal norm, according to which the location of this type of procedural activity would be determined in cases when administrative offenses cases are considered by judges, in the system of types of court proceedings. In short, consideration by judges of cases of administrative offences is a justice, and a judicial process that cannot be attributed to constitutional, civil, administrative or criminal proceedings in any way. Consequently, "proceedings on adminis-

[102] See: *Romanov A.A.* The Correlation of Proceedings on Cases of Administrative Offences and Administrative Court Procedure // Russian Juridical Journal, 2017. no. 1. pp. 131-136.
[103] See: *Starilov Yu.N.* Will the Code of Administrative Court Procedure of the Russian Federation Become the Basis for the Development of Legislation on Administrative Procedures? // Administrative Law and Process, 2015. no. 11. pp. 15-22

trative offenses cases" (when these cases are heard in the courts) is another form of judicial power. Therefore, part 2 of article 118 of the Constitution of the Russian Federation, in our opinion, should look like this: "The judicial power is exercised through constitutional, civil, administrative, criminal proceedings, *as well as proceedings on cases of administrative offences*"

The application of the legislation on administrative court procedure will create the basis for the creation of a federal law "On Administrative Court Procedures".[104] If we return to the search for "procedural fundamentals" in the sphere of administrative law, then, undoubtedly, it is necessary to pay attention to the sections entitled *"administrative procedures"* contained in each current Russian *administrative regulation of public functions implementation* and *administrative regulation of the provision of public services*. However, even a superficial interpretation of the term "administrative procedures" in this context is unlikely to lead to the conclusion on that the specified administrative regulations have resolved the task of establishing administrative procedural activity. Thus administrative regulations solve the simplest task of establishing through this term the procedure for carrying out of a specific state function or for the provision of a specific public service. It turned out that the consistency and staginess of the execution of public functions were equated in their purpose to administrative procedures and to tasks that they must solve in the public administration system. Globally, there is no talk about "real" administrative procedures in administrative regulations. It is hardly necessary to argue that the legislation on administrative regulations contributed to the formation of a modern theory of administrative procedures, and also actualized the idea of administrative practice's need for the law On Administrative Procedures, which would contained rules on general principles and procedures for the resolution of administrative cases, and on the adoption of administrative acts by the state and municipal administration. At the same time, one can confidently assume that the creation of legislation on administrative regulations will not fundamentally replace administrative and legal norms, which should be contained primarily in the law On Administrative Procedures.

[104] See: *Davydov K.V.* Current State and Prospects for the Development of Russian Legislation on Administrative Procedures. Draft Federal Law "On Administrative Court Procedures and Administrative Acts in the Russian Federation" // Journal of the Administrative Proceedings, 2017. no. 1. pp. 47-69.

And here a question arises on the need for *a constitutional and legal establishment of the basic principles of administrative procedures* laid down as the basis of public administrative activity for the adoption of administrative legal acts. Unfortunately, the Constitution of the Russian Federation does not contain legal bases on the grounds of which the activities of executive bodies of state power on compliance with, maintenance and protection of human and civil rights and freedoms, legitimate interests of organizations would be exercised. The norm, according to which decisions and actions (or inaction) of state authorities, local self-government bodies, public associations and officials can be appealed to a court (part 2, article 46 of the Constitution of the Russian Federation) is very important. However, the legal norm, which indicates the need for legal regulation of the procedure for the adoption of administrative legal acts, should not less significant. At the same time it is also expedient to establish in the text of the Constitution of the RF (in the second chapter) *the basic principles of administrative procedures*. At first glance, it may seem superfluous to include in the text of the Constitution of the RF the norms on observance by the state bodies and officials of the basic rules for the adoption of administrative legal acts, taking into account that in the future the law On Administrative Procedures will be adopted. It seems that exactly the constitutional legal norm on the need for legal regulation of administrative procedures would oblige the legislator to develop and adopt the law On Administrative Procedures.

Besides, the idea of adopting such a law is expressed by the highest officials of the country, legislators and scientists. Here it is appropriate to quote the opinion of the Chairman of the Government of the Russian Federation, D.A. Medvedev: “In recent years, administrative regulations have been adopted in various spheres of administration. We can say that a unified methodology for their preparation has been formed; common approaches to their structure and content have been consolidated. Hence – there is just one step to the creation of a model administrative regulation, and from it – to the adoption of the law about the basics of executive and administrative activity, which was discussed back in the 1960s”.[105] It is easy to assume that the “law on the basics of executive and administrative activity (terminology from the middle of the last century) in accordance with modern ideas about the exec-

[105] *Medvedev D.A.* 20 Years: the Path to the Awareness of Law // Russian Gazette, 2013. Dec. 11

utive power and the order of its functioning today should be entitled as the "law on administrative procedures".

Thus, the development of administrative and administrative procedural legislation in Russia, which, in turn, was based and continues to be based on the main constitutional and legal principles, allows talking about making possible amendments to the Constitution of the RF. What is meant here are principled provisions concerning the forms of implementation of the judiciary, the fundamental principles of the functioning of the executive power in relation to the adoption of administrative legal acts, as well as the "procedural" bases for the application of administrative penalties by courts (in the form of proceedings on administrative offenses cases). Exactly in these spheres of constitutional and legal regulation the changes, proceeding from both the current administrative and administrative procedural legislation, the achieved level of legal regulation (administrative court procedure and proceedings on administrative offences cases) and from the need to establish new legal institutes (administrative procedures), became imminent.

The attention of scientists, legal practitioners, legislators, judges is, of course, visibly strengthened to practically all the main problems of the modern administrative court procedure. We can confidently assume that in the near future the specialized literature will give a more substantive study to both the conceptual problems of the CACP of the RF and certain issues of the procedure for examining administrative cases. Many scientific journals are published in the country, where scientific articles on the problems the CACP RF application are published. The scientific publication "Journal of the Administrative Proceedings"[106] has been established and it publishes materials on the theory of administrative court procedure, trends in the development of legislation on administrative proceedings, judicial control in the sphere of exercising public powers; it analyzes judicial practice on administrative cases and issues of proceedings on certain categories of administrative cases, foreign experience in the organization of administrative courts and administrative justice[107]. In the journal you can

[106] URL: http://www.law.vsu.ru/adm/index.html

[107] See: *Kononov P.I.* Administrative Court Procedure as a Judicial Procedural Form for the Resolution of Administrative Cases: Discussion Questions of Theory and Legislative Regulations // Journal of the Administrative Proceedings, 2016. no. 2. pp. 9-15; *Kurchevskaya S.V.* Application of the Code of Administrative Court Procedure of the Russian Federation in the Courts of General Jurisdiction: the First Experience, Problems, Contradictions // Journal of the Administrative Proceedings, 2016. no. 2. pp. 66-72; *Lamonov E.V.* Judicial Practice of Application of the Code of Administrative Court Procedure of the Russian Federation in the

find relevant comments, reviews and conclusions of both scientists and judges. Special workbooks have been developed for judges considering administrative cases in courts of general jurisdiction.[108] They provide recommendations on the application of administrative procedural legislation.

Despite the short period of application of the CACP of the RF, it is possible to analyze the judicial practice and the problems of application of its separate procedural norms. A full-fledged scientific analysis of the judicial practice on administrative cases, as well as a precise institutional study of the system, content and structure of administrative court procedure, which is one of the most important forms of implementation judicial power in the country, will obviously become possible later.

Courts of General Jurisdiction // Journal of the Administrative Proceedings, 20175. no. 1. pp. 13-17; *Mayorov V.I.* Genesis of Administrative Judicial Law: Theoretical and Methodological Problems // Journal of the Administrative Proceedings, 2017. no. 1. pp. 5-9; *Opalev R.O.* Possible Directions for the Development of Legislation in the Field of Justice on Administrative Cases / / Journal of the Administrative Proceedings, 2017. no. 1. pp. 13-17; *Rogacheva O.S.* Consideration by a Justice of the Peace of Administrative Cases on the Issuance of a Court Order under an Administrative Court Procedure // Journal of the Administrative Proceedings, 2017. no. 1. pp. 24-30; *Starilov M.Yu.* Measures of Preliminary Protection on an Administrative Claim as a New Procedural and Legal Institute: from the Civil Process to the Administrative One // Journal of the Administrative Proceedings, 2017. no. 1. pp. 70-80; *Taribo E.V.* Violation of Rights as a Criterion for the Acceptance of Administrative Lawsuits // Journal of the Administrative Proceedings, 2017. no. 1. pp. 10-12.

[108] See: *Bespalov Yu.F.*, *Egorova O.A.* Handbook of a Judge on Administrative Cases: Initiation, Preparation, and Trial: a Workbook / Editor in chief Yu.F. Bespalov. Moscow: Prospekt, 2017.

Universal Decimal Classification 327.3

Gerd Winter

National Administrative Procedure Law under EU Requirements, with Focus on Public Participation

I. EU principles affecting Member State administrative procedure law

This article takes the perspective of a Member State (MS) authority, be it a legislative body, a judge or an administrator who, when introducing or applying administrative procedure rules, must respect certain requirements of EU law. Its focus will be on rules on public participation and court review of administrative decisions if such rules were infringed ,

Administrative procedure was not allocated to the EU as a competence and thus remains in principle a matter of domestic law. However, the MS are obliged under the general rule to "take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union".[109] This rule requires not only simply applying any substantive obligation of EU law but also providing procedural tools, including appropriate administrative procedures to implement the substantive obligations.

[109] Article 4 (3) TEU. See also article 291(1) TFEU which mandates MS to "adopt all measures of national law necessary to implement legally binding Union acts."

These tools range from long-standing classical requirements, such as the right to be heard, the prohibition of bias, the duty to give reasons, the withdrawal of unlawful permits, the protection of legitimate expectation, etc., to more modern ones, including the right of access to information and public participation. Procedural rules are often breached, so that the question arises whether affected persons have standing before a court concerning procedural infringements. If standing is accepted, it must be clarified if any procedural failure requires the quashing of the decision, or if there are reasons for keeping it in force. Another question of court procedure concerns interim measures, and whether an excluded person can apply for immediate admission while the procedure is pending.

The general principle that MS are obliged to take appropriate implementation measures does not give much guidance to answer these questions. Rather, a layer of middle range principles has been developed by EU legislation und jurisprudence which flesh out the general principle without questioning the basic MS procedural autonomy. These more precise principles and rules can be found in EU legislation or in judge made law. They can also be derived from international law which is binding on the EU. Such international law influences national law via EU law in various ways: by transposition into EU legal acts which must be directly applied or transposed by MS authorities, and without a transposition into EU law by direct application (if the preconditions of precision and unconditionality are fulfilled) or consistent interpretation by MS authorities.[110]

EU legislation often attaches specific requirements of administrative procedure to its substantive commands. For instance, in environmental legal acts, a standard requirement consists in subjecting certain activities to an authorisation or registration regime which often implies that certain kinds of information must be submitted by the applicant, the authority must elaborate an assessment report (in particular, under EIA legislation) the public must be given rights of participation, procedures must be coordinated by responsible agencies, agencies must supervise sectors, offences must be prosecuted, and so on. Such requirements have, as does all EU

[110] See for the two latter ways ECJ C-240/09 (Lesoochranárske), paragraphs 44 and 51. While the case concerns Art. 9 (3) of the Aarhus Convention, i.e. the right to challenge acts or omission, the principles developed by the court are also applicable to provisions concerning administrative procedures before a decision is taken. See further the chapters by Moreno (Direct Effect) and Macrory and Vedenr (Consistent Interpretation) in this book.

law, supremacy over MS rules.[111] They must be directly applied by MS authorities if contained in regulations. If contained in directives or decisions addressed to MS, the national administrative authority can wait for the transposition into domestic law, unless the preconditions of direct effect are present.[112] If national procedural law exists which conflicts with the EU requirements, the national law must be interpreted consistently.[113] If, because of clear wording, consistent interpretation is not viable, the supremacy of EU law demands that the national rule be set aside.

In the lack of precise legislation, more general principles apply. In particular, according to Article 41 of the EU Charter of Fundamental Rights everyone has the right to be heard before a decision, in which adverse effect is taken, to have access to his/her file and to ask for the reasons for an administrative decision. Although these principles are primarily addressed to the EU institutions, they must also be respected by MS authorities when implementing EU law.[114]

More principles have been developed as judge made law by the Court of Justice of the EU. One core principle, often called the REWE principle, is that of effectiveness and equivalence: When implementing EU law, national procedural law must be effective and at least equivalent to the law implementing national law. The principle was first stated by the ECJ as follows:

Accordingly, in the absence of Community rules on this subject, it is for the domestic legal system of each Member State to designate the courts having jurisdiction and to determine the procedural conditions governing actions at law intended to ensure the protection of the rights which citizens have from the direct effect of Community law, it being understood that such conditions cannot be less favourable than those relating to similar actions of a domestic nature.[115]

[111]ECJ Case 106/77 (Simmenthal), ECR 1978, 630. See the formulation of the supremacy principle in paragraph 17: "Furthermore, in accordance with the principle of the precedence ofCommunity law, the relationship between provisions of the Treaty anddirectly applicable measures of the institutions on the one hand and the
national law of the Member States on the other is such that those provisionsand measures not only by their entry into force render automatically inapplicableany conflicting provision of current national law but — in so far as
they are an integral part of, and take precedence in, the legal orderapplicable in the territory of each of the Member States — also preclude thevalid adoption of new national legislative measures to the extent to which
they would be incompatible with Community provisions."

[112]See further the chapter by Krämer in this volume.

[113]See further the chapter by Macrory and Madner in this volume.

[114] Art. 51 (1) 1st sentence ChFR.

[115] ECJ Case 33/76 (Rewe Zentralfinanz) ECR 1976, 1989, paragraph 5.

REWE effectiveness not only relates to remedies of national courts but also includes administrative tools. This,in particular, was developed in relation to the repayment of aid provided by the MS in violation of EU law requirements[116], but is also applicable to participation procedures.

In addition, the subjective right to an effective remedy before an independent and impartial tribunal (hereafter called the right to legal protection) was introduced after a history of jurisprudence of the European Court of Human Rights , comparison of MS constitutional traditions and finally the codification in Article 47 EU Charter of Fundamental Rights and Art. 19 (1) 2nd sentence TEU. According to Art.51 of the Charter this right must also be respected by MS when they implement EU law.

The relationship between the REWE and legal protection principles has yet to be systematically elaborated upon in the jurisprudence of the Court of Justice of the EU. Prechal/Widdershoven suggest that the REWE principle should be regarded as the "outer limit" framework and the legal protection principle as a specification.[117] I would rather suggest that both operate on the same level of generality but overlap to a certain extent. Concerning litigation about objective duties not involving individuals (such as if one governmental body files a court action against another, or in the case of association action), the right to legal protection is not applicable. There is, however, an overlap of the principles of effectiveness and legal protection in relation to litigation based on subjective rights. Furthermore, in no case does 'legal protection' express itself on equivalence.

Table 1: REWE effectiveness and right to judicial review

	Subjective rights	Objective duties
REWE equivalence	X	x
REWE effectiveness	x	x
Right to judicial review		-

[116]ECJ Case C-94/87 (Commission v Germany - Alcan I), ECR 1989, 175. The court does not elaborate on possible differences between courts and administration stating in paragraph 17: "It must be added that, in so far as the procedure laid down by national law isapplicable to the recovery of an illegal aid, the relevant provisions of national lawmust be applied in such a way that the recovery required by Community law is notrendered practically impossible and the interests of the Community are taken fullyinto consideration in the application of a provision which, like that relied upon bythe German Government, requires the various interests involved to be weighed upbefore a defective administrative measure is withdrawn."

[117]Sacha Prechal, Rob Widdershoven, Redefining the Relationship between 'Rewe-effectiveness'and Effective Judicial Protection, REALaw 4/2 2011 31-50.

In the area of overlapping scope, the two principles nevertheless have different meanings, and it will be up to future jurisprudence to further elaborate on this. While the legal protection principle stresses that subjective rights must be taken seriously, REWE effectiveness can be interpreted to mean that the protection of subjective rights also serve the 'objective' implementation of EU law.[118] This is important for the scope of court review. REWE effectiveness can be understood as to require the court, when checking the legality of an administrative act, not only look at those provisions which protect the individual interest of the plaintiff but also those which protect the general public interest.

A further difference between the two principles is of course that the legal protection principle only applies to court procedures while the REWE principle also extends to administrative proceedings.

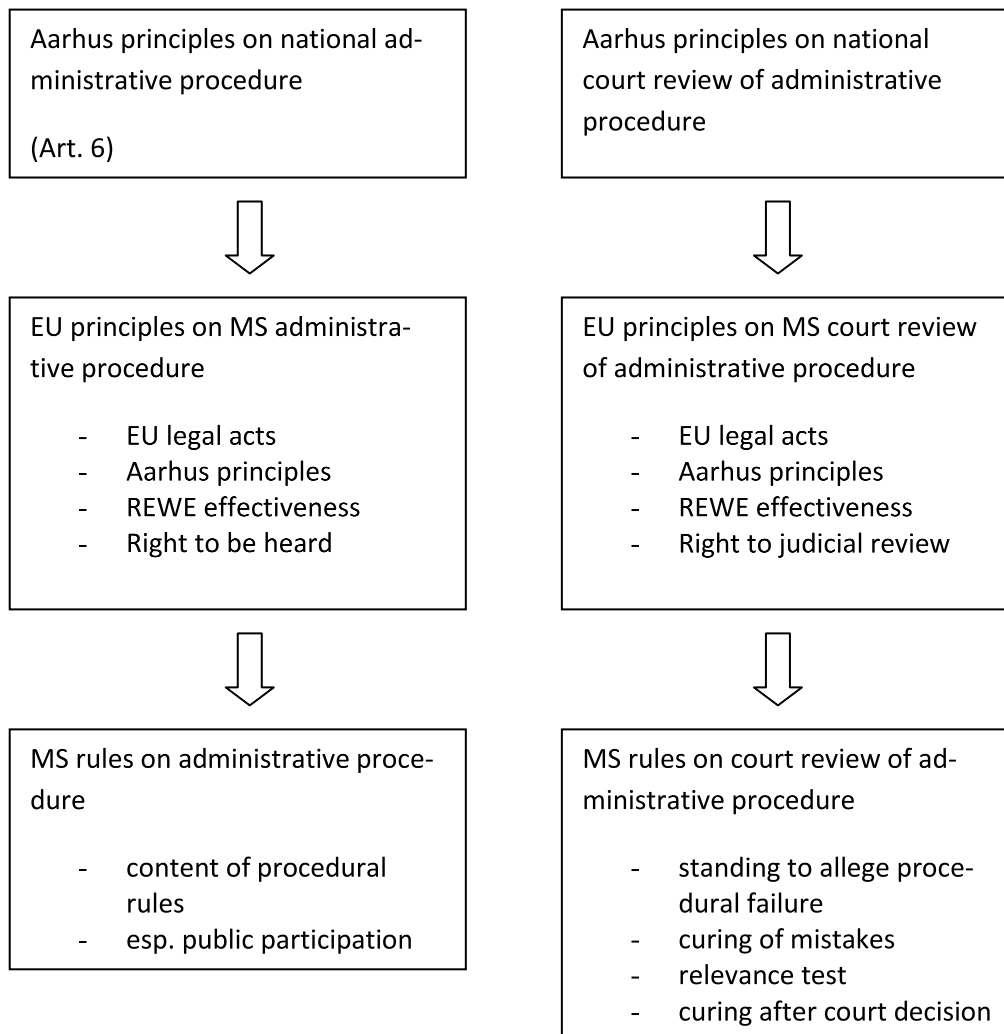
In conclusion the EU principles for national administrative procedure comprise the following:

- directly applicable procedural standards laid out by EU legal acts
- directly applicable procedural standards laid out by international law binding the EU
- consistent interpretation with EU legal acts on procedures
- consistent interpretation with international law on procedures binding the EU
- effectiveness and equivalence of implementation of EU law
- right to be heard, right to access to files, obligation to give reasons
- fundamental right to effective legal protection

Table 2 is an attempt to give an overview of the law levels and contents that are discussed in this chapter.

[118] It seems that Prechal/Widdershoven would be prepared to support this when they argue that "in a more daring scenario, the principle of Rewe-effectivenesscould develop into an additional and more stringent standard" (op. cit p. 49).

Table 2: Law levels and contents concerning administrative procedure



II. Towards EU standards on the right to be heard and public participation

The listed principles should be further elaborated towards a profile of EU standards for various procedural elements and their review by administrative courts. As indicated, the focus will be on requirements concerning the right to be heard and rights of public participation.

1. The right to be heard

In the environmental law context, the right to be heard is the classical right of users of environmental resources who are regulated by administrative law. This right is also provided by EU law: As mentioned before, according to Art. 41 (2) (a) of the EU Charter of Fundamental Rights, everyone has the right to be heard before a decision with adverse effect is taken.

The provision is especially important in relation to supervisory activities of MS authorities which in case of offences may result in rectification orders. Before such an order is taken, the concerned person must be given the opportunity to submit his/her views.

One example which has recently been publicly debated concerns the designation of protected areas in the Natura 2000 regime. In cases concerning the designation of SPAs, the Spanish Supreme Court indicated that there is no need to guarantee the right to be heard because the Directive does not mention it (judgment of 20 May 2008, appeal 2719/2004).[119]The classification of specially protected areas (SPAs) according to the Bird Directive[120] can however be regarded as an adverse decision for farmers whose land is affected. They must be heard before the decision is taken. The same applies to the establishment of the protection regime for special areas of protection (SACs) according to the Habitat Directive. It is debatable whether or not the submission of a list of designated SACs can already be seen as a decision requiring prior hearing given the fact that the submission elicits a stand-still obligation for activities impairing the future protection objectives.[121]

2. The right to public participation

I will address three aspects of public participation: the content of rights to participate, the scope of application and the possibility of preclusion of objections.

a) The content of rights to public participation

Rights to public participation generally address third parties. They are expounded in a number of EU legal acts, most notably in the EIA and IPPC Directives.[122] A difference is made between the public (at large), which shall be informed about the application and the public concerned, which shall have access to detailed information on the project and be enabled to comment. This concept is called the cone model because the first step (publication of the application) involves the general public and the second step (details and comment) involves a restricted public. The last step (publication of the decision taken) reopens the cone for the general

[119]See the chapter by García Uretra and Moreno Molina in this volume.

[120] DIRECTIVE 2009/147/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCILof 30 November 2009on the conservation of wild birds (OJ L 20, 16.1.2010, p. 7, Art. 4 (1) subpara 3.

[121]It is true that the ECJ denied the standing of farmers before the General Court arguing that the submission and listing of sites do not yet have a direct effect on the farmers (ECJ 23.4. 2009 C-362/04P (Sahlstedt)). This could be interpreted to also exclude the applicability of the right to be heard. But the judgment in the case was not convincing because it disregarded the ECJ's own stand-still jurisprudence (see ECJ C-117/03 (Dragaggi) para. 27).

[122] DIRECTIVE 2011/92/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCILof 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ L

public. Of course, these provisions must be respected by national authorities in the sectoral areas addressed by the directives.

In *Križan*, the ECJ has somewhat specified the content of these procedural requirements.[123] The case concerned the authorisation of a waste landfill. The authorisation presupposed an urban planning approval of the location of the landfill. This approval existed but was not disclosed in the proceeding for reasons of commercial confidentiality. It was controversial whether the IPPC Directive (in the applicable version[124]) required the disclosure of the location, and whether confidentiality was rightly assumed. Citing Art. 6 (6) of the Aarhus Convention which states that "all information relevant to the decision-making" must be made accessible, the ECJ held that information about the location of the landfill is relevant information, and that this cannot be confidential.[125] In more general terms, the ECJ took a broad approach on the scope of information that must be disclosed for public participation. Practicing consistent interpretation with the Aarhus Convention, it imported the formula "all information relevant to the decision-making" which was not present in the text of the IPPC Directive.

b) The scope of application of participation rights

Concerning the scope of activities that shall be subject to public participation, it is debatable whether a more general principle may be derived from the sectoral EU legal acts. Such principle could require that all high risk activities must be subject to public participation, be it in the cone form or another. Various considerations may support this interpretation.. Insofar as participation addresses the public concerned, a basis may be found in the right to be heard as established by Art. 41 of the Charter of Fundamental Rights. It is true that the right to be heard was modelled on the bilateral relationship between an administrative body and an adversely affected individual, but the idea of prior hearing is also applicable if an administrative decision has adverse side effects on third parties. In the EIA Directive, such broad interpretation of the traditional right to be heard is resounded in Consideration no. 19 which reads:

[123]ECJ Case C-416/10 (Križan v Slovenská inšpekcia životného prostredia).
[124] COUNCIL DIRECTIVE 96/61/ECof 24 September 1996concerning integrated pollution prevention and control, OJ L 257, 10.10.1996, p. 26, last amended by Regulation (EC) No 166/2006 of the European Parliament and of theCouncil of 18 January 2006, OJ L 33, 4.2.2006, p. 1.
[125]ECJ Case C-416/10 (Križan v Slovenská inšpekcia životného prostredia), paragraph

Among the objectives of the Aarhus Convention is the desire to guarantee rights of public participation in decision-making in environmental matters in order to contribute to the protection of the right to live in an environment which is adequate for personal health and well-being.

A basis for participation of the public at large could be found in the principle of effective implementation: public participation enhances the quality of the decision because the administrative body is confronted with additional and controversial information. It also raises the awareness of and support for environmental issues in the population. This line of thought – the mobilisation of the citizen as support for effective policy implementation – has characterised EU policy in general and specifically environmental policy for a long time.[126] It has lead, for instance, to the doctrine of supremacy of EU law and the direct effect of directives, but it also includes public participation, as can be seen from Consideration no. 16 of the EIA Directive which reads:

Effective public participation in the taking of decisions enables the public to express, and the decision-maker to take account of, opinions and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken.

As a third basis, the principle of democratic legitimacy of government may be considered. This aspect is somewhat expressed in the notion of accountability and transparency mentioned in the citation above. The concept of democracy would however not be supported if it is understood to imply that the legitimacy of the executive is only to be founded on parliamentary legislation and ministerial accountability. But this restrictive view , hailed as it still is, by many constitutional lawyers, and especially in Germany[127], is unable to address the plurality of legitimacy mechanisms which are needed to fill the parliamentary default areas which have particularly emerged in the transnational arena an the field of complex modern technologies.[128] Democracy in this new design is not yet well structured and the catchwords the Commission

[126] Johannes Masing, Die Mobilisierung des Bürgers für die Durchsetzung des Rechts : europäische Impulse für eine Revision der Lehre vom subjektiv-öffentlichen Recht, Berlin: Duncker & Humblot, 1997.

[127] Cf. Winfried Kluth, Demokratie, in Reiner Schulze, Manfred Zuleeg, Stefan Kadelbach (eds.) Europarecht Baden-Baden: Nomos 2 nd edition 2010, paras 34 and 35.

[128] See the contributions in Olaf Dilling, Martin Herberg, Gerd Winter (eds.) Transnational Administrative Rule-Making. Performance, Legal Effects and Legitimacy, Oxford: Hart Publishing 2011.

has proposed in its governance concept - transparency, participation, accountability, effectiveness and coherence[129] – are easier promulgated than put into practice, But public participation in administrative decision-making would certainly be a core element to any such design of modern, transnational democracy.

Looking at international law, Art. 6 (2) Aarhus Convention must be consulted, and holds that, in addition to public participation in decisions on the activities listed in the Annex to the convention, each party

Shall, in accordance with its national law, also apply the provisions of this article to decisions on proposed activities not listed in annex I which may have a significant effect on the environment. To this end, Parties shall determine whether such a proposed activity is subject to these provisions.

Following the ECJ reasoning in *Lesoochranárske*[130], this provision must guide the interpretation of national law. It may even be considered to be directly applicable, because its formulation is unconditional and reasonably precise.

This means that activities not listed in the Annexes to the EIA and IPPC Directives must be subject to participation of the public (or at least of the public concerned) if they pose significant risks. The level of risks caused by the listed activities could serve as a guide to identify the relevant projects.

The implication of such principle would be that, apart from dangerous point sources, most of which are already captured by the lists to the EIA and IPPC Directives and the annex to the Aarhus Convention, diffuse sources can also be encompassed.. Most importantly the manufacture and bringing on the market of dangerous products would be subjected to public participation. For instance, a single authorised pesticide, if widely distributed, can cause much greater damage than an individual dangerous installation. The relevant EU legal acts do provide for a notice and comment procedure addressed to the general public in product related proceedings. For instance, in the procedure of approving an active pesticide substance, the application dossier and the draft assessment report are made accessible for the public and open for com-

[129] European Commission, European governance - A white paper, COM/2001/0428 final, OJ C 287, 12.10.2001, p. 1–29.
[130] ECJ Case C-240/09 (Lesoochranárske zoskupenie) paragraphs 50-51.

ments.[131] However, the provisions only concern proceedings on the EU level, which finally result in a Commission decision. No participation procedure has been prescribed in relation to the authorisation of pesticide products by MS authorities.[132] The EU sectoral legislator thus leaves procedures to the discretion of the MS. This does not however exclude that the general EU principles on EU law implementation apply. It is true that Art. 41 (2) of the Charter of Fundamental Rights would not fit as a basis because the decision to authorise the manufacture and bringing on the market of a pesticide product does not yet determine who will be negatively affected. But the principle of effective implementation does fit as a basis, as well as the emerging principle of transnational democratic legitimation.

c) The preclusion of participation rights

As a last consideration concerning the design of public participation as a requirement of EU law, one should discuss whether rights of participation can be precluded if their holder fails to make use of them. For instance, German law provides that a comment will be precluded if a comment is filed after the expiry of the deadline for comments.[133] The preclusion is called 'formal' if it is related to the ongoing administrative proceedings and excluding a comment from further discussion at a subsequent hearing or second instance of administrative review. It is called 'material' if related to a review procedure before a court. In Germany material preclusion was discussed as a constitutional question. It was alleged that the right to legal protection was breached since the holder of a substantive right, like a third party claiming adverse effects on their health, was excluded from the court review of the relevant administrative decision. The BVerfG, however, rejected this reasoning. It argued that the preclusion effect drives third parties to submit their information at an early stage into the process, thus allowing the administrative authority to take the decision in view of all concerns. This would even serve the legal protection of third parties.[134]

[131]REGULATION (EC) No 1107/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCILof 21 October 2009concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ L 309, 24.11.2009, p. 1), Arts. 10, 12 (1) 2nd and 3rd sentence.

[132]DIRECTIVE 98/8/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCILof 16 February 1998concerning the placing of biocidal products on the market(OJ L 123, 24.4.1998, p. 1).

[133]§ 10 (3) 5th sentence Federal Emission Protection Act (Bundesimmissionsschutzgesetz-BImSchG) for dangerous installations; § 73 (3a) VwVfG for infrastructure projects. To the same effect: section 6:13 Dutch General Administrative Law Act. Cf Jans in this volume.

[134]BVerfGE 61, 82, 114-117.

Concerning the compatibility of this analysis with the principle of effectiveness and the right to effective court review the situation is still open. The Court of Justice of the EU has not yet ruled on the matter. It is true that the ECJ in *Djugarden Lilla* held that the EIA Directive in no way permits access to review procedures to be limited on the ground that the persons concerned have already been able to express their views in the participatory phase of the decision-making procedure established by Article 6(4) thereof.

Thus, the fact relied on by the Kingdom of Sweden, that the national rules offer extensive opportunities to participate at an early stage in the procedure in drawing up the decision relating to a project is no justification for the fact that judicial remedies against the decision adopted at the end of that procedure are available only under very restrictive conditions.[135]

This statement however concerns the inverse question whether access to the court can be restricted because an objector already has ample opportunity to bring their views at the administrative stage. Of course this must be denied because the administrative body may decide to disregard the objections, and the court's role is precisely to remedy this. By contrast, preclusion means that a person fails to use her chances at the administrative stage. The German Federal Administrative Court expressed itself on the matter in a case concerning the construction of a highway.[136] It stated that some of the plaintiffs were excluded from alleging violation of air pollution and nature protection standards because they had not raised claims of pollution and damage to protected species during the administrative proceeding. The court cited the ECJ in *Preston* where the ECJ argued that legal protection is not an absolute right but must be weighed against legal certainty which especially allows the setting of deadlines for filing an application to an administrative body.[137] This, the BVerwG said, "can without doubt be transferred to the national legal concept of preclusion of objections."[138] My own view is that this interpretaion disregards the difference between two party situations involving just the applicant and the administartive body and three party (or multi parties) situations. Considering three party situations preclusion creates a misbalance between the rights of an operator on the one and concerned third parties on the other. While operators are entitled to feed information into the proceedings

[135]ECJ Case C-263/08 (Djurgården-Lilla Värtans Miljöskyddsförening) ECR 2009 I-9967, paragraphs 48-49.
[136] BVerwGE 139, 150.
[137] ECJ Case C-78/98 (Preston), ECR 2000, I-3240, paragraph 33.
[138] BVerwGE 139, 150, 159.

without any deadline, third parties would be denied this right.[139] In addition, legal certainty is hardly a reason for preclusion. Any applicant for a permit must be aware that they cannot be certain about its status until the end of the last court proceedings. Preclusion appears rather to be a means to reduce the workload of courts. This however is no grave concern if weighed against the principle of effectiveness.[140] In conclusion, there is no problem to set deadlines for the submission of comments, and wise objectors will make use of them in order to influence decision-making at an early stage. But the preclusion of late comments remains incompatible with the principle of effective implementation.

II. EU standards on court review of procedural infringements

1. Procedural infringements

What a procedural infringement is of course depends on the content of the rule violated. In legal systems with precise codification of procedure this is easier to determine than in less regulated ones. But there are certainly also open questions in codified procedural law. One example is the relationship between public participation and policy decisions. Often, in proceedings on highway construction, the traffic demand justifying the new project is put into question by objectors. Is there a duty of the hearing officer to allow discussion and even presentation and cross-examination of experts or not? In Britain the question was denied in the Bushel case because the court considered national traffic forecasts at least as a matter of policy and not appropriate for cross-examination by objectors at a local inquiry.[141] German courts, by contrast, regard traffic demand as a question of determinable fact and legal appreciation.[142]

2. Consequences of procedural failure

a) Overview

If the procedural rule is clear and found to have been breached, the question arises as to the effect this has on the final decision. Does the mistake render the decision unlawful, and

[139] Bernhard Wegener, Neue Formen der Bürgerbeteiligung? Planung und Zulassung von Projekten in der parlamentarischen Demokratie, 69. DJT 2012, vol. II, M 57 et seq., at 67.
[140] It may be added that the BVerwG set aside its obligation to submit the problem as a preliminary question to the ECJ.
[141] Bushel v Secretary of State for the Environment [1980] 3 WLR 22.
[142] BVerwGE 75, 214, 232.

must the decision be annulled if appealed? National law and jurisprudence answer these questions differently, depending on how seriously they take procedures. EU case law has also emerged on the issue, but more so in relation to EU administrative procedures, not as rules addressed to MS procedures. It appears advisable to first explore MS practices and then relate them to available or to be developed EU standards.

aa) MS law and jurisprudence

French administrative law, for instance, classifies the procedural and formal provisions of administrative decision-making into "formalités substantielles" and "formalités accessoires". Only the first category can – and must - lead to annulment of the decision. French court jurisprudence has developed certain criteria which shall help to identify the substantial value of a procedural provision, such as whether it provides citizens with a right and whether it is designed to have an effect on the outcome. There is also a general excuse of "formalité impossible" if the circumstances were such to exclude to observe a procedural requirement.[143]

English law has adopted a more pragmatic approach. An analysis of court practice concerning the right to be heard concludes that it is divergent case law even on core questions such as what elements of fair procedure are binding in informal and formal administrative proceedings, whether the neglect of an element can be cured through appeal proceedings, and whether a relevance test applies in cases of incurable procedural failure.[144] Courts often asked themselves whether procedural compliance would have made any difference to the final decision, but in 2001in the *Berkeley* decision of the House of Lords [145] (then the UK's highest court) argued that where EU law was involved (here the failure to consider whether EIA was needed for an Annex II project) the discretion of the court not to quash the decision was extremely limited if not non-existent because of the court's overriding duty to ensure that EU was effectively applied. Recently the Supreme Court (which replaced the House of Lords as the highest court in 2009) has called for a re-evaluation of this approach, arguing that provided an applicant was

[143] Jean Waline, Droit administratif, Paris: Dalloz 22nd ed. 2008, p. 605.
[144] Carol Harlow, Richard Rawlings, Law and Administration, Cambridge: Cambridge University Press 2nd ed. 2006, 505.
[145] *Berkeley v Secretary of State for the Environment*[2001] 2 AC 603

able in practice to enjoy any rights under European legislation, national courts still had considerable procedural discretion as to whether to quash a decision or not.[146].

German administrative law has developed a more systematic doctrine, which is, as usual, highly complicated. After centuries of indolence concerning procedure it has opened itself for taking procedures more seriously since the 1970s. But since the early 1990s, with the upcoming preoccupation with what was called the removal of investment barriers, mechanisms have been gradually adopted that help to save unlawful decisions from quashing for procedural reasons. Meanwhile, this has gone so far that there is reason to question its compatibility with EU procedural law, and in particular the principle of effective implementation. This appears to justify a closer look at German law as an exemplary case.

German administrative law first of all accepts the notion that a procedural failure makes the decision (procedurally) unlawful so that the decision must be quashed in principle.[147]

Not less than four mechanisms have been introduced allowing the prevention of a procedural failure leading to the annulment of the decision. They are:

(1) the substantive rights effect,
(2) the curing of infringement until taking of court decision (Heilung),
(3) the relevance test (Erheblichkeit),
(4) the curing of a mistake upon court order

(1) Substantive rights effect

According to German administrative law, the admissibility of a complaint and its consideration by the court presupposes that the administrative act or omission allegedly violated an individual right of the plaintiff.[148] One could suppose that procedural rights are rights in the sense of this requirement. German doctrine, however, construes participation in procedures as a

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[146] *Walton v The Scottish Ministers* ([2012] UKSC 44, 17 October 2012) See further Macrory National Report in this book.
[147] Should the mistake be obvious and grave (for instance because the agency was not competent to decide) the decision is per se null and void. A court if, called to decide on the matter, will in this case only formally declare that the decision is null and void. In the case of normal unlawfulness, the act nevertheless exists and must be quashed by "constitutive" court decision.
[148] § 42 (2) VwGO.

means of the protection of substantive rights. The implication is that holders of substantive rights shall be given a possibility of defence of their rights as early as at the stage of administrative decision-making.[149] Those who participate in a proceeding not in defence of their individual interests but in view of the public interest are excluded from legal protection. This narrow conception of admitting allegations of procedural failure mirrors the fact that participation is not regarded as a component of democratic government. In terms of political theory, the citoyen may be welcome to participate in administrative proceedings but is not given legal protection for this; rather, only the bourgeois, whose substantive interest is at stake, has legally protected participation. This restriction entails the risk that individual interests (of the developer and of third persons) may be the major concern of the competent authority, and the public interest, which is said to be more than the sum of individual interests, which remain of secondary importance.

(2) Curing of infringement until taking of court decision

A procedural failure which is admissible for court review does not necessarily require the quashing of the decision. It may be cured if certain preconditions are fulfilled. In that regard, § 45 of the German Administrative Procedure Act (Verwaltungsverfahrensgesetz – VwVfG) provides the following:

(1) An infringement of the rules governing procedure or form which does not render the administrative act null and void under section 44 shall be ignored when:

1. the application necessary for the issuing of the administrative act is subsequently made;

2. the necessary statement of grounds is subsequently provided;

3. the necessary hearing of a participant is subsequently held;

[149] BVerfGE 53, 30 (Mülheim-Kärlich) is often cited as the core decision establishing this doctrine. However, things are a bit more difficult. This decision was a step forward because the court rejected the earlier doctrine, which held that there is no subjective right to allege procedural failure because procedure is a device exclusively serving the public interest in the quality of administrative decisions. The court's argument that procedure allows holders of substantive rights to make their rights heard early in the procedure was thus able to discard the older conception. *Mülheim-Kärlich* however did not at all posit that procedural rights must in any case have a substantive dimension. It is not excluded that the legislator established "pure" procedural rights. If it does so, these rights must as any other public rights be enforceable in the courts.

4. the decision of a committee whose collaboration is required in the issuing of the administrative act is subsequently taken;

5. the necessary collaboration of another authority is subsequently obtained.

(2) Actions referred to in paragraph 1 may be made good up to the conclusion of the last administrative court proceedings checking the merits of the case.

(3) […][150]

This means that a procedural mistake can be rectified by subsequent action. The action can be performed until the decision of the last court instance which is tasked to check the facts of the case. This is normally the second instance administrative court; in certain cases concerning large infrastructure projects, the single responsible court is the Bundesverwaltungsgericht (BVerwG). If, for instance, the adversely affected party was not heard before the administrative decision, the mistake can be corrected until the date of the judgment of the court of last factual instance. Some scholars even suggest that the application for administrative or court review already represents the opportunity to be heard.[151] It is submitted that, in this way, the right to be heard is made toothless.

§ 45 VwVfG does not expressly extend its scope to public participation proceedings. There is awidespread opinion that such extension is acceptable, at least in relation to the public hearing.[152]

(3) Relevance test

If the rectification of the procedural failure has not taken place or was not accepted by the court, the relevance test intervenes. This test is by § 46 VwVfG formulated as follows:

The quashing of an administrative act, which is not null and void under section 44, cannot be demanded for the sole reason of failure of procedure, form or local competence, where it is evident that the infringement has not influenced the decision on the substance.[153]

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[150]Author's translation.

[151] For a case concerning the legally prescribed hearing of a conscientious objector see BVerwGE 44, 17 (21)

[152] Ferdinand Kopp, Ulrich Ramsauer, Verwaltungsverfahrensgesetz, München: Beck Verlag 9th ed. 2005§ 75 n. 24.

In other words, a procedural mistake does not trigger the quashing of the decision if it has obviously not influenced the decision. This means that in the normal case procedural failure does extort the quashing of the decision. Only if it is obvious that the mistake did not have a substantial influence the decision can stand. The administrative authority has the burden of proving the evidence of no influence. In an attempt to make the rather complicated formulation of the provision better understandable, the BVerwG has rephrased the provision into the formula that the decision must be quashed if there is a concrete possibility that the procedural mistake has influenced it.[154] The relevant passage is the following:

"Concerning the identification of the here relevant causal connection [i.e. between the mistake and the decision, GW] it would be excessive at the one end to let the 'abstract possibility' suffice and at the other end to ask for a positive proof that because of the procedural failure the decision was taken with exactly this and no other content. Rather, the causal connection is to be accepted if under the circumstances of the case there was a concrete possibility that without the procedural mistake another decision would have been taken".[155]

Although this formulation sounds practicable, an analysis of the case law of the BVerwG reveals that in hardly any case has the court found that such a concrete possibility had existed.[156] The administrative decision could therefore in almost all cases be upheld as far as administrative procedure was concerned. This practice has been explained by the fact that German administrative courts operate under the so-called investigation principle, i.e. they are obliged to promote the finding of the truth rather than watching and assessing the interactions of parties.[157] This means that they form their own judgment of the facts including those the plaintiff alleged during the administrative proceedings. They will then either quash or uphold the decision on

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[153] Author's translation.
[154] BVerwGE 69, 256; BVerwGE 75, 214, 228.
[155] BVerwGE 69, 256, 270.
[156] As an exemplary case see BVerwGE 75, 214, 229. The case concerned the construction permit for the Munich airport. The competent authority was supervised by a Minister who was at the same time head of the supervisory board of the airport company. This was not regarded to bias the decision of the competent authority because the Minister had not exerted any visible influence on the decision. In the view of the author this is very unlikely because the airport was a firm political priority of the Bavarian government of the time.
[157] Bülow, op. cit. p.

substantive grounds. In this view procedural mistakes are of no avail either because the decision was lawful – then the mistake was without effect – or because it was unlawful – then the mistake is not "needed" for the quashing of the decision. In a critical perspective it appears that this devaluation of procedure disregards the fact that procedures have a genuine function, especially if the law is imprecise, concerns complex facts, or provides discretionary margins. The court will in such cases come to the conclusion that the decision taken was lawful, but it will not be able to exclude that the administrative authority, in using its discretion, may have come to another and equally lawful decision.

(4) Curing of a mistake upon court order

In the rare cases in which the procedural mistake was not cured until the court judgement the mistake was found to be relevant, there is one more possibility to save the decision from quashing: the court may declare the decision unlawful and unenforceable but allow the administrative authority to rectify the mistake. This means, for instance, if during a public hearing a certain issue was unlawfully excluded from discussion, the authority can reopen the hearing, discuss the relevant issue and approve or modify the decision on that basis.[158] In these cases, the courts usually emphasise that the authority must conduct the subsequent procedure with an open mind ("ergebnisoffen").[159] But that is hardly a realistic advice. An administrative body which has defended its decision through internal and external reviews will not easily take an unbiased position.

b) EU law and jurisprudence

We will now confront the German concept of treating procedural failure with the EU principles stated above. Before doing so, the rules developed by the European courts for EU administrative procedures will be consulted for heuristic purposes.

aa) EU standards for EU procedural infringements – a heuristic look

[158] § 75 (1a) VwVfG. For an example see BVerwGE 100, 358.
[159] BVerwGE 102, 351, 365.

There is no direct logical link between direct EU administration and MS administration that implements EU law. Concerning the construction of standing, the ECJ has even construed access to EU courts more narrowly than access to MS courts. This does however not mean that the Court of the European Union would repeat this contradiction in relation to the assessment of administrative procedures. After all, standing is something directly affecting the workload of a court. It is therefore understandable that a court construes it narrowly if its own workload is concerned. Things may be different when it comes to assessing the merits of a case, both in terms of substantive and procedural law.

The General Court and Court of Justice check administrative decisions on the basis of Art. 263 (4) TFEU. The catalogue of possible illegality of decisions - lack of competence, infringement of an essential procedural requirement, infringement of the Treaties or of any rule of law relating to their application, or misuse of powers – was drafted after the model of French administrative law. In particular, the test of "essential procedural requirement" resounds the French distinction between "formalités substantielles" and "formalités accessoires". However, the European Courts have refused to elaborate on the distinction between essential and non-essential procedural requirements.

As for the curing of a mistake this was accepted as a possibility, but the regularisation has to be made by the end of the administrative proceeding. It is not admitted at the stage of the court proceedings. The Court of First Instance stated the reasons for this view as follows[160]:

Moreover, any infringement of the rights of the defence which occurred during the administrative procedure cannot be regularized during the proceedings before the Court of First Instance, which carries out a review solely in relation to the pleas raised and which cannot therefore be a substitute for a thorough investigation of the case in the course of the administrative procedure. If during the administrative procedure the applicant had been able to rely on documents which might exculpate it, it might have been able to influence the assessment of the

[160] See cases concerning refused access of the plaintiff to files CFI Case 36/91 (ICI v Commission), ECR 1995 II-1847, n. 108 and ECJ C-199/99 (Corus UK v Commission), ECR 2003, I-11177, n. 128.For an analysis of the case law see Elena Bülow, Die Relativierung von Verfahrensfehlern im Europäischen Verwaltungsverfahren und nach §§ 45, 46 VwVfG, Baden-Baden: Nomos 2007, 245 et seq.

college of Commissioners, at least with regard to the conclusiveness of the evidence of its alleged passive and parallel conduct as regards the beginning and therefore the duration of the infringement. The Court cannot therefore rule out the possibility that the Commission would have found the infringement to be shorter and less serious and would, consequently, have fixed the fine at a lower amount.

The citation shows that the core argument for rejecting a regularisation of infringements pending court proceedings is related to the separation of powers: the court sees itself to be confined to legal review which disallows it to reopen the full scope of arguments considered before the administrative body.

Concerning the relevance test, the EU courts apply this test in cases of absence of an alternative decision. If the decision was the only possibility in legal terms, the court is prevented from annulling it. Procedural infringements are considered to be irrelevant in such cases.[161] In *Distillers* the plaintiff alleged as a procedural infringement that the competent advisory board was not adequately heard before the Commission decision. This decision stated that price terms adopted by distillers were in breach of the cartel prohibition according to Art. 85 EEC-Treaty. The plaintiff had not notified the terms to the Commission which was required to obtain authorisation for an exception. The court stated:[162]

In view of what is said above it is unnecessary to consider the procedural irregularities alleged by the applicant. The position would be different only if in the absence of those irregularities the administrative proceedings could have led to a different result. Subject to what the applicant says with regard to the product Pimm's the action is in effect confined to challenging the legality of the Commission's refusal, to grant exemption to the price terms under Article 85 (3) from the prohibition in Article 85 (1). The applicant does not deny that the price terms infringe Article 85 (1). Since however it omitted to notify the said terms to the Commission the applicant has deprived itself by its own act of any possibility of obtaining in the proceedings to

[161]ECJ Case 30/78 (Distillers v Commission), ECR 1980, 2229.
[162]ECJ Case 30/78 (Distillers v Commission), ECR 1980, 2229 n. 26.

which the present application relates a decision granting exemption under Article 85 (3). Even in the absence of the procedural irregularities alleged by the applicant the Commission Decision based on the absence of notification could therefore not have been different.

This decision has been understood to prove that the ECJ also does accept a relevance test in cases where the administrative authority has discretion to decide.[163] Bülow argues on the basis of closer analysis of court practice that the European Courts apply such test only in cases of non-essential rules. Without building a systematic doctrinal concept, they implicitly reject a relevance test if the procedural rule is essential.[164] In contrast, a different reading suggests that the European Courts do apply a relevance test notwithstanding whether the infringed rule is essential or not. In particular, *Aalborg Portland* can be understood to mean that any procedural mistake is subject to a relevance test.[165] The plaintiffs, a group of cement producers, appealed a Commission Statement of Objections according to Art. 85 EEC-Treaty, alleging, among other issues, that the Commission had failed to disclose documents with exculpatory content to them. The court said:

> On the other hand, where an exculpatory document has not been communicated, the undertaking concerned must only establish that its non-disclosure was able to influence, to its disadvantage, the course of the proceedings and the content of the decision of the Commission (see Solvay v Commission, paragraph 68).
> It is sufficient for the undertaking to show that it would have been able to use the exculpatory documents in its defence (see Hercules Chemicals v Commission. paragraph 81, and Limburgse Vinyl Maatschappij and Others v Commission, paragraph 318), in the sense that, had it been able to rely on them during the administrative procedure, it would have been able to put forward evidence which did not agree with the findings made by the Commission at that stage and would therefore have been able to have some influence on the Commission's assessment

[163]See for an analysis of the case law Bülow, op. cit. p. 327 et seq.
[164]Bülow, op. cit. p. 329.
[165]ECJ Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 Pand C-219/00 P (Aalborg Portland v Commission), ECR 2004 I 401.

in any decision it adopted, at least as regards the gravity and duration of the conduct of which it was accused and, accordingly, the level of the fine (see, to that effect, Solvay v Commission, paragraph 98).[166]

If the court is to be understood as applying the relevance test to essential procedural rules as well, the test is in any case not very demanding. It suffices that the applicant establishes that the mistake "was able to influence […] the course of the proceedings and the content of the decision". The formula appears to be somewhat less burdensome than the "concrete possibility" of the BVerwG. Be this as it may, there is certainly a significant difference in its application, the European courts laying less burden on the applicant than the German courts.

Taking my own position on the different readings, I believe that Bülow is right. I cannot imagine the Court of Justice of the EU applying a relevance test if a core procedural requirement was breached, such as, for example, where, against clear legal provisions, the application for a project was not published, comments were not accepted, or a hearing omitted. According to German law even in such cases the relevance test applies.

Concerning the possibility of a court to allow for a regularisation of procedural infringement, even after the court judgment was issued, no decision of the European courts have even considered this. Arguing a maiore ad minus, it can be concluded that if a mistake cannot be made good after initiation of a court proceeding, this is even less possible after its ending.

Finally, concerning the question of whether standing to allege procedural mistakes presupposes a substantive right, no such requirement has been stated by the European Courts when checking standing under Art. 263 (4) TFEU (or the former Art. 230 (4) EC and Art. 173 (4) EEC). On the contrary, according to the Plaumann formula, a procedural right (if specifically provided to the applicant) even constitutes standing.[167] Since the entering into force of the Lis-

[166] ECJ Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 Pand C-219/00 P (Aalborg Portland v Commission), ECR 2004 I 401, n. 74 and 75.

[167] ECJ Case 25/62 (Plaumann v Kommission) ECR 1963, 213; ECJ Case C-78/03 P (Kommission v Aktionsgemeinschaft Recht und Eigentum) ECR 2005, I‑10737, paragraph 33; ECJ Case C-487/06 P (British Aggregates v Kommission)ECR 2008, I‑10505, paragraph26.

bon treaties, standing must be interpreted in the light of the right to an effective remedy according to Art. 47 ChFR. This right is provided to all persons whose rights are guaranteed by EU law. There is no doubt that these rights can also be procedural.

In conclusion, the jurisprudence of the European Courts on effects of procedural failures can be summarized as follows:

- the rectification of a procedural infringement is not accepted if made at the stage of court proceedings;
- a procedural infringement is not relevant (in the sense of not leading to the annulment of the decision) (a) if the decision was, in legal terms, the only one which could have been taken, or (b) if although the administrative authority had a discretionary margin, the failure was able to influence the decision; however, if the procedural requirement is of essential importance no relevance test is applied;
- there is standing to allege procedural infringements if the plaintiff was provided a right to participate, notwithstanding whether he/she is also materially concerned.

It is submitted that these standards which are aimed at EU administrative procedures can also serve as suggestions for EU requirements addressing MS procedures.

bb) EU standards for MS procedural infringements

Are precise procedural rules established by EU legal acts to be regarded as absolute, i.e. that their violation unavoidably leads to the annulment of the decision? This has sometimes been argued[168] but is hardly realistic. Procedural law would cause unnecessary waste of time and costs if the whole procedure must be reiterated although it is certain that without the failure the same decision would have resulted. Procedural fairness does not require completely superfluous administrative action. The same applies to procedural rules established by international law, such as the Aarhus Convention.

[168] Anna-Maria Schlecht, Die Unbeachtlichkeit von Verfahrensfehlern im deutschen Umweltrecht, Berlin: Duncker & Humblot 2010, p. 206; Wolfgang Kahl, Grundrechtsschutz durch Verfahren in Deutschland und in der EU, VerwArch 95 /2004) S. 1 (25).

On the other hand, the fact that EU law and international law have established rather precise procedural requirements, particularly on public participation, and cannot be left unattended. While the "no alternative" situation may be conceded, it is submitted that those requirements do not allow disregarding the structural components of participation in cases of administrative discretion or complex risk assessment. The structural components would seem to include the information of the public at large of the project application, the information of the public concerned about environmental effects of the project, the acceptance of comments of the public concerned, and the conducting of an oral hearing if so required. If no information was provided on the core elements of the application and environmental effects, or comments alleging important issues not invited or accepted, or a hearing omitted, this must lead to the nullification of the decision without a test of relevance. Infringements of minor importance which would be subject to such test would include cases where the EIA was incomplete, the notice not published at all required places, an individual comment not accepted, or an issue of minor relevance refused to be discussed at a hearing. It is submitted that the formula of "concrete possibility that without the infringement another decision would have resulted" is appropriate but should be practiced fairly and without a bias in favour of preserving the administrative decision.

Concerning the rectification of infringements at later stages, the relevant EU legal acts and Art. 6 Aarhus Convention should be understood to allow this until the end of the administrative proceedings, but not anymore at the court stage. After all, they prescribe participation as a means to influence the administrative decision, and they even require this at an early stage when the options are still open.[169] It is submitted that this also holds true for systems like the German where the proceedings before administrative law courts are more investigative than in other legal systems, because even the German legal concept does not mean that the court proceeding, especially if related to discretionary administrative decisions, can substitute an administrative proceeding. This is all the more so because since the mid 1980s, the German administrative courts have developed a practice of judicial self-restraint and reduced density of review of administrative fact finding and assessment. This particularly concerned the risk assessment of complex technologies and infrastructure projects which are precisely those undertakings

[169] See Art. 6 (4) Aarhus Convention; Art. 24 IPPC Directive; Art. 6 (4) EIA Directive.

which are subject to public participation.[170] Therefore, even in the German system of somewhat higher density of court review, no rectification should be allowed at the court stage and – even more so - at a later stage subsequent to the court judgment.

Another question is whether a procedural failure at the first instance administrative proceeding can be rectified at the second instance, which is called to decide on appeal from the first instance. The ECJ ruled on this question in *Križan.*[171] It held that rectification is in principle compatible with EU law but that the details are to be decided by the MS provided the principle of equivalence and effectiveness is respected. The relevant paragraph reads as follows:

Consequently, the principle of effectiveness does not preclude the possibility of rectifying, during the administrative procedure at second instance, an unjustified refusal to make available to the public concerned the urban planning decision at issue in the main proceedings during the administrative procedure at first instance, provided that all options and solutions remain possible and that rectification at that stage of the procedure still allows that public effectively to influence the outcome of the decision-making process, this being a matter for the national court to determine.[172]

In more general terms the principle of effectiveness is interpreted to demand two preconditions for rectification at a second instance administrative level: all options and solutions must remain possible, and the public must still be effectively able to influence the decision. This implies that rectification is not possible at the second instance if the competent authority is confined to a legality check, or if the project has already been constructed.

Concerning locus standi, it was already said that Art. 47 of the Charter of Fundamental Rights must be interpreted to provide legal protection also for procedural rights, even if the right holder is not affected in his/her substantive rights. Although this provision is mainly addressed to the EU courts, it is also applicable to MS courts when the MS implement EU law.

[170]The landmark decision signalling this new practice is BVerwGE 72, 300 (Nuclear Power Installation Wyhl).
[171]ECJ Case C-416/10 (Križan v Slovenská inšpekcia životného prostredia).
[172]ECJ Case C-416/10 (Križan v Slovenská inšpekcia životného prostredia), paragraph 90.

The best legal protection of participatory rights would certainly be granted if persons who were excluded from participation could apply for rectification while the administrative procedure is still pending. In the practical case, an interim measure would be necessary for the excluded person in order to come in before the end of the proceeding. However, some MS legal orders exclude applications for court review including interim measures while the administrative proceedings are pending, the reason being that the proceedings shall not be disturbed by court interference.[173] If this reasoning is accepted and the excluded person thus stripped of his/her procedural rights pending the administrative proceedings, it is imperative that he/she must, as compensation, be entitled to challenge the final decision as being procedurally unlawful. This conclusion can also be supported by Art. 9 (2) Aarhus Convention which demands that court review must be possible based on an infringement of the right to participation.

III. Conclusion

The chapter has elaborated that the autonomy of the MS concerning administrative procedures and judicial review of said procedures is, in various ways, framed by EU law. There is a layer of general principles of EU law which must be respected, including the supremacy of EU law establishing procedural requirements, international law binding the EU such as the Aarhus Convention, the EU constitutional right to be heard, of access to files and of reasoned decisions, the principle of effective and equivalent implementation, and the right to effective judicial protection. These general principles are specified by sectoral legal acts, including acts establishing public participation procedures which were the focus of the present chapter. It was argued that in view of the principle of effectiveness and the Aarhus Convention, the scope of application of public participation should be extended to all activities having significant adverse effects on human health or the environment. Moreover, it was suggested in the same line that the preclusion of objections from administrative and judicial review should be abandoned. Concerning procedural infringements, it appears that their rectification should be possible but not anymore at the stage of court review. Even more so, rectification should not be possible after

[173] In Germany see § 44a VwGO and the reasons for the draft provision in BT-Drucks 7/910 p. 97 ; for Spain see judgment of the Supreme Court of 17 November 1998, cited in the chapter by Garcia-Uretra/ Moreno Molina, section 4, in this volume.

the court judgment has been rendered. While a test of relevance of procedural infringement should, in principle, be accepted, this should be excluded in case of essential components of procedures. The test could be guided by asking whether there was a concrete possibility that, without the infringement, another decision might have resulted. However, this test must be practiced with caution bearing in mind that fair procedure is a value in itself. Concerning locus standi, applying for court review procedural rights should be considered as rights in the sense of the guarantee of effective judicial protection. MS law may exclude legal remedies pending administrative proceedings, but they must fully be granted after the decision has been taken.

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The Principles of Administrative Procedures: European and Russian Experience

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The hierarchical system of interconnected and subordinate principles of administrative law (legality, fairness, proportionality (proportionality)) and administrative procedures (prohibition of superformalism, the prohibition of abuse of rights, the protection of legitimate expectations, the uniform application of the law, the presumption of authenticity) is proposed. The conclusion of only a partial reflection of these principles in the Russian legislation and judicial practice is argued. The analysis of the history of the development of the principles of the Good Administration is made. Proposals for the introduction of procedure principles in Russian administrative law are formulated.

Keywords: *principles of administrative law, principles of administrative procedures, good administration.*

The feeling of the guiding principles and the based on them cognizing of the inner relationship and the degree of kinship of all legal concepts and norms are the most difficult task of our science, in fact this is what makes the nature of our activity scientific.
Friedrich Carl von Savigny

An analysis of the fundamental principles of this or that phenomenon is similar to the search for an elixir-stone: extremely abstract matter, moreover, very mobile, variable, permeating the various facets of the phenomenon, tends to slip away from the researcher. And at the same time it would be a mistake to suppose the phenomenon of the principles of causa sui; the latter, despite its immateriality, is obliged to be a real, effective, albeit a very peculiar instrument of legal impact.

Hence we shall derive the first peculiarity of the principles of administrative procedures – their *direct action, specific regulativity*. As will be shown below, some principles are more abstract, others are more specific. But in any case, they are formulated not as declarations, but with a clear and pragmatic goal – to act as a special means of legal regulation. The principles of procedures are intended to become a guide not only for the legislator, but also (which is extremely important) for the law enforcer.

Their second important feature is *universality*. The principles of administrative procedures often become the principles of all management activity, going beyond the legislation on administrative procedures.[174]

The third feature is *the open nature of the system of principles*. Whatever list is enshrined in the legislation on administrative procedures (and in the legislation as a whole), it is not a

[174] It is interesting that steps are being taken in this direction in the post-Soviet space. For example, in Estonia, even though the law on administrative procedures of 2001 does not apply to certain groups of relations (for example, on provision legal protection for industrial property), the practice of the Estonian State Court extends to them general principles of administrative law and procedures, including the requirement of justification of an administrative act.
On this issue, see: *Pilving I.* Administrative Proceedings in the Legal System of the Republic of Estonia: Essence, Structure and Objectives // Administrative Justice: Towards the Development of a Scientific Concept in the Republic of Uzbekistan. Materials of the International Conference on the topic: “Development of Administrative Law and Legislation of the Republic of Uzbekistan in Conditions of the Country Modernization”, March 18, 2010 / University of World Economy and Diplomacy. Editor in chief L.B. Hwang – Tashkent, 2011. p. 139.

"frozen" dogma. The content of individual principles can be changed, refined, supplemented, especially by judicial practice. No list of principles of any law should be regarded as a denial of the right to exist for other fundamental principles of public administration. This important point should be remembered by legislators in the post-Soviet states prone to creating "rigid" and "closed" legal forms.

The fourth feature is *the hierarchy* of principles. There are at least three operating "layers" of principles in the sphere of administrative procedures: firstly, general legal principles and principles of administrative law in general, secondly, the principles of administrative process, and, finally, the principles of administrative procedures. Each subsequent layer "flows" out from the previous one, but at the same time introduces novelties that reflect the specificity of a "narrowing" regulated sphere. This feature entails the rule that in the case of crossing, "collision" of principles, the priority should be given to more fundamental ones.

Among the functions of the principles of administrative procedures we may distinguish the following:

1) often preceding the adoption of certain laws, underlying the formation of procedures, the principles are intended to "prepare" the rule of law for their appearance and "hasten" the legislator;
2) ensuring of the well-known universality of legislation on administrative procedures; while it should be remembered that the operation of the principles of administrative procedures can go beyond the specific law, they immanently seek to cover as much as possible of the public relations. This desire is understandable and even fair, because it is not a question of the principles of a particular law, but a phenomenon more or less fully embracing the entire system of administrative procedures of different types;
3) help in establishing a balance between the legal and non-legal fundamentals of procedures;
4) equation of public and private interests, including the protection of persons without authority from possible abuse by the subjects of management, and on the other hand, the protection of the public administration from the dishonesty of citizens and organizations;

5) finally, the purpose of the principles is to ensure the reality, the specific regularity of administrative procedures through the "fine-tuning of the law", and also serving as a mean of assessing related legal phenomena, in particular of discretionary administrative acts.[175]

As is known, more than half a century ago, a well-known Russian expert in the theory of law, S.S. Alekseev put forward the concept of "legal regimes". If before him Russian jurists differentiated the branches of national law using only two criteria – the subject and method of legal regulation, then S.S. Alekseev proposed one more – the principles of a branch.[176] This forecast for the increase in the role of the principles, alas, turned out to be largely unrealized. The very system of principles of Russian law has never been built. And their role in the mechanism of legal regulation was formulated quite arbitrarily. And if specialists in certain branches of Russian law (for example, civil law) in an alliance with the legislator tried to pay the problem some attention, the branch principles largely remained unexplored in the Russian administrative law.

In the case of procedural principles, the situation is somewhat more complicated. On the one hand, the principles of the public and private process are well known to the Russian legal order. At the same time they fully comply with all the major international standards. Thus, the provisions of article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms on the right to a fair trial are fully implemented in the Russian criminal (and, to some extent, civil) process.[177]

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[175] *Davydov K.V.* Principles of Administrative Procedures: Comparative Legal Research // The Topical Issues of Public Law, 2015. no. 4 (34). p. 18.
German research literature distinguishes similar functions of principles: filling in the gaps, unifying and bringing to uniformity, the role of a landmark for the actions of administrative bodies, legitimization of administrative law and administrative practice (see: *Sommermann K.P.* Principles of Administrative Law // Digest of Public Law, 2016. no. 1. pp. 62-64).

[176] *Alekseev S.S.* General Theory of Law. Moscow, 1981. vol. 1. pp. 185, 245.

[177] Art. 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;

On the other hand, the very institutes of administrative procedures, and especially their principles, as well as the principles of administrative law in general, for the Russian legislator and even the doctrine still remain largely unexplored and obscure problem. Of course, the task of analyzing and constructing a system of general principles of administrative law goes beyond the scope of this paper.[178]

However, first, let's ask a few provocative questions, which reflect some of the challenges that the institute of administrative procedures faces in the foreign legal orders.

1. Whether the essence of principles is contradicted by the attempts of their legalization, including in the texts of laws?

As noted by Julio Ponce, the development of administrative procedures is a "battle of norms and principles", a constant battle between formalization restrictions and informal "mobility", flexibility.[179] As written by D. Kenneth, "the principles of legality and legitimacy were criticized by some researchers for their excessive extravagance; they do not work because of widespread discretion".[180]

It seems that there is no unbridgeable gulf here. Methods of curbing discretion are, on the one hand, mechanisms of publicity, public involvement (here the principles of administrative procedures are simply irreplaceable), and on the other hand, proper administrative and, of course, judicial practice. It is judicial practice that is the "great equalizer" of norms and principles. If there is such the legislation on administrative procedures and their principles not only do not conflict, but on the contrary – harmoniously complement each other. However, the principles of administrative procedures should have a certain legal measuring. Therefore, such pseudo-legal principles, such as "efficiency", are beyond the scope of this study.

(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. (Reference legal system "Konsultant Plus").

[178] On this issue, see, for example: *Sommermann, K.P.* Principles of Administrative Law // Public Law Digest, 2016. no. 1. pp. 41-86

[179] See: *Ponce J.* Good Administration and Administrative Procedures, Journal of Global Legal Studies, Indiana, 2005. Volume 12, Issue 2, pp. 564-565.

[180] *Kenneth D.* Discretionary Justice, University of Illinois Press, 1973, p. 31.

2. The next problem stems from the previous one and is its particular case. How promising are the legislative bases of administrative procedures in supranational entities. Does not the emergence of such structures mean a transition into the era of principles?

It seems that the obvious "fascination" with the problem of precisely the principles of administrative procedures by many European researchers is precisely explained by the difficulties in creating a universal "classical" legal framework at the level of the European Union. This problem is also being updated for a number of post-Soviet countries, including Russia, with the development of integration processes of the Single Economic Space.

However, in our opinion, it is far from obvious that the supranational level itself a priori paralyzes the idea of formalizing legal requirements. Here we can recall the work of the collective ReNUAL[181]; it is quite possible that the rapid growth of the principles of administrative procedures (primarily through judicial practice) is another harbinger of the appearance in the future of a new legal array. So the bias towards principles is not a threat to legislation, but a temporary phenomenon, which, moreover, allows us to accumulate a certain critical mass of legal material. So the development of both the administrative procedures themselves and their principles are equal and actual tasks for the Russian integration processes.

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

Indeed, for example, the reform of the German legislation on administrative procedures of 1996 greatly changed the existing accents. And judicial practice often goes even further in its experiments. However, it seems, with all the mobility, the principles of administrative procedures are relatively stable. Their "core" can withstand even the strongest strikes of the legislator.

4. Finally, the fourth point. As Eberhard Schmidt-Assmann notes, the administrative procedures play a special role in the model of the welfare state, imposing additional high standards of protection the rights and legitimate interests, contributing to the public's assistance, and also demanding a relatively effective work of the state apparatus.[182]

[181] ReNEUAL. Model Rules of the EU Administrative Procedure 2014, 2014 //
URL: http://www.reneual.eu/publications/ReNEUAL%20Model%20Rules%202014/ReNEUAL-%20Model%20Rules-Compilation%20Books%20I_VI_2014-09-03.pdf [accessed: 10.07.2015].

[182] *E. Schmidt-Assmann*, Structures and Functions of Administrative Procedures in German, European and International Law // Transformation of Administrative Procedures, edited by J. Barnes, Sevilla: Global Law Pres, 2008. p. 52

It is possible to continue this thesis: that which we call administrative procedures, the modern principles of administrative procedures is primarily the product of the development of European legal systems of the last several decades that went hand in hand with the economic growth in the countries mentioned. But does this mean that with the economic crisis development, the worsening of the economic situation in the countries of the EU, the CIS, and Russia the urgency of this phenomenon will decrease? Or, are the principles of administrative procedures possibly generally unrealizable in the conditions of the economic crisis?

I think that this question should be answered negative. Ipso facto, the introduction of such high standards for the implementation of public administration, of course, requires a certain preparedness of legal systems. However, this is hardly a matter of material development. As was rightly noted in the draft laws on administrative procedures introduced in the early 2000s to the Russian parliament, their adoption would not require significant additional costs. We add: but the indirect effect can be just the opposite; the organization of public management on a firm basis of law under a reasonable system of principles is a very positive circumstance from the point of view of investors (both foreign and domestic). So administrative procedures are not a costly "black hole", but a factor contributing to the growth of investments.

Thus, we can make an intermediate conclusion: after all modern challenges, the institute of administrative procedures in general and their principles in particular retains and even multiplies its significance.

Let's briefly outline the groups of the most important subordinated guiding fundamentals, the influence of which is decisive for the principles of administrative procedures, and hence the entire public administration system.

1. We propose to refer the principle of legality, the principle of fairness (reasonableness, conscientiousness) and the principle of proportionality to the basic general legal principles that have a major impact on administrative procedures.

1.1. The principle of legality, as is known, has a formal and substantial, procedural and material measuring. In other words any actions, administrative acts should be taken by authorized legal entities in the established order (procedure), in the prescribed form and comply with the legislation in their content. The German approach to legality proceeds from the premise that the basic rules should be enshrined in the normative acts of the highest legal force; subordinate

regulation is allowed only in cases directly stipulated by law. However, this concept has not been adopted in all European countries. So, according to the remark of K.P. Sommermann, the French executive branch has a special power to issue orders, which it uses in those limits in which the constitution does not provide for the exclusive competence of the legislator.[183] Formally, the Russian legal system enshrines the German model, because, according to part 3 of article 55 of the Constitution of the RF, the rights and freedoms of a person and a citizen can be restricted by a federal law. Accordingly, substatutory regulation of restrictions should be based on a direct law norm. However, in reality the French approach also has had a certain effect on the Russian public administration. [184]

An interesting rule is contained in part 10 of article 15 of the Administrative Procedural Law of Latvia 2001: "An institution (administration) and the court have no right to refuse to resolve an issue on the grounds that this issue is not regulated by law or other external normative act (prohibition of legal obstruction of institutions and courts). They have no right to refuse to apply a norm of law on the grounds that this norm of law does not provide for a mechanism of application, that it is imperfect or that no other normative acts have been issued that would more fully regulate the application of the relevant norm of law. This does not apply only to the case where an institution, which must use this norm of law or otherwise participate in its application, has not been established and does not operate".[185] In fact, in this case, the principle (requirement) of the gaplessness of law, the inadmissibility of refusing to accept an administrative act in view of the defective legislation is proclaimed. Unfortunately, this edge of legality is not known to the Russian law and order.

The next aspect of the operation of the principle of legality is related to the analogy of the law (i.e. application in the absence of a special norm to legal relations of a similar norm). As is known, an analogy is not allowed in the substantive public law of Russia, and, on the contrary, in private substantive law it is widely used (article 6 of the Civil Code of the Russian Federation). Legislation on the judicial process in some cases directly establishes the analogy of a law (article 1 of the CPC RF, article 2 of the CACP RF); in the criminal process this is "legalized"

[183] *Sommermann K.P.* Op. cit. p. 67.
[184] This is primarily about the empirically derived and confirmed by the Constitutional Court of the RF right of the President of the Russian Federation to a forward-looking norm-setting. However, it is in the sphere of administrative procedures this legal opportunity of the head of the state has not been directly realized yet.
[185] Collection of legislative acts on administrative procedures. Tashkent, 2013. p. 257.

by judicial practice.[186] We believe that the analogy of a law is fully applicable to administrative procedures, it follows from their general procedural nature. That is, if, for example, a specific normative act does not enshrine the obligation of documents receiving authority or official to issue a certificate on their acceptance, this does not mean that the applicant does not have the right to receive it. In this case, similar rules on the procedures for registering documents from other normative acts shall be applied.[187]

The next conceptual point: how widely should we understand the range of the subjects of legality? I.e. whether to reduce it only to the actions of the public administration or to extend it also to powerless entities? Of course, the main addressee of the requirements of administrative procedures is public authorities and their officials. However, this does not mean that citizens (organizations) are excluded from the scope of this principle. Another thing is that the degree of "intensity" of its impact in respect of citizens (organizations) largely depends on the type of procedures. Thus, violation of the requirements of mandatory procedures in the field of control (supervision) entails public responsibility, including of powerless entities. The violation by an applicant of the legislation on the provision of public services (for example, failure to provide all necessary documents by the applicant) only leads to a refusal to satisfy the application.

Separately, we shall mention administrative discretion (i.e. discretion of public authorities and their officials). The possibility of acting at discretion gives flexibility to legal norms, does not allow them to "freeze" and "ossify". On the other hand, the variation of legal capacities on the part of the executive authorities (for example, the choice of decisions on granting or refusing to grant a particular good, a special status) in the absence of clear criteria for making a decision, threatens to violate the principle of legality. One of the most important tasks of administrative procedures is just to create a legal framework for discretion, and hence to strengthen the rule of law in public administration.[188]

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[186] See, for example: Decision of the Constitutional Court of the Russian Federation No. 114-O from 24.04.2002 On the complaint of citizens Vakhonin Alexander Ivanovich and Smerdov Sergey Dmitrievich against violation of their constitutional rights by part three of article 220.2 of the Code of Criminal Procedure of the RSFSR (RLS ConsultantPlus).

[187] Of course, the analogy of the law should not worsen the situation of a powerless entity.

It is noteworthy that this approach is reflected in part 2 of article 17 of the mentioned Latvian law: "If an institution or a court finds a gap in the system of law, it may rectify it by using the method of analogy, that is, by a systematic analysis of the legal regulation of similar cases and by applying the principles of law determined as a result of this analysis to the particular case. Such administrative acts as infringe human rights of an addressee may not be based on analogy" (Collection of legislative acts on administrative procedures. Tashkent, 2013. p. 258)/

[188] On this issue, see: *Davydov K.V.* Legislation on Administrative Procedures and Discretionary Administrative Acts: Theory and Practice Issues // Bulletin of Voronezh State University. Series: The Law, 2015. no. 2 (21). pp. 113-128.

Concluding the general characteristic of the principle of legality of administrative procedures, it is necessary to determine the consequences of violations of the latter. Such consequences for violators, as already noted above, are obvious: legal responsibility, denial of meeting an application, etc. However, what are the consequences for the legal result of an administrative procedure – an administrative act? In other words, is the violation of a procedure always leads to the illegality and invalidity of an act? Foreign legal systems solve this issue differently, and the position of the legislator may change over time. Thus, the original version of the German Federal Law of 1976 On Administrative Procedures (hereinafter referred to as LAP of the FRG of 1976) was fairly lenient towards procedural violations (enshrined the freedom of form and prohibited super-formalism). Reforms of the 1990s conducted in the interests of business went even further. The current version of article 45 of the German law provides, first, the possibility of correcting violations of the procedure not only in the course of a case considering by an administrative body itself, but even before the end of a judicial dispute about such an illegal act. The second (and rather unexpected) consequence of the violation of specific procedural requirements (on hearing the addressee of an administrative act, as well as on the justification of the administrative act) is to extend the time limits for appealing corresponding administrative acts.

Russian legislation avoids the slightest attempts to formalize the consequences of violations of administrative procedures from the point of view of legal force, the operation of administrative acts (this is understandable, because there is still no full-fledged legal framework for the institute of administrative acts in the Russian administrative law). An exception to this rule is the Federal Law No. 294-FL On the Protection of the Rights of Legal Entities and Individual Entrepreneurs in the Conduct of State Control (Supervision) and Municipal Control[189] from December 26, 2008, the article 20 of which contains the list of gross violations of the procedural requirements of this law that involve the invalidity of the results of verification, thus of a final administrative act.

1.2. The principle of justice (reasonableness, good faith) embodies the axiological (value-based) principle in law. This principle plays the greatest role in the Anglo-Saxon legal system, where even the very concept of procedural principles is called “natural justice”. However, in the

[189] Russian Gazette, 2008. December 30.

Romano-German legal system the principle of justice, which is much less formalized than the principle of legality, plays an outstanding role. In the Russian law the latter is mentioned in civil law: for example, according to paragraph 2 of article 6 of the Civil Code of the Russian Federation, "if it is impossible to use the analogy of law, the rights and obligations of the parties are determined on the basis of the general principles and sense of civil law (analogy of law) and *the requirements of good faith, reasonableness and justice*". Despite the fact that Russian administrative legislation avoids such formulations, judicial practice proceeds from the premise that this principle is constitutional, and therefore, general legal.[190]

Of course, the decision on the question of which rules, actions, acts are fair, reasonable and good faith in each specific case is carried out by an authorized administrative body, also by the court, taking into account all the circumstances of the case. It is legally impossible to formalize these criteria in advance; the operation of the principle of justice implies the discretion of the authorized body.

We believe that in their content the principles of administrative procedures are a combination of two main legal principles – legality and justice. The proportion of these principles affects the degree of formalizability of each specific principle and the specificity of its regulatory impact.

1.3. The principle of proportionality.

According to Armin von Bogdandi and Peter M. Huber, in many respects this principle began the constitutionalization of administrative law. Already pledged in the Prussian police law, over time, it "broke free", embraced the entire administrative law (including, of course, administrative procedures), and then began its victorious procession through other public sectors, and also entered the dogmatics of fundamental rights; Through the European Convention on Human Rights and the practice of European courts it has been moved to other European legal orders.[191] Perhaps, nowadays the principle of proportionality can be attributed to one of the most important "cross-cutting" principles, including, of administrative procedures application. It is a synthesis of principles of legality and expediency (reasonableness). If the judicial practice is a "great conciliator" of the norms of law and principles, then proportionality is a universal

[190] See: Decisions of the Constitutional Court of the Russian Federation No. 11-P from June 19, 2002, No. 2-P from 19.01.2016; Rulings No. 1387-O from June 13, 2016, No. 1428-O from July 07, 2016, No. 1460-O from July 19, 2016, and others.
[191] *Armin von Bogdandi, Peter M. Huber*, The State, Public Administration and Administrative Law in Germany // Public Law Diges, 2014. no. 1 (3). p. 46.

balancer of all basic legal phenomena, including the principles of procedures in relation to each other.

As is known, the proportionality test includes three criteria: first, means intended to achieve the goal of the government should be suitable for achieving this goal (appropriateness); secondly, from among all those suitable ones, the means should be chosen that restricts the right of a private person minimally (necessity); thirdly, the harm to a private person from the restriction of his right should be proportional to the benefit of the government with respect to achieving the stated goal (proportionality in the narrow sense).[192] The principle of proportionality applies only in cases where the legislation allows for administrative discretion.

This principle has a constitutional basis in the Russian Federation. According to зart 3 of article 55 of the RF Constitution, "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*". However, in general, this principle is applied not so much in positive, as in protective, jurisdictional procedures (for example, in dealing with issues of deportation, administrative expulsion of foreign citizens). Moreover, the Russian courts not being fully aware of its content essentially declare this principle. In fact, the proportionality test is not applied in the Russian legal system; courts only use a nice foreign term, in fact discussing about the fairness, reasonableness, acceptability (or, accordingly, injustice, unreasonableness, unacceptability) of various measures. Paradoxically, the Anglo-Saxon doctrine of "natural justice" is now closer to law enforcement practice, in spite of the fact that traditionally German influence on the Russian public legislation cannot be overestimated. The scientific doctrine of this principle in Russia is still in its infancy.[193]

2. The second set of principles consists of the principles of administrative process (objectivity and impartiality of consideration and resolution of the case, the principle of the state language, publicity, efficiency and economy, ensuring the right to defense etc.).

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[192] *Moshe Cohen-Elia, Iddo Porat*, The American Method of Weighing Interests and the German Test for Pproportionality: Historical Roots // Comparative Constitutional Review, 2011. no. 3 (82). p. 61.

[193] See: *Tolstykh V.L.* Constitutional Justice and the Principle of Proportionality // Russian Justice, 2009. no. 12. pp. 47-56; *Sherstoboev O.N.* The Principle of Proportionality as a Prerequisite for the Expulsion of Foreign Citizens outside the State of their Residence: the Limits of Legal Restrictions // Russian Juridical Journal, 2011. no. 4. pp. 51-59.

All of them are relevant for administrative procedures, with certain clarifications. So, the principle of publicity in a trial means the openness of the court session for any third parties, even if the judicial decision taken does not affect their legal status in any way. Without doubt, the openness of a judicial process is not absolute; it is limited in cases where the consideration involves a secret protected by law (state, commercial, medical, etc.), also in other cases when it is necessary to protect the rights and legitimate interests of its parties. Administrative procedures are initially more "closed"; under the general rule, only persons with a legal interest participate in resolving a case. Exceptions are procedures with public hearings, any citizens can attend them.

3. Principles of administrative procedures themselves.

Legislations of foreign countries, as well as scientific doctrine, distinguish various sets of such principles. Let us briefly describe the most common, generally recognized of them.

3.1. The principle of prohibition of abuse of formal requirements (prohibition of super formalism).

This principle means: an administrative authority or an official is prohibited to encumber citizens (organizations) with obligations, refuse to grant them any right only to satisfy formal requirements, including internal organizational rules, if an administrative case can be considered without complying with them (naturally, with the exception of cases directly stipulated by law). This principle has a number of purely procedural aspects. Thus, at the stage of initiating a procedure a refusal to accept documents only in connection with obvious and correctable errors in them is not allowed. In case of submission of documents to an unauthorized person, the latter, under the general rule, must itself forward it to the competent authority (and not return it to the applicant). It is not allowable to refuse to accept documents in considering a case only because of easily removable errors. Finally, the main conclusion from this principle is that the refusal to satisfy an application (as an alternative – the adoption of another unfavorable act) is unacceptable in view of only formal violations of an administrative procedure.

Unfortunately, this principle is being introduced into the practice of Russian public administration, especially in the field of control and supervision, with great difficulty. So, often control bodies refuse to issue a necessary document (for example, accreditation) due to the most insignificant violations. While from the point of view of this principle they should have ignored

formal shortcomings; in the case where the latter are of significant importance assisted the non-authoritative participants in their correction. However, we can note some positive developments on this issue in the domestic legislation. So, according to article 7 of the Federal Law No. 210-FL On the Organization of the Provision of State and Municipal Services from July 27, 2010, the state and municipal bodies providing such services do not have the right to demand from the applicant:

1) submission of documents and information or implementation of actions, the submission or implementation of which is not provided for by regulatory legal acts regulating relations arising in connection with the provision of state and municipal services;

2) submission of documents and information that are, in accordance with the law, at the disposal of bodies and organizations that provide public services;

3) implementation of actions, including endorsements required for receiving state and municipal services and related to the application to other state bodies, local self-government bodies, organizations (unless otherwise expressly provided by law).

Within the framework of this principle of administrative procedures, we see an indirect effect of the general legal principles of justice (reasonableness), proportionality, and also the procedural principle of objective truth.

3.2. The principle of prohibition of abuse of rights.

The principles of the prohibition of abuse of rights and the prohibition of abuse of formal requirements can be viewed both general and private. The effect of this principle extends not only to the public administration, but also to other participants to an administrative procedure. In this case, it is not a classic offense, but a more “subtle” deviation. An entity uses the legal opportunity granted by law, but does this in bad faith.[194] The general consequence of the violation of this prohibition is a refusal to meet the possibilities provided by the law. Let us list pure-

[194] The category of abuse of rights is most developed in the Russian civil law. We believe that the main provisions of civil legislation, doctrine and judicial practice are quite applicable to the sphere of public law. Thus, according to the Decision of the Supreme Court of the Russian Federation No. 52-KG 16-4 from 14.06.2016, “abuse of rights is understood as the conduct of an authorized person in the exercise of the right belonging to it, involving violation of the established limits of the exercise of rights, with illegal means and purpose, violating the rights and legitimate interests of other persons and causing harm to them or creating conditions for this. Under abuse of subjective rights should be understood as any negative consequences that have appeared to be a direct or indirect result of the exercise of a subjective right”.

ly "procedural" variants of the consequences developed by the judicial procedural legislation and the practice of its application:

1) refusal to satisfy claims;

2) transfer of costs to a dishonest person;

3) refusal to suspend an administrative act complained, if such suspension was the sole purpose of the appeal;

4) refusal by the authority considering a complaint to accept new evidence, if such intentionally was not submitted by the participant in the consideration of the case by the first instance.

Good faith, as well as legality, is a general legal requirement, it applies both to the public administration and to non-authoritative participants to administrative procedures. This principle is not sufficiently developed in the Russian administrative law. As an exception, we can say the norm of part 3 of article 11 of the Federal Law No. 59-FL On the Procedure for Considering Appeals of Citizens of the Russian Federation[195] from May 2, 2006: "a state body, local self-government body or official, upon receipt of a written appeal, which contains obscene or offensive language, threats to the life, health and property of an official, as well as members of his family, may leave the appeal unanswered on the merits of the questions raised in it and notify the citizen who sent the appeal, on the inadmissibility of abuse of the right".

3.3. The principle of protection of trust (protection of legitimate expectations).

Legitimate expectations are a phenomenon long known to German public law.[196] It was developed in the XIX century in the practice of the Supreme Administrative Court of Prussia.[197] The principle of prohibition of legitimate expectations violation is that the person whose rights are affected by a decision should not suffer from a sudden change in the opinion or policy of a state body, the rights of such a person must be compensated. The doctrine of legitimate expectations operates in a situation where an available legal norm, previous administrative practice or other circumstances (for example, an body's promise) allow a bona fide person to expect certain legal consequences.[198] It seems that these requirements are most concentrated in part 2 of

[195] Russian Gazette, 5 May, 2006.
[196] *Thomas R.* Legitimate Expectation and Proportionality in Administrative Law. Oxford, 2000. C. XI.
[197] *Sin M.P.* German Administrative Law in the Feld of Common Law. New York, 2001. pp. 150-161.
[198] See: *Melnychuk G.V.* Standards for the Evaluation of Discretionary Acts in the Administrative Law of Germany // Legislation, 2011. no. 10. p. 88.

paragraph 48 (abolition of an unlawful favorable act), and also part 2, 3 of paragraph 49 (withdrawal of a lawful positive act) of the Law on Administrative Procedures of the FRG of 1976. However, the effect of this principle is somewhat wider: for example, in Germany it is assumed that in the event when an administrative body changes its previous practice, individuals should be given the opportunity to state their position in the hearings[199], and such decisions are subject to mandatory written justification.[200]

Unfortunately, Russian legislation does not establish either general provisions on the protection of legitimate expectations, nor private ones on the cancellation of adopted administrative acts. Judicial practice, as will be shown below, is of a contradictory nature on this issue.

3.4. The principle of uniform application of law.

This principle stems from the principle of legality, the prohibition of abuse of powers, and the principle of trust protection. Its essence comes down to the fact that officials are required to exercise an equal approach to the same factual circumstances and an individual approach to essentially different circumstances. Moreover, the practice developed in state bodies should be of a stable nature, deviations from the developed algorithms should be justified.

However, the implementation of this principle in the Russian legal system is further complicated by the fact that individual administrative acts have not been yet covered by information resources (unlike, for example, judicial decisions[201]). In the situation of such "information hunger" we have to recognize the phenomenon of instructive letters of various executive bodies as one of the manifestations of the principle's operation in Russian administrative law. The named documents should be formally non-regulatory (although they often actually establish law norms), generalize the established administrative practice and serve as an orienting point for both officials and citizens (organizations).

3.5. Presumption of reliability.

This presumption stems from the more general presumption of good faith of participants in administrative procedures without authority. Its significance lies in the fact that the documents submitted by the participants of a procedure, other information and materials are consid-

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[199] *Sin M.P.* Op. cit.. p. 150.

[200] This rule, for example, is directly enshrined in part 3 of article 45 of the Law on Administrative Procedures of Finland (see: Collection of Legislative Acts on Administrative Procedures, Almaty, 2013. p. 376).

[201] URL: https://rospravosudie.com/

ered reliable until an administrative body or an official establishes another. If there are justifiable doubts about the authenticity of the documents submitted, the administrative body or official must independently and at its own expense verify the authenticity of the latter. On the other hand, this presumption is supplemented by the rules on the responsibility of unconscientious persons for providing deliberately false documents (information, materials).

3.6. The principle of interpretation of the law in favor of interested persons without authority is closely associated with the presumption of reliability.

In accordance with this principle, any doubts, contradictions and ambiguities in normative legal acts arising in the course of an administrative procedure are interpreted in favor of the interested parties, with the exception of cases directly provided for by law. This rule, which is especially important in case of gaps and collisions in the legislation[202] found its consolidation in the Russian tax law. According to part 7 of article 3 of the Tax Code of the Russian Federation, all irremovable doubts, contradictions and ambiguities in the acts of the legislation on taxes and fees are interpreted in favor of a taxpayer (payer of fees).

3.7. The principle of coverage of bigger by smaller.

This principle is relatively local, is a particular case of the principle of prohibiting super-formalism (and, in part, the presumption of reliability). In accordance with it, an administrative body or official is not entitled to require the participants of an administrative procedure to commit acts that have already been committed by them in the framework of other actions. If the documents (information) submitted to an administrative body (official) confirm the content of other necessary documents (information), the latter cannot be additionally claimed. Finally, if the authorization provided by an administrative body (official) also includes other permits meaningfully, the latter are presumed to be submitted. A vivid example of the operation of this principle in German legislation is the decree on the approval of a plan. According to article 75 of the Law on Administrative Procedures of the FRG of 1976, such is the final administrative act that comprehensively regulates all issues related to the implementation of a project. Consequently, additional permits (licenses, approvals, etc.) are not needed. This principle is being gradually introduced in the Russian administrative law. So, a big step forward was the estab-

[202] *Khamedov I.A., Khvan L.B., Tsai I.M.* Administrative Law of the Republic of Uzbekistan. General part: Textbook. Tashkent, 2012 p. 422 (author of the paragraph I.M.Tsai).

lishment in numerous administrative regulations of full lists of documents necessary for the initiation of an administrative procedure and the resolution of a case. Here it is possible to recall the prohibition on demanding from citizens of documents located in the databases of administrative bodies. As a result, a "hierarchy" of documents is established, under a general rule it is no more acceptable to claim "clarifying" materials. However, the very institute of "complex" administrative procedures and administrative acts that unite "small" components into larger ones, unfortunately, is not developed in the Russian administrative law.

We emphasize: the above principles of administrative procedures still have not received a reliable legal basis in the Russian administrative legislation. Gaps and defects in rulemaking are compensated by the judiciary practice. However, this does not always cope with this task. Let us demonstrate the thesis on the example of the demolition of commercial kiosks in Moscow in 2015-2016.

Federal Law No. 258-FL[203] from July 13, 2015 introduced paragraph 4 into the article 222 of the Civil Code of the Russian Federation, that gives the local self-government bodies the power to decide on the demolition of unauthorized construction in the case of creation or building of it on a land plot not provided in accordance with the established procedure for this purpose, if such a land plot is located in a zone with special conditions of use the territory of common use or in the zone of drop of utility networks of federal, regional or local importance. On the basis of paragraph 4 of article 222 of the Civil Code of the Russian Federation the Government of Moscow took Decree No. 829-PP from 8.12.2015 "On the measures to ensure the demolition of unauthorized buildings in certain areas of the city of Moscow"[204], in accordance with which the forced demolition of commercial real estate (including kiosks) began. At the time of writing this text, the process of demolition was continuing, as well as legal disputes against it. However, at least the first wave of applications for challenging the legality of the issued writs (i.e. administrative acts) on demolition was left without satisfaction by arbitration courts in the first and second instances.[205] In this situation, we see a "clash" of the principles of legality and

[203] Russian Gazette, June 16, 2015.
[204] RLS Consultant Plus.
[205] See: the Decision of the Arbitration Court of the City of Moscow from 4 May 2016 on case No. A40-252391/15, the judgment of the Ninth Arbitration Appeal Court from 27.07.2016 No. 09AP-30565/2016 on case No. A40-252391/15; the Decision of the Arbitration Court of the City of Moscow from 23.03.2016 on case No. A40-3450/16, the decision of the Ninth Arbitration Appeal Court from 11.07.2016 No. 09AP-24693/2016-AK on case No. A40-3450/16; the decision of the Arbitration Court of the City of

justice (the latter manifests itself in the form of the principle of trust protection). Indeed, public administration operates legally, because implements the powers granted by the Civil Code of the Russian Federation. On the other hand, the demolished objects were not just unauthorized (i.e. illegally built) buildings. Many of them got property rights in the order established by the legislation (quite often back in the 1990s). The arguments of the courts are noteworthy. Refusing to meet the requirements, they often addressed to the practice of the Supreme Arbitration Court of the Russian Federation proceeding from the fact that the existence of a state registration of property rights to an immovable property itself is not the ground for refusal to satisfy the claim for the demolition of this object as an unauthorized construction, since state registration of rights to real estate and transactions carried out in relation to it in the Unified State Register of Rights to Immovable Property and Transactions Therewith is not constitutive or administrative, but right-confirming in nature.[206] It seems that this judgment is extremely controversial from the point of view of the principles of administrative procedures. First, according to article 13 of the Federal Law No. 122-FL from July 21, 1997 On State Registration of Rights to Real Estate and Transactions with it" [207], within a procedure of registration a legal examination of the submitted documents is carried out. Perhaps, registration authorities did not conduct an examination of administrative acts of municipal authorities, which served as the basis for registration of rights to such real estate objects. However, if the registration authorities proceeded from the principle of trust to the administrative acts of other bodies, it would be strange to refuse such trust to the addressees of the administrative acts. Moreover (and this is the second), there is a chain of administrative procedures and acts: at first, people received permits, and then – certificates of registration of rights. Thus, an entity without authority has the right to rely on the protection of the "double" trust, regarding both groups of administrative acts.

Such protection does not, of course, mean an absolute ban on the abolition of favorable administrative acts. The need to maintain a balance of public and private interests often forces the administration to adjust the status quo, changing or even canceling the previously granted

Moscow from 11/04/2016 on case No. A40-4524/2016 (72-88), the decision of the Ninth Arbitration Appeal Court from 09.07.2016 No. 09AP-27077/2016 on case No. A40-4524/2016 (RLS Consultant Plus).

[206] Information Letter of the Presidium of the Supreme Arbitration Court of the Russian Federation No. 143 of December 9, 2010, "Review of Judicial Practice on Certain Issues of Application by Arbitration Courts of Article 222 of the Civil Code of the Russian Federation" (RLS ConsultantPlus).

[207] Russian Gazette, July 30, 1997.

legal capacity. However, such cancellation must be accompanied by reimbursement of the damage caused to a bona fide addressee. Naturally, in case of revealing the fact of dishonesty or abuse (or, even more so, committing of corruption offenses) by the addressee of an administrative decision, the principle shall automatically be “void”.[208] In the cases described the public administration proceeded from the full freedom of action in the cancellation of previous administrative acts and treaties.[209]

Thus, at present the Russian legislation and judicial practice do not always recognize and implement the basic principles of administrative procedures, which is an extremely negative circumstance, including from the point of view of the stability of the domestic law and order.

4. Over the recent decades, the concept of “Good Administration” immediately created for the sphere of public administration has been widely spread in the EU countries. As noted by E. Schmidt-Assmann, “good administration” is a set of common procedural standards applicable both to the activities of the supranational administration of the EU and to national European legal systems.[210] Hans Peter Nehel was one of the first in the European research literature who emphasized that the principles of “good administration” are predominantly procedural in nature; the material and legal principle here is secondary.[211] There is a notable thesis of Jorge Agudo Gonzalez: procedural guarantees of “good administration”, that now are so organic for European countries, are the result of an “alloy” of continental legal doctrines and the concept of “natural justice”. Moreover, according to the mentioned author, the acts of supranational bodies (the European Commission, the Court of Justice of the EU), which created the legal basis for “good administration”, were often made under the pressure of American business and American antimonopoly legislation.[212]

[208] Such judicial practice is available: the Decision of the Federal Arbitration Court of the North Caucasian district on case No. A63-9546/2011 from August 28, 2013; Review of the judicial practice of the Supreme Court of the Russian Federation No. 2, alleged by the Presidium of the Supreme Court of the Russian Federation from 06.07.2016 (RLS ConsultantPlus).

[209] For the sake of justice, we note: despite the absence of a corresponding requirement in Russian legislation, the Moscow City Government established a rule of compensation on the basis of the area of demolished premises as a gesture of “goodwill”. Of course, it is still difficult to talk about the protection of trust and proportionality, but this step can be considered progressive. However, it is still difficult to talk about the protection of trust and proportionality, but this step can be considered progressive. However, the above mentioned initiative of the capital’s municipality only emphasizes the gap in the Russian legal system.

[210] *E. Schmidt-Assmann*, Structures and Functions of Administrative Procedures in German, European and International Law // Transformation of Administrative Procedures, edited by J. Barnes, Sevilla: Global Law Pres, 2008. pp. 62-63.

[211] *Nehel H.P.*, Good Governance as a Procedural Law and/or a General Principle?, in the book: Legal Problems in the Administrative Law of the EU. Towards an Integrated Administration, under edition of H. Hofmann, A.H. Türk, Cheltenham, Great Britain (Northampton, USA), 2009, p. 323; *Nehel H.P.*, Principles of Administrative Procedure in EU Law, Oxford: Hart Publishing, 1999, p. 15.

[212] *Gonzalez J.A.*, Evolution of the Theory of Administrative Procedures in the “New Management”. Key Points, 2013, Review of European Administrative Law, Vol. 6, NR. 1, pp. 82-84.

So, what is “good administration”? Of course, on the one hand, we can talk about the right of citizens to “good administration”[213], on the other hand, about some kind of integral principle. However, it seems fairer to us that “good governance” is recognized not as something syncretic, but as a system of principles, procedural rights and guarantees.[214]

What forms the legal basis of “good administration”? Some European states have even fixed certain procedural principles in the texts of their constitutions. There is a very interesting example of Italy: here the legislator in article 97 of the 1947 Constitution (i.e. long before the emergence of the pan-European doctrine of “good administration”) obliged the executive bodies (“agencies”) to be impartial and “buonandamento”. As J. Ponce notes, the latter term is deciphered by Italian scientists precisely as a duty to “good administration” (“buonaammistrazione”). The practice of the Italian Constitutional Court includes into this phenomenon various elements: both the proper organization of public administration, and the formation of procedures necessary for the implementation of relevant public functions, as well as making right decisions by collecting and preliminary analysis of all pertinent information.[215] You can find other examples of attempts to consolidate, at least, some elements of “good administration” in the texts of national constitutions.[216]

However, the emergence of “good administration” as a relatively holistic legal framework needs to be linked not so much to individual and little-coordinated experiments of national legislators, but to the activities 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 of September 28, 1977 On the Protection of the Individual in Relation to the Acts of Administrative Authorities. This act rightly emphasizes the tendency to increase the role of the public admin-

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[213] As Ponce writes, one of the first cases of the Court of First Instance, in which the verification (and at the same time, the providing to citizens) of the right to “good administration” took place, we may name CaseT-54/99, Max. Mobil Telekommunikation Service GmbH v. Commission (2002) (for more details, see J. Ponce, op.cit., pp. 585-586).

[214]See: The Swedish Agency for Public Administration, the principles of good governance in the member states of the European Union, 2005 (www.statskontoret.se), p. 16.

[215] *J. Ponce*, op.cit., pp. 556.

[216] 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 efficiency, economy, coordination and prohibition of abuse of power.

Article 21 of the Constitution of Finland of 1999 stipulates that the norms relating to the publicity of process (procedures), including the right to be heard, the right to receive a justified decision and the right to appeal, as well as other guarantees of fair trial and “good administration” must be established by law.

istration, the procedures for the adoption of administrative acts. At the same time, there was made a logical conclusion: in such a situation it is necessary to strengthen the citizens' positions in relations with the authorities, and therefore, to strengthen their procedural rights and guarantees. The resolution proclaimed the following five principles:

1) Right to be heard;
2) Access to information;
3) Assistance and representation;
4) Statement of reasons;
5) Indication of remedies (appeal).

As noted in the research literature, this resolution became an important step towards the formation of a legal framework for the main procedural principles that form the "core" of the right to "good administration".[217] Here it is possible to 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. This resolution, along with other principles, paid special attention to:

1) objectivity and impartiality;
2) equality before the law by avoiding unfair discrimination;
3) maintaince of a proper balance between any adverse effects which its decision may have on the rights, liberties or interests of persons and the purpose which it pursues;
4) taking decisions within a time which is reasonable.[218]

As the next step in the juridification of "good administration" should be recognized the Charter of Fundamental Rights of the European Union (2000) that enshrined provisions on the right to "good administration" (to the analysis of which we will return) in article 41.[219]

However, although article 41 of the Charter is considered (by the way, quite deservedly) as the main "pillar" and the principles of "good administration", the logical continuation and at

[217] The Swedish Agency for Public Administration, the principles of good governance in the member states of the European Union, 2005. p. 11.
[218] URL: https://wcd.coe.int/ViewDoc.jsp?id=678043 (accessed: 10.07.2015).
[219] URL: http://www.europarl.europa.eu/charter/pdf/text_en.pdf (accessed: 10.07.2015).

the same time – the "rown" of all the above resolutions, this procedural concept has one more "pillar" that is the Code of Good Administrative Behaviour.[220]

The European Ombudsman in his time thus attempted to counteract the antithesis of "good administration" – "maladministration". The appearance of this document (approved, by the way, in 2001 by the European Parliament) is explained by the need to clarify too general provisions of article 41 of the Charter. Moreover, as emphasized in the research literature[221], and even in the preamble of the Code itself, it is not at all about any specific "classical" binding legal norms. On the contrary, even the very term "codex" is used with a certain degree of conventionality; it is a set of recommendations, some "horizontal principles"; "soft law" of the administrative procedures of the EU.

Thus, both article 41 of the Charter, and the Code of Good Administrative Behaviour are by no means traditional legal sources.[222] This, I think, is quite logical, taking into account the very nature of legal principles – this changeable, elusive and "intangible" "soul" of written law.

Therefore, a great role in the formation and development of the principles of "good administration" was played by judicial practice[223], which, in addition to the above-mentioned, develops a number of relatively new principles: proportionality, protection of legitimate interests (expectations), etc.

So what principles are the "fabric" of "good administration"? It is difficult to give an exact answer to this question, if at all possible. Various researches, as if competing, show an ever-increasing array; in some analytical documents one can find references to 26 or even 44 principles.[224]

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

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[220] URL: http://www.ombudsman.europa.eu/en/resources/code.faces#/page/1 (accessed:10.07.2015).

[221] The Swedish Agency for Public Administration, the principles of good governance in the member states of the European Union, 2005. pp. 91-92.

[222] This thesis is agreed by both practitioners and researchers are in solidarity; see, for example: With this thesis, both practitioners and researchers are in solidarity; see, for example: The Swedish Agency for Public Administration, the principles of good governance in the member states of the European Union, 2005. p. 15; *E. Schmidt-Assmann*, Structures and Functions of Administrative Procedures in German, European and International Law // Transformation of Administrative Procedures, edited by J. Barnes, Sevilla: Global Law Pres, 2008.

[223] See, for example: Pönder H., Germany's Administrative Process in a Comparative Perspective – Observations towards the transnational process "Ius Commune Proceduralis" in Administrative Law, working paper by Jean Monnet, 2013, New York, pp. 23.

[224]Detailed review, see: The Swedish Agency for Public Administration, the principles of good governance in the member states of the European Union, 2005. p. 12.

1) consideration of a case fairly and impartially within a reasonable time (part 1, article 41 of the Charter, article 8 of the Code of Good Administrative Behaviour);
2) right to be heard before the adoption of an act that may lead to adverse consequences for a person (part 2, article 41 of the Charter, article 16 of the Code);
3) right of access to a case, if a measure applied can affect the legal status of a person (part 2, article 41 of the Charter);
4) obligation to motivate taken decisions in writing (part 2, article 41 of the Charter, article 18 of the Code);
5) right to 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) the principle of proportionality (article 6 of the Code);
9) obligation of service-mindness (article 12 of the Code);
10) prohibition of abuse of right (article 14 of the Code);
11) obligation to indicate legal remedies to persons entitled to appeal (article 19 of the Code);
12) obligation to notify persons about a decision taken (article 20 of the Code);
13) obligation to document, record, protocol procedures (article 23, 24 of the Code).

Each position plays its role and enriches the system. However, among all this diversity, it seems, we can distinguish two main principles – the right to be heard and the obligation to motivate administrative acts. Let us consider them in more detail.

1. *The right to be heard*.

This requirement arose in various legal orders with an uneven speed, its volume is varying (as is the system of exceptions from its operation); the ways of legalization (consolidation) of this principle are also different. Thus, in France, according to D. Capitan, the first decisions of the State Council formalizing the corresponding guarantees have begun to appear since 1945, the constitutional status was given to them by the Constitutional Council of France in 1990 (the decision on the case of the Law on Finance of 1990), parallel efforts were made to incorporate

them into the texts of individual regulatory legal acts.[225] However, in most European countries (and nowadays in many other states of the world) the principle of hearing on an administrative case "takes roots" in the specialized legislation on administrative procedures. Of course, its volume depends on the type of procedural relations: it receives its maximum development in formal procedures (like planning). But even for informal procedures there is a certain minimum standard. It seems that a classic example of this is part 4 of paragraph 43 of the Austrian Administrative Procedure Law (hereinafter referred to as APL): "Each party, in particular, should be given the opportunity to present and prove all aspects relevant to the case, ask questions to witnesses and experts present, and also speak openly and on the facts discussed, which were given by other participants in the procedure, by witnesses and experts, on other petitions and on the results of office submissions".[226]

Of course, the operation of this principle is not absolute. So, part 2, 3 of paragraph 28 of the German Administrative Procedure Act of 1976 provides that a hearing may be omitted if:

1. an immediate decision appears necessary in the public interest or because of the risk involved in delay;

2. the hearing would jeopardise the observance of a time limit vital to the decision;

3. the intent is not to diverge, to his disadvantage, from the actual statements made by a participant in an application or statement;

4. the authority wishes to issue a general order or similar administrative acts in considerable numbers or administrative acts using automatic equipment;

5. measures of administrative enforcement are to be taken;

6. A hearing shall not be granted when this is grossly against the public interest.[227]

However, sometimes restrictions are formulated so vaguely that the effectiveness of the principle becomes unobvious. In particular, according to part 2 of article 34 of the Finnish Administrative Procedure Act, the decision on a case may be taken without hearing the party if:

(1) the demand is ruled inadmissible or immediately rejected as groundless;

(2) the matter pertains to admission to service or to voluntary education or training;

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[225] See: *Capitan D.* Principles of the Administrative Process in Russia and in France // Administrative Procedures and Control in the Light of European Experience, under edition of T.Ya. Khabrieva and J. Marcu. Moscow: Statute, 2011. pp. 222-223.
[226] Collection of Legislative Acts on Administrative Procedures, Almaty, 2013. p. 23.
[227] Collection of Legislative Acts on Administrative Procedures, Almaty, 2013. p. 165.

(3) the matter pertains to the granting of a benefit on the basis of the personal characteristics of the applicant;

(4) hearing may jeopardise the objectives of the decision or the delay in the consideration of the matter arising from the hearing causes a significant hazard to public health, public safety or the environment; or

(5) the demand, which does not concern other parties, is approved or the hearing is for another reason obviously unnecessary.[228]

2. Obligation of an administration entity to justify an administrative act.

According to H. Maurer's just remark, this principle (requirement) pursues the following goals. First and foremost, it forces the administration to analyze its own position more carefully and use the legislation and the actual circumstances of a case properly. Secondly, it provides citizens with an opportunity to better familiarize themselves with the act and make a decision – whether to contest it or not. Finally, thirdly, giving motives facilitates the work of appellate administrative and judicial bodies.[229] The requirement of motivation is quite abstract itself. Therefore, we think it is possible to welcome the attempts of individual legislators to specify the prescriptions about what is may actually be considered as motivation. As a good example, we can cite part 2, 3 article 61 of the Administrative Procedure Law of Azerbaijan: "When substantiating they must note the factual and legal circumstances of a case, evidence proving or rejecting these circumstances, as well as laws and other regulatory legal acts referred to in the adoption of the administrative act. If an administrative act has been adopted in the framework of discretionary powers, the administrative authority must clearly and precisely substantiate its considerations".[230]

However, like any other procedural principle, the requirement to justify an act has its limits. Thus, according to part 2 paragraph 39 of the Administrative Procedure Law of Germany, the justification is not required if:

1. when the authority is granting an application or is acting upon a declaration and the administrative act does not infringe upon the rights of another;

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[228] Ibid. p. 373.
[229] Cit. by: *Kunneke M.*, Tradition and the Modification of Administrative Law. Anglo-German Comparison, 2007. pp. 149-150.
[230] Collection of Legislative Acts on Administrative Procedures, Almaty, 2013. p. 71.

2. when the person for whom the administrative act is intended or who is affected by the act is already acquainted with the opinion of the authority as to the material and legal positions and able to comprehend it without argumentation;

3. when the authority issues identical administrative acts in considerable numbers or with the help of automatic equipment and individual cases do not merit a statement of grounds;

4. when this derives from a legal provision;

5. when a general order is publicly promulgated.[231]

It is not difficult to note: the continental European tradition largely derives from the derivativeness of the principle of justification of an act from the right to be heard. At the same time, it seems possible to find another parallel: there is a close genetic link between the obligation to justify the act and the possibility of its appeal. If an administrative act cannot be appealed (for example, an interim act that does not affect the further course of the procedure), then, we think, it is not necessary to justify it. On the contrary, an act that resolves a case on its merits or prevents its further consideration (for example, refusal to accept the application, termination of the proceedings, refusal to transfer the case to a competent person), under a general rule, must be justified.

So, first of all “good administration” is a set of procedural requirements, that are different and not always homogeneous. On the one hand, their volume is very different: from relatively “large”, informative (like the right to a hearing) to discrete, “small” (for example, the obligation to maintain a protocol on an administrative case). On the other hand, the degree of their formalizability is also dissimilar. From relatively legalized provisions (the requirement to provide information and documents to the participants of a procedure) to ones that do not seem to have legal content (for example, service-oriented approach). The legal basis for “good administration” originated at the supranational level, but it seems that in many respects it is for this reason the common-European requirements have been still extremely abstract. Their specific legal content is formalized by judicial decisions and national legislators.

To what extent are these procedural guarantees relevant to the Russian administrative law?

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[231] Op. cit. p. 171-172.

Paradoxically, but at the present time in the Russian administrative law, exactly protective procedures are the closest to the standards of "good administration". In accordance with the Code of Administrative Offenses of the Russian Federation, participants to the proceedings on administrative offenses have the right to be heard, to be notified, to have access to the materials of a case, to a justified decision, etc. Positive procedures in this matter are substantially inferior to jurisdictional ones. For example, the requirement of justification is usually enshrined in respect of unfavorable (burdensome for an addressee) non-jurisdictional administrative acts. It is mainly about cases when administrative bodies, officials refuse to satisfy applicants' requirements.[232] In the case of the right to be heard the situation is more difficult. This rule is most clearly manifested in formal procedures with public hearings. In the part of public hearings, the Russian legislator, albeit with varying success, but still strives for a foreign model. However, the overwhelming majority of Russian "informal" procedures in fact do not recognize such an important guarantee for participants of administrative procedures.

In conclusion, we note that within the framework of European experience the principles of administrative law, the continuation and refinement of which are the principles of administrative procedures, have been being worked out for at least two centuries (XIX-XX centuries). At the first stage, in the parlance of the great G.W.F. Hegel, "self-knowledge of the spirit" and the derivation of general principles from separate legislative acts were going, attempts were made to construct them logically, which was not always a simple task. Since the middle of the last century the process of positivization of general principles began by consolidating them primarily in the acts of constitutional legislation (which was inevitably accompanied by extensive interpretation of constitutional courts). The next step was marked by the codifications of general administrative law, including the adoption of laws on administrative procedures that enshrine the principles of administrative procedures themselves. Finally, at the present time the process of Europeanization and internationalization of administrative law, administrative procedures and their principles is going on.[233]

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[232] See: Article 29 of the Federal Law No. 218-FL On State Registration of Real Estate from July 13, 2015, article 5 of the Federal Law No. 256-FL On Additional Measures of State Support for Families with Children from December 29, 2006, article 14 of the Federal Law No. 99-FL On Licensing of Certain Types of Activities from 4 May 2011.
What is more, in the last law even this rule is truncated. For example, with respect to refusal to reissue a license (Article 18 of the Law), the requirement for justification is not established.

[233] See: *Sommermann K.P.* Op. cit. pp. 45-61.

An impartial analysis of Russian reality leads us to conclude that, from the point of view of the described logic of the development of administrative law, we are at the level that generally corresponds to the nineteenth century, when the principles are empirically derived from the texts of individual normative acts and judgments.[234] It is truly amazing how has Russian positive administrative law (i.e., *managerial* law itself) evolved throughout its history without a coherent unified system of principles? The indifference to this problematic of the Russian doctrine and legislator jeopardizes the unity and very existence of this great but so far chaotic branch.

The leading role in this "construction" of administrative law should be played precisely by the principles of administrative procedures, which, as has already been mentioned above, have to cover virtually all areas of public administration. And here an important question arises: whether is it worth to focus on the natural process of "sprouting" of the administrative procedures principles in judicial and administrative practice, or is it impossible without corresponding efforts of the legislator?

We think the answer is obvious. As is rightly noted in the research literature, the experience of the overwhelming majority of European countries is based on the "legalization" of the principles of procedures by the relevant laws.[235] This has a profound meaning, since it is the legislator who can put the "last point" in lengthy and not always constructive discussions about whether, for example, the constitutional duty of motivation only applies to judicial decisions or also to administrative acts (as it took place, for example, in Italy).[236] In general, it is the legislative framework that is most preferable from the point of view of citizens' interests, which are far from being always able to understand the nuances of judicial practice.[237] We add: but even if all of them became experts in jurisprudence immediately, references to judicial precedents would hardly be convincing for officials-normativists. This is even more urgent for Russia and other post-Soviet countries, given the fact that here the formation of legislation on administrative procedures goes at best in parallel with judicial practice (and not rarely precedes the latter).

[234] This conclusion does not apply to tort administrative law, which just got hypertrophied development in the Russian legal system.
[235] The Swedish Agency for Public Administration, the principles of good governance in the member states of the European Union, 2005. pp. 72-74
[236] *Guido Corso*, Administrative Procedures: Twenty Years Later, Italian Journal of Public Law, Volume 2, no. 2/2010, pp. 274-275.
[237] The Swedish Agency for Public Administration, the principles of good governance in the member states of the European Union, 2005. p. 77.

One can agree not only with the thesis of the expediency of legislative consolidation of the principles[238], but also with the fact that these should be maximally concretized not only in general provisions, but also in other special articles of laws. The more specific they are reflected, the greater the probability of their practical application.[239] The next stage of the evolution of administrative procedures and their principles will be connected first of all with the will of the legislator and only then with the position of law enforcers.

[238] See: Federal Law On Administrative Procedures: Initiative Project with Developers Comments / Intro. Art. K. Eckstein, E. Abrosimova // Fund "Constitution", Moscow: Complex-Progress, 2001. p. 9 (the author of the text – K. Eckstein).
[239] See: *Pudel'ka J., Deppe J.* General Administrative Law in Central Asia States – a Brief Overview of the Current State / URL: http: //ruleoflaw.en/wp-content/uploads/2014/01/130708-Pudelka-Deppe-study_r.pdf [accessed: 10/05/2016].

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K. V. Davydov's draft law

Federal Law on Administrative Procedures and Administrative Acts of the Russian Federation

Chapter 1: General provisions

Article 1. The scope of the Federal Law

1. This Federal Law regulates the relations in the implementation of administrative procedures by administrative bodies and officials for the adoption and execution of administrative acts, establishes the principles and general rules of administrative procedures, administrative acts, the procedure for appealing administrative acts, as well as inaction of administrative bodies and officials, administrative expenses, responsibility of administrative bodies and officials for violating the requirements of this Federal Law.
2. The effect of Chapters 2, 3, 9 of this Federal Law extends to any activity of administrative bodies and officials in the sphere of public legal relations, regardless of the adoption of administrative acts.

3. The effect of Chapters 4 to 9 of this Federal Law extends to such actions of administrative bodies and officials which lead to the adoption of an administrative act.

4. The effect of Chapters 6 to 9 of this Federal Law extends also to inaction of administrative bodies and officials.

5. The effect of this Federal Law does not apply to:

1) relations connected with the review of cases on administrative offences;
2) relations regulated by the criminal procedural, civil procedural, arbitration procedural legislation and the Administrative Court Procedure Code of the Russian Federation;
3) relations regulated by the legislation on investigative activities;
4) civil-law relations, unless otherwise provided by the Civil Code of the Russian Federation and this Federal Law;
5) relations regulated by the legislation on elections and referendum;
6) strategic planning relations;
7) relations related to the performance of notarial actions;
8) relations related to the execution of judicial acts;
9) relations regulated by the labor legislation, legislation on public and municipal service;
10) relations regulated by the budgetary and banking legislation;
11) relationships regulated by the bankruptcy legislation;
12) relations connected with the preparation, adoption and publication of regulatory legal acts;
13) relations connected with the preparation and adoption of individual legal acts that do not entail legal consequences for individuals and legal entities or other subjects of law that are not organizationally subordinated to an administrative body or an official;
14) relations connected with the consideration of proposals of individuals and legal entities, regulated by the legislation on the procedure for considering public appeals.

6. The application of this Federal Law during the period of a military, emergency situation, the regime of a counter-terrorist operation, other special legal regimes is determined by the legislation on the relevant special legal regimes.

Article 2. Legislation on administrative procedures and administrative acts

1. Legislation on administrative procedures and administrative acts consists of the Constitution of the Russian Federation, generally recognized principles and norms of international law and international treaties of the Russian Federation, this Federal Law, other federal laws adopted on its basis, decrees of the President of the Russian Federation, resolutions of the Government of the Russian Federation, regulatory legal acts of the federal bodies of state power, laws of the constituent territories of the Russian Federation, normative legal acts of local self-government bodies.

2. Normative legal acts governing relations regarded to administrative procedures and administrative acts can not detract from the legal guarantees of individuals and legal entities established by this Federal Law, unless otherwise is expressly provided for by this Federal Law.

3. The provisions of this Federal Law shall be directly applicable until the adoption of special laws of the constituent territories of the Russian Federation and regulatory legal acts of local self-government bodies on administrative procedures and administrative acts to the administrative procedures for the adoption and enforcement of administrative acts of governmental authorities of the constituent territories of the Russian Federation and local self-government bodies.

4. Federal laws may establish special types of administrative procedures in certain sectors and spheres of government.

Article 3. Basic concepts used in this Federal Law

1. The following basic concepts are used in this Federal Law:

1) administrative procedure is an activity of administrative bodies, officials for the adoption, execution, modification or cancellation of administrative acts on the grounds of an application of individuals or legal entities or on their own initiative, as well as activity to review administrative complaints carried out in accordance with this Federal Law;

2) administrative complaint is the application of an addressee of an administrative act, an interested person to an administrative authority in connection with an administrative act, refusal

to adopt an administrative act or inaction of an administrative body, an official with the purpose of protecting his rights and interests protected by law;

3) administrative case is a totality of documents and materials that fix the procedure for the preparation, review and adoption of an administrative act by an administrative body, an official on the ground of applications of individuals or legal entities or on its own initiative;

4) administrative act is a legal act adopted by an administrative body, an official following the results of an administrative procedure in accordance with this Federal Law on a particular case that generates legal consequences for a certain person or an individually defined circle of persons;

5) administrative body is a body of state power, a body of local self-government, as well as organizations (including multifunctional centers) that are authorized in accordance with the law to carry out administrative procedures;

6) the addressee of an administrative act is a person who applied to an administrative authority, to an official for the adoption of an administrative act (the applicant), or the person against whom the administrative body, the official which on its own initiative has accepted or intends to adopt an administrative act;

7) favorable administrative act is an administrative act that confirms the right that provides an addressee new rights or abolishes the duty imposed on him, and also improves his situation in another way;

8) discretionary power (discretion) is an ability to accept or not accept an administrative act or to choose a certain version of the decision, its type and content in accordance with the law which is granted to administrative bodies and officials by the legislation;

9) official is a person that acts as a representative of a public authority or performs administrative-economic, organizational-administrative functions in administrative bodies permanently, temporarily or by special power;

10) person concerned is a person who is not the addressee of an administrative act, whose rights or interests protected by law have been affected or may be affected as a result of the adoption of an administrative act;

11) application is a request of an individual or legal entity to an administrative body, to an official with the purpose of adopting an administrative act;

12) burdening administrative act is an administrative act that refuses an addressee to get the right, deprives or restricts his right or imposes a certain duty on him, and also worsens his situation in any other way.

Article 4. Calculation of time limits

1. The term is determined by a calendar date or an indication of an event that must inevitably occur. The term can also be set as a period of time that is calculated by years, months, weeks, days (calendar or working) or hours.
2. A term that is calculated by years starts from the calendar date or from the date of an event, by which its beginning is determined, and expires in the respective month and date of the last year of the term. If the end of the term falls on a month in which there is no corresponding date, then the deadline goes to the last day of this month.
3. A term that is calculated by months starts from the calendar date or from the date of the occurrence of the event, by which its beginning is determined, and expires on the corresponding day (date) of the last month of the term. If the end of the term falls on a month in which there is no corresponding date, then the deadline goes to the last day of this month.
4. A term that is calculated by weeks starts from the calendar date or from the date of the event, by which its beginning is determined, and expires on the corresponding day of the last week of the term.
5. A term that is calculated by days starts from the calendar date or from the date of the event, by which its beginning is determined, and expires on the last day of the established period. If the last day of the term falls on a non-working day, the expiration day is considered to be the following business day.
6. A term that is calculated by hours starts from the first minute of the event, which defines its beginning, and expires at the last minute of the established period

Chapter 2. Principles of administrative procedures

Article 5. Principle of proportionality

Measures for any restriction of the rights and freedoms of individuals or legal entities should be directed to the goals established by the Constitution of the Russian Federation and federal laws and should be appropriate, necessary, reasonable and proportionate to achieve such goals, taking into account their content, place, time and range of persons affected.

Article 6. Principle of prohibition of formal requirements abuse

1. An administrative body or an official is prohibited to burden individuals or legal entities with duties, refuse to grant them any right with just one purpose to satisfy formal requirements, including internal organizational rules, if an administrative case may be considered without observing them, with the exception of cases directly stipulated by law.
2. Unless otherwise stipulated by law, non-compliance or improper adherence of formal requirements by participants in an administrative procedure cannot serve as grounds for refusal to issue an administrative act required by an administrative authority or an official.
3. An administrative body or official cannot refuse to accept documents provided by individuals or legal persons, in connection with the obvious and correctable formal mistakes made in them.

Article 7. Presumption of reliability

1. Documents and other information on the actual circumstances given by participants in an administrative procedure and considered by an administrative body or official (hereinafter referred to as documents and other information) are deemed reliable until the administrative body or official establishes otherwise.
2. It is prohibited to demand participants of an administrative procedure to provide documents or additional information, except in cases directly stipulated by law.

3. If there are reasonable doubts concerning the authenticity of documents or other information provided by the parties to an administrative procedure, the administrative body or official must independently and at his own expense verify the authenticity of such documents and information.

4. Participants to an administrative procedure shall bear responsibility provided for by the legislation of the Russian Federation for provision of deliberately false documents and information to administrative bodies and officials.

Article 8. Principle of uniform application of law

1. Administrative bodies and officials are obliged to exercise an equal approach to the same factual circumstances and an individual approach to substantially different factual circumstances.

2. An administrative body or official is prohibited to adopt different administrative acts on the same significant factual circumstances.

3. An administrative body or official is prohibited to take the same administrative acts on various significant factual circumstances.

4. When performing their discretionary powers (discretion) by an administrative body or official in one way, later they are obliged to exercise their discretionary powers in a similar manner.

5. An administrative body or official has the right to refuse from the practice specified in parts 1 to 4 of this article, only because of the emergence of circumstances that are essential for the proper consideration and resolution of an administrative case.

Article 9. Principle of protection of reliance

1. The confidence of individuals or legal entities in the practice of administrative bodies and officials is protected by law.

2. Administrative acts are presumed to be lawful and justified.

3. Losses incurred by bona fide individuals as a result of cancellation of administrative acts are subject to reimbursement according to the rules of Chapters 5 and 9 of this Federal Law and in accordance with the civil legislation of the Russian Federation.

4. The right to reliance cannot serve as justification of illegal actions.

5. A person that abuses reliance in an administrative process may be refused meeting its demands and protection its right.

Article 10. Principle of coverage of a smaller by a larger

1. An administrative body or official shall not be entitled to demand the participants to an administrative procedure to commit acts that have already been committed by them in the framework of other actions.

2. If documents (information) submitted to an administrative body or official confirm the content of other necessary documents (information), the latter cannot be additionally claimed.

3. If a permit provided by an administrative body or official meaningfully includes other permits, the latter are presumed as already given.

Article 11. The procedure for exercising discretionary powers (discretion)

1. An administrative body ar official shall be obliged to exercise their discretionary powers within the limits established by law.

2. Administrative acts adopted within the framework of discretionary powers shall correspond to the purpose of such powers.

3. During exercising discretionary powers, administrative acts aimed at unreasonable restricting the rights, freedoms and legal interests of individuals or legal entities cannot be taken.

Article 12. Application of other principles of law

The system of principles of administrative procedures provided for in this chapter is not exhaustive and cannot be regarded as a denial or derogation of other generally recognized principles of law, as well as guarantees of the rights, freedoms and legitimate interests of individuals or legal entities, including the principles of legality, equality of all before the law and the court, the piority of rights and freedoms of individuals and legal entities.

Chapter 3. Basic rules of administrative procedures

Article 13. Jurisdiction over administrative cases

1. Administrative cases are considered by relevant administrative authorities, officials in accordance with the competence set by the legislation of the Russian Federation.
2. An administrative body or official has to on its own verify its competence to resolve issues specified in the application of an individual or legal entity.
3. If an administrative body or official has determined that the resolving of the issue does not fall within its competence, it refuses to consider the administrative case and within three working days forwards the application and other materials of the administrative case to a competent administrative authority, an official and notifies in writing the applicant and interested persons.
4. Conclusion of agreements on determining jurisdiction is not allowed.
5. Disputes about jurisdiction are not allowed. In the event of a jurisdiction change in the course of an administrative procedure due to new circumstances, the administrative body or official that began the consideration of the case in the interests of the participants may continue the administrative procedure with the written consent of the participants and the administrative body or official authorized to adopt an administrative act with account of the changed circumstances.

Article 14. The duty of mutual assistance (collaboration) of administrative bodies and officials

1. Administrative bodies and officials in the implementation of administrative procedures are obliged, within their competence, to provide mutual assistance (collaboration). Mutual assistance is carried out at the request of administrative bodies or officials.

2. In the event when several administrative bodies or officials may provide assistance the requesting administrative body or official has to resort to those administrative bodies or officials who in its opinion can provide the necessary mutual assistance in the most effective way and in a shorter period.

3. If the exercise of requested mutual assistance is not within the competence of a requested administrative body or official, the latter is obliged to forward the request to a competent administrative body or official.

Article 15. The terms of mutual assistance of administrative bodies and officials.

Administrative body or official resort to mutual assistance in case of:

1) inability to perform any action independently;

2) availability of documents and information necessary for the resolution of a particular issue in the possession of other administrative bodies or officials.

Article 16. Grounds for refusing to provide mutual assistance

1. An administrative body or official shall be obliged to refuse to provide mutual assistance if:

1) the implementation of the requested measures is contrary to law;

2) the implementation of the requested measures is not within their competence;

3) the requested documents and information refer to the secret protected by law and their provision to the requesting administrative body or official is prohibited by law.

2. A requested administrative body or official may refuse to provide mutual assistance if:

1) other administrative bodies or officials may provide mutual assistance with substantially less costs;

2) the provision of the mutual assistance significantly impedes the exercise of its own powers.

3. A requested administrative body or official must not refuse to provide mutual assistance on grounds not provided for in the parts 1 and 2 of this article.

4. In the event of refusal to provide mutual assistance on the grounds provided for in the parts 1 and 2 of this article, the requested administrative body or official must notify the requesting administrative authority or official. The requesting body or official has the right to challenge such refusal at the administrative body (applying to the official) that is superior to the requested administrative authority (official).

The superior administrative body (official) within three working days from the date of receipt of the necessary documents takes the final decision on the dispute on the refusal to provide mutual assistance. If the refusal is declared unreasonable, the superior administrative body (official) instructs the requested administrative body or official to render immediate mutual assistance.

Article 17. Rendering of mutual assistance between administrative bodies and officials of the states-members of the Eurasian Economic Union

Rendering of mutual assistance between administrative bodies and officials of the states-member of the Eurasian Economic Union is carried out according to the rules established by international treaties ratified by the Russian Federation.

Article 18. Certification of documents copies

1. An administrative body or official shall certify copies of administrative acts, other documents provided, except for cases when the law provides otherwise. Certification is carried out when there is the original of a certified administrative act or other document.

2. Copies of administrative acts and other documents are not subject to certification if their integrity has been violated or the true content of documents has been changed.

3. Certification is carried out by affixing on each page of a certified copy of the seal of the administrative authority, the signature of the official, and also by inscription on the last page, which should contain the following information:

1) the exact name of the document the copy of which is under certification;

2) confirmation of the correspondence of the copy of the document to the original.

Article 19. Participants to an administrative procedure

1. The participants to an administrative procedure are:

1) the addressee of an administrative act;

2) the administrative body that is considering an administrative case;

3) interested persons involved by an administrative body or official to the administrative procedure as participants.

2. Interested persons are involved to the administrative procedure on the grounds of their application, at the request of the addressee of administrative act or by the initiative of an administrative body or official if the supposed administrative act may affect their rights and interests protected by law.

Article 20. Other persons involved to an administrative procedure

Other persons that are involved to the administrative procedure are witnesses, experts, interpreters, as well as other persons who contribute to the proper consideration of an administrative case and the adoption of an administrative act.

Article 21. Representation in an administrative procedure

1. An individual may participate in an administrative procedure in person or through a representative. Personal participation does not deprive him of the right to have a representative in this administrative procedure. The presence of a representative does not deprive him of the right to personal participation in the administrative procedure.

On behalf of a legal entity, participation in an administrative procedure is taken by its head or representative on the basis of a power of attorney.

2. Representatives in administrative procedures may be any capable persons whose powers are certified in accordance with the procedure established by the civil law.

3. The interests of legally incapable or partially incapacitated individuals in an administrative procedure are represented in accordance with civil law by their legal representatives.

4. The representative of the addressee of an administrative act or an interested person cannot be a person who is on the state or municipal service in the administrative body considering the administrative case or in the body which is directly subordinated to it or under its control.

5. The persons specified in article 20 of this Federal Law participate in an administrative procedure personally.

Article 22. Circumstances precluding participation in an administrative procedure

1. An official of an administrative body, expert, interpreter shall not be entitled to participate in an administrative procedure in the following cases:

1) if they acted or are acting as other participants in the administrative procedure or their representatives;

2) if they are or were close relatives of one of the participants in the procedure;

3) if they or any of their close relatives are members of a governing body or have shares (shares of the authorized capital) of the legal entity that is a party to the procedure;

4) if they are personally, directly or indirectly interested in the outcome of the case or there are other circumstances that cause doubt on their objectivity and impartiality.

2. Close relatives, specified in part 1 of this article, are understood as:

1) parents, spouses, children, grandchildren, grandparents, brothers, sisters, uncles, aunts and cousins of the participant to an administrative procedure;

2) people listed in paragraph 1 of this part who are in related kinship with the spouse of the participant to an administrative procedure;

3) son-in-law, daughter-in-law, father-in-law or mother-in-law of the participant to an administrative procedure.

3. An expert also has no right to participate in the implementation of an administrative procedure if he is in official or other dependence on a party to the procedure, including on the official of an administrative body.

Article 23. Disqualification (self-disqualification) of an official of an administrative body, expert, interpreter

1. If there are grounds provided for in article 22 of this Federal Law:

1) participants to an administrative procedure shall have the right to propose a written disqualification of an official of an administrative body, expert or interpreter;

2) An official of an administrative body, expert or interpreter must declare self-disqualification in writing.

2. Disqualification (self-disqualification) can be declared before the completion of an administrative procedure immediately when it became known that there are grounds provided for in article 22 of this Federal Law.

3. A repeated application for disqualification to the same official of an administrative body, expert or interpreter may be considered if it contains new grounds or new facts.

The decision on a disqualification (self-disqualification) is subject to acceptance within one working day from the date of submission of the disqualification (self-disqualification).

The decision on the disqualification of an official of an administrative body is taken by its head, and in the case of performing an administrative procedure in a panel, by the corresponding collegial body by a simple majority of votes. In this case, the member of the panel who is supposed to be disqualified does not participate in the voting.

In case of disqualification (self-disqualification) of a member of a collegiate administrative body the administrative procedure is carried out with the participation of the remaining officials of the collegial administrative body if there is quorum.

The decision to disqualify the head of an administrative body is taken by a higher administrative body or official. In case of self-disqualification of the head of an administrative body the administrative procedure is performed by his deputy, and in the absence of the latter, another official authorized to replace him.

The decision to disqualify an expert or an interpreter is taken by the administrative body or official that is carrying out this administrative procedure.

4. Participation of an expert or an interpreter earlier in the same administrative procedure as an expert or an interpreter is not grounds for his disqualification (self-disqualification).

5. A reasoned decision on disqualification (self-disqualification) must be made in writing. A copy of the decision shall be sent to the participants of an administrative procedure

6. Disqualification (self-disqualification) is not accepted if it is objectively impossible to determine another official of an administrative body, expert or an interpreter

Article 24. The language of an administrative procedure

1. An administrative procedure is performed in the Russian language – the state language of the Russian Federation. Administrative procedures in administrative bodies located on the territory of a republic that is part of the Russian Federation can also be performed in the official language of this republic

2. An administrative body or official explains and ensures for the participants to an administrative procedure who do not know the language in which the administrative procedure is being conducted the right to get acquainted with the materials of the administrative case, make statements, give explanations and statements, file petitions and disqualifications, file complaints in their native language or freely chosen language of communication, use the services of an interpreter in the manner established by this Federal Law.

3. An administrative act is set out in the Russian language, and upon the application of the addressee of the administrative act or a person concerned is translated into the language used during the administrative procedure.

Article 25. Maintenance and accounting of administrative cases

1. From the moment of initiation of administrative procedure an administrative body or official shall initiate an administrative case file in which there are documents relating to

the implementation of this administrative procedure, including the administrative act (its certified copy) adopted as a result of the administrative procedure.

2. The procedure for conducting cases, logs for their recording, recording administrative acts is established by an administrative body on the basis of the standard provision approved by the Government of the Russian Federation

3. Cases' files are stored in accordance with the rules of record keeping established by law and, in the established order, are subject to the transfer to the archive.

Article 26. Administrative procedure recordation

1. If the implementation of an administrative procedure is carried out in the form of a meeting with the participation of persons specified in part 1 of article 19 and in article 20 of this Federal Law an administrative body or official shall keep the minutes of the meeting.

2. The protocol should contain the following information:

1) the name of the administrative body, position, surname, first name, patronymic name of the official performing an administrative procedure;

2) the place and date of an administrative procedure;

3) the surname, first name, patronymic name of the persons specified in part 1 of article 19 and article 20 of this Federal Law, indicating their status in the present case (the applicant, the person concerned, the witness, etc.);

4) content of the issue under consideration;

5) summary of statements by participants to an administrative procedure;

6) decision taken on the results of the meeting.

A protocol may contain other additional information.

3. If the meeting was held intermittently, then this should be indicated in the protocol. When several meetings are held, a separate protocol is drawn up for each of them.

4. The minutes shall be kept by the secretary of meeting determined by the presiding officer. The minutes shall be signed by the presiding officer, the secretary of the meeting immediately after the end of the meeting.

5. The addressee of an administrative act and the interested person have the right to familiarize themselves with the protocol and submit comments to it. The refusal of the comments is indicated in the protocol.

Chapter 4. Procedure for the implementation of an administrative procedure

Article 27. Grounds for initiating an administrative procedure

1. The grounds for initiating an administrative procedure are:

1) application of an individual or legal entity;

2) initiative of an administrative body or official.

2. In the case provided for in paragraph 1 part 1 of this article an administrative procedure shall be considered initiated from the day of receipt to an administrative authority or to an official of an application, except in cases where the application in accordance with this Federal Law is redirected to a competent administrative body or official.

3. In the case provided for in paragraph 2 part 1 of this article an administrative procedure shall be considered initiated from the day of commencement of an action (actions) aimed at adoption of an administrative act on the initiative of an administrative body or official.

Article 28. General requirements for an application

1. An application must contain:

1) name of the administrative body (position, surname, name and patronymic name of the official) to which the application is submitted;

2) surname, name and patronymic name of the applicant – an individual, his place of residence or place of stay;

3) surname, name and patronymic name of the person applying for on behalf of a legal entity, his position, full name and location of the legal entity;

4) the summary of the requirement;

5) date, month and year of application;

6) the signature of the applicant – an individual or the signature of the head of a legal entity certified by the seal of the legal entity (if available);

7) list of documents attached to the application, if there are any;

8) other information known to the applicant, without which the application cannot be considered.

If for the receipt of an administrative act the law provides for the payment of a state fee or other mandatory payment, a document confirming the paying of the relevant payment must be submitted.

If an application is submitted through a representative, a document confirming this authority must be submitted.

2. An application submitted orally at personal appointment of applicants is fixed by an official of the administrative body in writing with indication of the information provided for by part 1 of this article

3. An application may be sent to an administrative authority or official in person, by post, through a multifunctional center, using the information and telecommunication network "Internet" or other means provided by the legislation of the Russian Federation.

Article 29. Assistance to the participants to an administrative procedure

1. An administrative body or official is obliged to explain to the participants of an administrative procedure their rights and obligations, to facilitate the processing of the application and the documents attached to it, including provision of an opportunity to eliminate formal mistakes, supplement the list of attached documents or correct formal mistakes itself with the notification of the applicant.

2. The official of an administrative body is obliged on the basis of applications of individuals and legal entities to give them samples of applications and other set forms related to the administrative procedure, also to send them by postal communication, using the information and telecommunication network "Internet" or other means provided for by the law of the Russian Federation.

Article 30. Acceptance of an application

1. An administrative body or official must accept any application and register it on the same day.

2. Unless otherwise provided by law, an administrative body or official shall be obliged within three working days from the date of receipt of an application to give or send to the applicant a certificate of the date and registration number of the application.

Article 31. Forwarding an application to the competent administrative authority, to the competent official

1. If an administrative body or official has determined that consideration of the application received is not within its competence, it shall forward it and other materials of the administrative case to a competent administrative authority or official within three working days, notifying the applicant and persons concerned in writing.

2. If one or more of the requirements set forth in an application falls within the competence of another administrative body or official, the initial administrative body or official within three working days shall forward the application and the relevant administrative materials in this part to the consideration by a competent administrative body or official, notifying the applicant and persons concerned in writing.

Article 32. Dismissal of an application without consideration

1. An administrative body or official, upon the receipt of a written application containing obscene or offensive language, threats to the life, health or property of the official, as well as members of his family, has the right to leave the application without consideration and notify the applicant of the inadmissibility of abuse of the law.

2. An application, the text of which is not readable, shall be left without consideration and shall not be sent to a competent administrative body (competent official) in accordance with the rules of article 31 of this Federal Law, and if his name and postal address are readable the applicant is notified about that in writing within seven working days from the date of registration.

3. If the requirements of an application are not within the scope of this Federal Law an administrative body or official shall issue a reasoned decision to leave the application without consideration, which may be appealed against in accordance with the rules of Chapter 6 of this Federal Law.

Article 33. Grounds for initiating an administrative procedure on the initiative of an administrative body or official

1. The grounds for the initiation of an administrative procedure on the initiative of an

administrative body or official is a requirement of the law on the need to adopt an administrative act or discretionary power (discretion) imposed by law on an administrative authority or official.

2. An administrative body or official within three working days from the date of initiation of an administrative procedure notifies in writing the participants to the administrative procedure or their representatives about the initiation of the administrative procedure, as well as the place, time, events and other conditions for the implementation of the administrative procedure.

Article 34. Participation of an addressee and persons concerned in an administrative procedure

1. An administrative body or official must create the necessary conditions for ensuring participation of an addressee of administrative act and a person concerned or their representatives in an administrative procedure.

2. Unless otherwise provided by law, prior to the adoption of an administrative act an administrative body or official is required to hear the addressee of an administrative act, interested persons or their representatives.

3. An administrative body or official may refuse to hear the addressee of an administrative act and the persons concerned or their representatives in the following cases:

1) the materials submitted by the applicant clearly indicate the advisability of adopting an administrative act favorable to him that does not affect the rights and legitimate interests of others;

2) there is a need of immediate adoption of an administrative act with a view to preventing or eliminating a danger that might cause significant harm to the interests of the state and society;

3) when numerous administrative acts of identical content are being adopted, including in automatic mode using technical means;

4) when taking an interim decision on which an independent administrative complaint cannot be filed;

5) if the law provides for the adoption of an administrative act in oral or conclusive form;

6) if the addressee of an administrative act and the person concerned do not require a hearing;

7) in other cases provided by the law.

Article 35. Examination of the circumstances of an administrative case

1. An administrative body or official is obliged to investigate comprehensively, fully and objectively all the actual circumstances that are important for the proper resolution of an administrative case.

2. An administrative body or official is not connected by explanations and arguments of participants to administrative procedure and presented evidence.

3. An administrative body or official is not entitled to refuse examination and accounting the circumstances presented by the participants to an administrative procedure, the consideration of which falls within their competence.

Article 36. Acquaintance with the materials of an administrative case

1. Participants to an administrative procedure during and after the completion of the procedure are entitled to familiarize themselves with the materials of the administrative case.

2. The possibility of acquaintance with the materials of an administrative case must be provided no later than three working days from the date of submission of a petition.

3. When providing materials of an administrative case an administrative body or official is obliged to ensure compliance with the requirements of the legislation on state and other secret protected by the law.

4. In the event of refusal to provide a document due to the inadmissibility of disclosure of information constituting a state or other secret protected by the law, an administrative authority or official is required to provide the addressee of an administrative act and the person concerned as far as feasible complete information about the content of the requested document.

Participants to an administrative procedure are entitled to receive copies of documents and other materials of an administrative case.

Article 37. Evidence in an administrative case

1. Evidence on an administrative case shall be any factual data on the basis of which an administrative body or official establishes the circumstances that are relevant for the proper resolution of an administrative case.

2. The use of evidence obtained in the breach of the law is prohibited.

3. Participants to an administrative procedure are obliged to assist in determining all the factual circumstances of an administrative case, provide information on facts that are known to them and that are relevant to the case, as well as to present necessary evidence in their possession.

4. If a participant to an administrative procedure cannot obtain the necessary evidence himself, he applies to an administrative body or official with a petition for disclosure of the evidence. The petition states the significance of the evidences for the case, their signs and location. An administrative body or official is obliged to demand these evidences and provide their representation.

Article 38. Witness testimony

1. Witness testimony is an oral report by a witness to an administrative body or official about circumstances known to him that are important for the proper consideration and resolution of an administrative case. At the suggestion of an administrative body or official, a witness who testified orally may present them in writing. Witness testimony that are stated in writing are attached to the materials of an administrative case.

2. The information reported by a witness is not evidence if the witness cannot indicate the source of his knowledge

3. If testimony is based on the reports of other persons, these persons should also be interviewed.

4. A person may be called by an administrative body or official as a witness at the request of a participant to an administrative procedure and on the initiative of an administrative body or official.

Article 39. Written evidence

1. Written evidence is acts, contracts, certificates, business correspondence, other documents and materials that contain information on circumstances relevant to the administrative case and that are made in the form of digital and graphical recording, received by facsimile, electronic or other communication, including using information and telecommunication network "Internet", via a video conferencing channel (if there is a technical capability for such transfer of documents and materials) or by other means allowing identification of the accuracy of the document.

2. Written evidence shall be submitted to an administrative authority or official in the original or in the form of a duly certified copy. If only a part of a document relates to an administrative case, a certified extract from it may be submitted.

3. The original documents are submitted to an administrative body or official in the event when, in accordance with the law or other normative legal act, the circumstances of an administrative case are subject to confirmation only by such documents, and also at the request of an administrative body or official if it is impossible to resolve the administrative case without original documents or presented copies of the same document are different in content.

4. Written evidence submitted to an administrative body or official which are fully or in part in a foreign language shall be attached duly certified translations into Russian.

5. Written evidence is attached to the materials of an administrative case. The originals of documents that are legally required to be in the places of their permanent or temporary storage cannot be attached to the materials of an administrative case.

Article 40. Expert examination

1. Examination is appointed in cases where circumstances relevant to the consideration of an administrative case can be established as a result of research of materials conducted by an expert using specialized knowledge.

2. An administrative body or official shall appoint an expert examination at the request of the participants to an administrative procedure or on its own initiative.

3. An expert may be a person who is disinterested in the case and has special knowledge.

4. Each participant to an administrative procedure has the right to submit to an adminis-

trative body or official the questions that must be raised before the expert. The final range of questions on which the expert must give an opinion is determined by an administrative body or official

5. At the request of an administrative body or official the expert should provide additional explanations on the expert opinion.

Article 41. Conduct of an inspection

If necessary, an administrative body or official shall appoint an inspection of territory, site or object. The inspection can be conducted either by the administrative body or official reviewing the administrative case itself or by another administrative body or official in the order of mutual assistance.

Participants to the administrative procedure are notified on the inspection.

Article 42. The term of an administrative procedure

1. Administrative cases are considered and resolved by administrative bodies and officials within thirty calendar days, unless otherwise provided by the legislation of the Russian Federation.

2. An administrative procedure starts from the day of registration of an application by an administrative authority, official or from the moment of committing an action on the initiative of an administrative body or official.

3. If a longer period is required to establish circumstances that are essential for an administrative procedure, the term of the administrative procedure may be extended by the a body or official, but not longer than for thirty calendar days, unless otherwise provided by the legislation of the Russian Federation. The administrative body or official notifies the addressee of the administrative act and the persons concerned about the extension of the term.

Article 43. Restoring of a term

1. When recognizing the reason for omission of the period of time as justifiable an administrative body or official has the right to restore the missed period at the request of the addressee of an administrative act and the person concerned.

2. The addressee of an administrative act or the interested person shall apply to an administrative body (official) with a written application for the restoration of the missed period not later than ten calendar days from the moment of elimination of the reasons specified in part 1 of this article. The application shall be accompanied by documents confirming the valid reason for omission of the period of time.

3. An administrative body or official, within three working days, considers the application for the restoration of the missed period.

4. Simultaneously with the filing of an application for the restoration of a missed period, an action the term of which has been missed is being carried out.

5. In cases directly stipulated by the law, the restoration of a missed period is not allowed.

Article 44. Notification on administrative procedure

1. An administrative body or official has to notify about the place and time of meeting all the participants to an administrative procedure, and if necessary also other persons specified in article 20 of this Federal Law, using various means of communication.

2. Participants to an administrative procedure should have sufficient time to get to and prepare for the meeting.

Article 45. Termination of an administrative procedure and refusal to meet the application

1. An administrative procedure initiated on the grounds of an application is terminated if:

1) the applicant refuses his application in writing

2) there is an administrative or judicial act that has entered into legal force, adopted in relation to the same person, for the same subject and for the same reasons;

3) the status of the applicant has changed, which, by virtue of the law, excludes the adoption of an administrative act required by the application.

2. An administrative procedure initiated by the initiative of an administrative body or official may be terminated if:

1) the addressee of the administrative act has eliminated the violation of requirements of the legislation;

2) the need to adopt an administrative act on the violation of requirements of the legislation has disappeared due to changes in the legislation, factual circumstances or other grounds provided for by the law

3. An administrative body or official refuses to meet an application if it is unreasonable.

4. The decision (administrative act) of an administrative body or official on termination of an administrative procedure or on refusal to meet an application within three working days from the date of adoption is sent to the participants of the administrative procedure by mail, through the multifunctional center, using the information and telecommunication network "Internet" or other means provided for by the legislation of the Russian Federation.

5. The decision (administrative act) on termination of an administrative procedure or on refusal to meet an application can be appealed against according to the rules of Chapter 6 of this Federal Law.

Article 46. Resumption of an administrative procedure

1. Based on the application of the participants to a procedure the administrative body or official is obliged to take a decision on changing or canceling an administrative act that cannot be appealed if:

1) after the adoption of the administrative act, the factual circumstances or legal norms that were taken as a basis changed in favor of the applicant;

2) there is new evidence that may lead to the adoption of a more favorable administrative act for the applicant;

3) there are other grounds provided for by the law.

In the cases provided for in this part an administrative procedure is renewed.

2. An application must be filed within three months from the day when the person who applied for the resumption of a procedure got to know about the circumstance stipulated in part 1 of this article.

3. On the basis of an application the decision is made by the administrative body (official) who adopted the administrative act that is subject to amendment, cancellation or by the relevant superior or other competent administrative body (official) that is authorized to cancel this administrative act within the framework of resumption of the administrative procedure.

Article 47. Participation of several administrative bodies and officials in the adoption of an administrative act

1. If the adoption of an administrative act requires the permission or consent of other administrative bodies and officials the necessary actions, including the demand and collection of additional documents, are carried out by the administrative body or official that has initiated administrative procedure.

2. The permission or consent received in the manner provided for in part 1 of this article is not subject to a separate appeal and may be appealed together with the administrative act.

Chapter 5. Administrative act

Article 48. Forms of administrative acts

1. An administrative act can be adopted in written (including electronic), oral or conclusive form (in the form of light, sound signals and signs, images or otherwise).

2. An administrative act that is adopted either verbally or conclusively shall be subject to written fixation upon the request of the addressee within five working days from the receipt of the relevant application. In this case, the rules on written administrative acts of this chapter shall be applied.

Article 49. General requirements for an administrative act

1. An administrative act must be adopted in accordance with the Constitution of the Russian Federation, this Federal Law and other normative legal acts of the Russian Federation.

2. The addressees of an administrative act must be clearly specified.

3. An administrative act must be sufficiently clear and understandable in its content, so that it is obvious to the addressee what right is granted, limited, canceled or what duty it is imposed to.

Article 50. Requirements for a written administrative act

1. A written administrative act shall contain:

1) the name of the administrative body, position, surname, first name, patronymic name of the official that adopted the administrative act;

2) the surname, name, patronymic name, place of residence or stay of an individual or the name and legal address of a legal entity to whom the administrative act is addressed;

3) the name of the administrative act, the date and place of its adoption, registration number, the seal of the administrative body and the signature of the official;

4) the description of a resolved issue and the justification for the decision taken (descriptive and analytical part), with reference to a specific norm of law;

5) statement of a decision taken (substantive provisions);

6) the duration of the administrative act, if such administrative act is adopted for a certain period;

7) coercive measures (if any);

8) the procedure and terms for appealing the administrative act.

2. An administrative act may contain attachments and other additional documents, the effect of which cannot exceed the validity period of the administrative act. The attachments and other supplementary documents are not independent administrative acts and act as long as the administrative act.

Article 51. Justification of an administrative act

1. A written administrative act must contain a justification in which there are all significant factual and legal circumstances of the case, evidence supporting or refuting the circumstances, as well as laws and other normative legal acts that were used by an administrative body or official in the adoption of the administrative act.

2. If an administrative act is adopted within discretionary powers (discretion) the administrative body or official must clearly and precisely state the reasons for adopting exactly such a decision.

3. An administrative body or official may justify an administrative act only by those facts and evidence that were examined within the framework of administrative procedure.

4. Justification of an administrative act is not required:

1) when making numerous administrative acts of identical content, including in automatic mode using technical means;

2) when adopting an administrative act favorable to the addressee, which does not affect the rights and legitimate interests of others;

3) in other cases provided by the law.

Article 52. Administrative act with a condition

1. An administrative act adopted by an administrative body or official within the framework of discretionary powers (discretion), may provide for the following:

1) effective date or loss of force of any benefit or obligation (duty) provided by this administrative act, or its duration;

2) dependence of entry into force or loss of power of any benefit or obligation (duty) on the onset of an event in the future;

3) indication of the right to repeal this administrative act;

4) other additional conditions related to the commission of certain actions or refraining from the commission of certain actions by the addressee of the administrative act;

2. Administrative acts not specified in part 1 of this article may provide for additional conditions in cases provided for by the law.

3. Additional conditions must comply with the objectives of an administrative act and be lawful. Additional conditions can be appealed only together with an administrative act.

Article 53. Promulgation of an administrative act

1. An administrative body or official is obliged to bring an administrative act to the notice of the participants to an administrative procedure or their representatives.

2. A written administrative act is brought to the notice of the participants of an administrative procedure by delivery to the addressee in person or by publishing it.

3. A written administrative act is delivered to the participants of an administrative procedure by one of the following ways:

1) direct delivery to the addressee of an administrative act and the person concerned;

2) by registered mail with notification;

3) sending in the form of an electronic document to the e-mail address of the addressee of an administrative act and the person concerned, if they have given a written consent for such a method of delivery.

An administrative act sent in the manner specified in paragraph 2 of part 3 of this article shall be deemed to be delivered from the moment marked on the counterfoil to be returned to the administrative body or official.

An administrative act sent by the method specified in paragraph 3 of part 3 of this article shall be deemed to be delivered on the fifth day from the date of its sending with the use of the information and telecommunication network “Internet”.

4. If the addressee of an administrative act and the interested person declare the non-delivery of the administrative act delivered by the ways specified in paragraphs 2 and 3 of part 3 of this article or declare about delays in its receiving, the obligation to prove the fact of delivery the administrative act within the established time is imposed on the administrative body or official.

5. When an administrative act is handed over to the addressee and the interested person, the administrative body or official must also give documents that are an integral part of this act.

Non-delivery of these documents simultaneously with the administrative act or their delivery at a later date does not affect the operation of the administrative act and is not grounds for challenging the legality of such an act.

6. A written administrative act is subject to publication if the administrative body or official does not know the information about persons whose rights and legitimate interests are affected by this administrative act, as well as in other cases provided by law. The administrative act is considered to be announced by publication on the fifth day from the date of posting its content on the official website of the administrative body in the information and telecommuni-

cation network "Internet".

7. An oral administrative act shall be brought to the notice by oral statement of its contents to the addressee of the administrative act and to the person concerned.

8. A conclusive administrative act shall be brought to the notice by providing it directly visible, perceived or otherwise accessible to perception.

Article 54. Correction of explicit errors in an administrative act

1. An administrative body or official may correct literal errors and other obvious errors in an adopted by them administrative act on their own initiative or on the basis of an application of the participant to an administrative procedure, without changing its sense.

2. An administrative body or official may request a document necessary for rectification.

3. Corrections in an administrative act are confirmed by the signature of an authorized official of administrative body.

4. An administrative body or official shall provide the participants of an administrative procedure with information on the corrections made in an administrative act in the manner provided for in article 53 of this Federal Law.

Article 55. The operation of an administrative act

1. An administrative act comes into force from the moment of bringing its contents to the notice of the addressee of the administrative act and the person concerned in the manner provided for in article 53 of this Federal Law. The administrative act enters into force and is considered valid in the content in which it was brought to the notice of the said persons.

2. An administrative act retains its legal force and is considered to be valid until it is canceled, changed, expired or until it is declared invalid for other reasons.

3. An administrative body or official is obliged to notify the addressee of an administrative act and the interested person about the cancellation or amending of the administrative act in the manner provided for by article 53 of this Federal Law.

4. An invalid administrative act does not have legal force and is not subject to execution or application.

Article 56. Null administrative act

1. An administrative act is null in whole or in part if it contains a significant breach of the requirements of the legislation or a particularly significant defect (error) which, if reasonably assessed circumstances, makes its execution or application legally impossible.

2. In addition to the cases specified in part 1 of this article, an administrative act is also void if:

1) the act does not clearly show which administrative bodies and officials took it;

2) the administrative act was adopted by administrative bodies and officials who do not have the appropriate authority;

3) the act does not clearly show its addressee;

4) the administrative act requires commission of a wrongful act;

5) the administrative act cannot be executed for factual or legal reasons;

6) the administrative act was adopted with gross violations of the requirements of legislation to its form.

3. A null administrative act is invalid, has no legal effect from the moment of its adoption and is not subject to execution or application.

Non-fulfillment or non-application of a null administrative act shall not entail responsibility in accordance with the legislation of the Russian Federation.

Execution or application of a null administrative act entails responsibility in accordance with the legislation of the Russian Federation.

4. The nullity of a part of an administrative act does not entail nullity of the entire administrative act, if in the part corresponding to the requirements of the legislation it can act independently.

5. An administrative body or official is entitled at any time on his own initiative to determine the nullity of an administrative act. The nullity of an administrative act can be established at the request of the addressee of an administrative act and the person concerned.

Article 57. Cancellation of an illegal administrative act

1. An administrative act that is adopted by an administrative body or official as a result of the violation or misuse of the legislation, as well as the principles of administrative procedures, is illegal.

2. An illegal administrative act may be cancelled in full or in part. The administrative act can be canceled partially only if the unrepealed part can remain in force or act independently. If the administrative act is partially cancelled, the rules of this article apply only to the part recognized as invalid.

3. An unlawful encumbering administrative act that has not entered into force is subject to mandatory cancellation.

4. Unless otherwise provided by law, the cancellation of an unlawful encumbering administrative act that came into force shall entail the cancellation of the legal consequences appeared from the moment of entry this act into force.

5. An unlawful favorable administrative act may be canceled with taking into account the limitations provided for in this article

6. It is not allowed to cancel an unlawful favorable administrative act if the trust of an administrative procedure participant is subject to protection by the law, provided that such an act does not harm the rights or interests of others, the state and society interests, provides for in respect of the participant of administrative procedure one-time or current monetary or property obligations or is a basis for the occurrence of such obligations. The participant to an administrative procedure is released from the obligation to return received money or other property if he, acting in good faith, has spent the money provided to him or used the property or in the condition that if he returns it, he will suffer considerable damage.

7. A participant to an administrative procedure cannot refer to the right to protection of trust in the following cases:

1) if he has achieved the adoption of an administrative act by providing knowingly false information, a bribe, threat, deception or commission of another wrongful act;

2) if he knew about the illegality of an administrative act or did not know this for gross negligence

8. In cases specified in part 7 of this article, an unlawful favorable administrative act shall be canceled. The cancellation of such an administrative act entails the cancellation of legal consequences that have arisen from the moment it came into force. In this case, the addressee of the administrative act and the interested person are obliged to reimburse the spent money or used property. The amount of compensation is established by the rules of civil legislation on unjustifiable enrichment.

9. An unlawful favorable administrative act that inflicts harm to the rights or legally protected interests of other persons, the interests of the state and society is subject to cancellation. The cancellation of this administrative act entails the cancellation of legal consequences that have arisen from the moment it came into force.

10. Losses caused to a bona fide addressee of an illegal favorable administrative act, to a bona fide interested person by the cancellation of such an act, shall be reimbursed. The amount of compensation payable to the participant to the administrative procedure is determined by the administrative body or official who canceled the illegal administrative act, within the limits of the actual damage caused.

11. The participant to an administrative procedure has the right to demand compensation for the damage caused within one year from the day when the person learned or should have learned about the cancellation of such an administrative act.

12. An unlawful administrative act may be canceled within one year, and in cases specified in part 7 of this article, within three years from the day when the grounds for its cancellation became known.

Article 58. Cancellation of a lawful administrative act

1. An administrative act adopted by an administrative body or official in accordance with the requirements of the law is considered lawful.

2. A lawful administrative act may be cancelled in full or in part. The administrative act can be canceled partially only if the unrepealed part can remain in force or act independently. If the administrative act is partially repealed, the rules of this article apply only to the relevant part.

3. A lawful adverse administrative act may be cancelled by the administrative body or official that has adopted it, unless otherwise is expressly provided for by the law.

4. A lawful favorable administrative act may be cancelled only in the following cases:

1) if the cancellation of such an administrative act is expressly provided for by the law and the administrative act itself;

2) if the administrative act is issued under a condition and this condition has not been executed properly;

3) if the factual or legal circumstances of the case at the existence of which at the time of the adoption of the administrative act the administrative body or official could not adopt such an administrative act have changed; at that, the addressee of the administrative act or the interested person has not used the rights granted by this administrative act, and keeping this administrative act in force may harm the interests of the state and society.

5. Unless otherwise expressly provided by law, the cancelation of a lawful administrative act shall entail the cancellation of the relevant legal consequences from the moment an administrative act on its cancellation comes into force.

6. Losses of a bona fide addressee of a lawful favorable administrative act or to a bona fide interested person that are caused by the cancellation of such an act shall be compensated in full. The amount of compensation payable to a participant to an administrative procedure is determined by the administrative body or official that canceled the legal administrative act.

7. A participant to an administrative procedure shall have the right to demand compensation for the caused damage within one year from the day when the person got to know or should have learned about the cancellation of such an administrative act.

8. A lawful administrative act may be cancelled within a year from the day when the grounds for its cancellation became known.

Article 59. Return of documents and property

Documents or property provided on the basis of an administrative act for the confirmation or exercise of any right may be claimed by an appropriate administrative body or official after the cancelation of this administrative act or its recognition as null and void. The person who is an actual owner of such documents and things must return them.

Chapter 6. Administrative appeal procedure

Article 60. The right to appeal an administrative act

The addressee of an administrative act or the interested person has the right to appeal the administrative acts or inaction of an administrative body or official in order to protect their rights.

Article 61. Complaints procedure

1. An administrative act or inaction of an administrative body or official is appealed in administrative or judicial order.

2. A complaint against an administrative act or omission may be administratively filed to the administrative body or official that has accepted the appealed administrative act, or to a higher administrative body or a higher-ranking official.

3. A complaint against an administrative act or omission of an administrative authority or an official is filed to a higher administrative authority or higher-ranking official directly or via the administrative body or official whose acts or inaction are being appealed. In the latter case, the administrative body or official is obliged to forward this complaint within three working days to the higher administrative authority or to a higher-ranking official authorized to consider the complaint.

4. The higher administrative body or official is not entitled to entrust consideration of the complaint to the administrative body or official whose administrative act or inaction is being appealed.

5. In the absence of the higher administrative body or higher official the administrative act, the inaction of the administrative body or official shall be appealed in court.

Article 62. Period for appeal

1. An administrative complaint can be filed:

1) against an administrative act – within one month from the date of the entry into force of an administrative act;

2) against the inaction of an administrative body or official – within three months from the expiration of a period provided for by law for the adoption of an administrative act.

2. If an administrative act does not specify the term or procedure for its appealing or if the administrative act affects the rights and legitimate interests of third parties who were not participants to the administrative procedure for its adoption a complaint against this administrative act may be filed within six months from the date of its entry into force.

3. In the event of a reasoned miss of the terms specified in this article the period for appeal can be restored by an administrative body or an official.

An administrative complaint is filed simultaneously with filing an application for restoring the term.

If the application for restoring the term for appeal is met the administrative complaint shall be deemed accepted.

Article 63. General requirements for an administrative complaint

An administrative complaint must contain:

1) the name of the administrative body (position, last name, first name, patronymic name of the official) to which the complaint is filed;

2) the surname, name, patronymic name of an individual filing the complaint, his place of residence or place of stay;

3) the surname, name, patronymic name of a person filing the complaint on behalf of a legal entity, his position, full name and location of the legal entity;

4) the claim of a person filing the complaint and the grounds for such claims;

5) list of documents attached to the complaint, if any;

6) the date, month and year of the complaint;

7) the signature of an individual or his representative filing the complaint, the signature of a person filing the complaint on behalf of a legal entity that is certified by the seal of the legal entity (if any).

Article 64. Actions of an administrative body or official in respect of a received administrative complaint

1. An administrative procedure for the consideration of an administrative complaint is initiated on the day the complaint is registered with an administrative authority or by an official.

2. The administrative body or official is obliged, upon receipt of the complaint, to verify its compliance with the requirements of articles 60-63 of this Federal Law.

The complaint shall be left without processing by the administrative body or official if it was filed in violation of the requirements of articles 60-63 of this Federal Law. In this case the administrative body or official immediately indicates shortcomings and provide the person who filed the complaint with the opportunity to correct them within the general time limit for appeal.

In case of failure to correct the deficiencies mentioned by the administrative body the complaint is recognized as inadmissible and shall bereturned to the person filing it.

3. After the initiation of an appeal procedure a higher administrative body or official is obliged to request the administrative case from the lower administrative bodies or officials immediately. Inferior administrative bodies or officials are obliged within five working days after the receipt of this request to submit the administrative case to the higher administrative body or higher-ranking official.

Article 65. Legal consequences of filing an administrative complaint

1. The filing of an administrative complaint shall suspend the execution of an appealed administrative act until the decision on the administrative complaint of an administrative body or official enters into force, except for cases when immediate execution is necessary, based on the interests of the state and society, as well as in other cases of immediate execution of an administrative act provided for by law.

2. An administrative body or official is entitled to take a reasoned decision to refuse to suspend the execution of an appealed administrative act and to warn the person about the inadmissibility of the abuse of right if the complaint has been filed solely for the purpose of such suspension.

Article 66. The order and limits for consideration of an administrative complaint

1. Consideration of an administrative complaint against an administrative act or inaction of an administrative body or official is carried out in accordance with the rules of chapter 4 of this Federal Law, unless otherwise provided by this chapter.

2. An appealed administrative act is verified for its legitimacy and relevancy, and in case of exercise of discretionary powers (discretion) it is also verified with a view to expediency.

3. When considering an administrative complaint an administrative body or official shall be guided with both the existing in the case and additionally provided evidence, provided that the latter could not be submitted at the stage of adoption of the appealed administrative act for valid reasons.

Article 67. Decision on an administrative complaint

1. A decision is made on the grounds of results of administrative complaint consideration.

2. A decision on an administrative complaint must include:

1) the name of the administrative body (position, last name, first name, patronymic name of the official) that made the decision; the members of the collegial body; the case number of the administrative complaint procedure and the date of the decision; surnames, names, patronymic names of participants to the administrative complaint procedure; the date of adoption of an appealed administrative act and the name of the administrative body (position, surname, first name, patronymic name of the official); the members of the collegial body that adopted the appealed administrative act.

2) the surname, name, patronymic name or the name of the complaining addressee of an administrative act or person concerned;

3) a summary of the content of the appealed administrative act;

4) the reasons of the complaint;

5) the explanation of the addressee of an administrative act and the person concerned who was present at the consideration of the complaint;

6) the established circumstances of the case and the evidence that led to the conclusions of an administrative authority or official considering the administrative complaint;

7) motives for which these or other evidences were rejected and normative legal acts that had been referred to by participants of the administrative appeal procedure were not applied;

8) normative legal acts by which an administrative body or official was guided in making decision on the administrative complaint;

9) motives for which an administrative body or official did not agree with the conclusions of inferior administrative bodies or officials in the cancellation or amendment of thane administrative act.

10) conclusions on the results of consideration of the administrative complaint.

3. The decision on the administrative complaint also indicates the procedure for allocating administrative costs.

4. The decision on the administrative complaint shall enter into force in the manner prescribed by this Federal Law.

5. The decision on the administrative complaint shall be sent to the addressee of an administrative act and interested persons or delivered to them within three working days from the date of adoption.

6. Administrative appeal and review of the decision on an administrative complaint to a higher administrative body or higher-ranking official are carried out according to the rules of this chapter of this Federal Law.

Article 68. Taking of a decision on an administrative complaint

1. Based on the results of an administrative complaint consideration, the administrative body or official has the right:

1) to leave the complaint without satisfaction, and the administrative act without change;

2) to meet the complaint in whole or in part, canceling completely or partially the administrative act and adopting a new administrative act.

2. Based on the results of consideration of the administrative complaint, a decision that worsens the position of a person in comparison with the initial administrative act is not allowed.

3. Based on the results of consideration of an administrative complaint on inaction of an administrative body or official the body or official that reviews the complaint takes one of the following decisions:

1) to meet the complaint in full or in part by adopting an administrative act;

2) to reject the complaint.

Chapter 7. Procedure for the execution of an administrative act

Article 69. Obligatoriness of an administrative act

1. An administrative act and a decision on an administrative complaint (hereinafter – the act and decision) are binding for execution.

2. The act and decision shall be executed upon the expiration of the time limit for appeal provided for by this Federal Law.

3. In cases provided for by law, as well as on the basis of public interests, the act and decision may be executed immediately.

4. Unless otherwise provided by law, the act shall be enforced by the administrative body or official that has accepted it.

5. A decision on an administrative complaint shall be forwarded to an inferior administrative body or official authorized to enforce it, within three working days from the date of adoption of the decision.

6. The administrative body or official shall be obliged to determine precisely what actions the addressee of the act (decision) and the interested person must perform in connection with the execution of the act (decision).

Article 70. Period for the execution of an act or decision

1. The act and the decision are to be executed within a period of not more than ten working days from the date of expiration of appeal period.

2. The law may establish a shorter term for the execution of acts or decisions on certain categories of administrative procedures.

Article 71. Procedure for the execution of acts and decisions

1. The act and decision are executed by the performing by an authorized administrative body or official of actions specified in the act or decision.

2. The performance of actions for the execution of the act or decision may be certified by a separate document or an appropriate note in the act (decision).

3. The act (decision) on the providing to the applicant of a document having legal significance is deemed to be executed from the moment of the factual providing of the document of an established form.

4. In the cases established by law, the execution of the act or decision on certain categories of cases may be conditioned by the applicant's performance of certain actions.

Article 72. Consequences of failure of an official to perform the act and decision

1. An official who has not fulfilled the act and the decision of an administrative body or official is subject to disciplinary, administrative, criminal and other liability established by the legislation of the Russian Federation.

2. Bringing to responsibility does not release the official from the execution of the act and decision of an administrative body or official.

Article 73. Compulsory execution of administrative acts and decisions obliging to perform certain actions, to undergo certain actions or to refrain from performing certain actions.

1. The act and the decision that are not executed voluntarily in the established term shall be are executed compulsorily.

2. The act and the decision obliging to perform certain actions, to undergo certain actions or to refrain from performing certain actions that have not been performed voluntarily shall be enforced by compulsory means with the following coercive measures:

1) execution of actions at the expense of the addressee of the act, decision;

2) a fine;

3) direct coercion.

3. A coercive measure must be commensurate with its purpose. The coercive measure should be chosen so that the losses of participants to an administrative procedure are minimal.

4. The addressee of the act, decision must be noticed in advance by the administrative body or official about the application of enforcement measures, except for urgent cases related to the prevention or elimination of the danger to the interests of the state and society, as well as in other cases directly provided by law.

5. The notice shall be sent in writing and officially handed over to the addressee of the act (decision) in accordance with the rules of this Federal Law on the delivery of administrative acts.

6. The notice specifies the period given for the execution of the act (decision) on a voluntary basis, and prescribed measures of compulsory execution to be applied after the expiration of this period. The notice may provide only one measure of coercive execution. In the event when the previously chosen measure of enforcement failed to achieve its purpose, another coercive execution measure may be allowed. Enforcement measures may be repeated or modified.

7. The notice indicates the act (decision) to be enforced and the grounds for applying enforcement measures.

8. In the event that the addressee and the interested person fulfill the act (decision), the application of measures of compulsory execution is immediately terminated.

9. If an obligated person provides resistance during the compulsory execution of the act (decision), other measures provided by law may be applied to him / her. In this case, at the request of an administrative body or official authorized for the execution of the act (decision) the relevant administrative bodies, officials are obliged to render assistance in overcoming of the resistance.

Article 74. Commitment of actions for account of the addressee of an administrative act (decision)

1. If the prescribed obligation of the addressee of the act (decision) to perform any actions is not fulfilled by itself an administrative body or official is authorized to instruct another person to commit such actions for account of the addressee of the act (decision).

2. The administrative body or official is entitled, if possible, to carry out such actions itself at the expense of the addressee of the act (decision), unless otherwise provided by law.

Article 75. Fines

The violation by the addressee of the act (decision) and the person concerned of the requirements of this chapter shall result in the imposition of a fine to individuals in the amount of

from two thousand to ten thousand rubles; to legal entities – from ten thousand to fifty thousand rubles.

The procedure for the collection of fines provided for in this article is determined by the legislation on administrative violations.

Article 76. Direct coercion

1. If the commission of actions for account of the addressee of the act (decision) or a fine does not lead to the goal or due to objective circumstances cannot be applied an authorized administrative body or official has the right to directly compel the obligated person to commit an appropriate action or to prohibit the commission of a specific action.

2. When direct coercion, measures provided for by the Law of the Russian Federation on Law Enforcement Bodies may be used.

Chapter 8. Administrative expenditure

Article 77. Administrative expenditure

1. Administrative expenditure shall include a state fee paid in the course of an administrative procedure in accordance with the procedure and amount established by the legislation of the Russian Federation on taxes and fees, as well as other types of expenses established by this chapter.

2. Issues of return, exemption from payment of duties, deferral or installments, reduction of the amount of payment in the implementation of an administrative procedure are regulated by the legislation of the Russian Federation on taxes and fees.

Article 78. Other expenses in the course of an administrative procedure

1. Other expenses in the course of an administrative procedure include:

1) costs associated with the delivery of an administrative act or decision on an administrative complaint or other documents to their addressees;

2) costs associated to the invitation of witnesses, experts and translators;

3) costs associated with the provision of additional copies of documents relevant to an administrative act or procedure, as well as the costs associated with the copying of these documents, extracts from them and the provision of the latter;

4) business trip expenses;

5) amounts that must be paid to other administrative bodies, officials and other persons for their assistance or services;

6) costs associated to the moving or provision of security of things;

7) the expenses of an administrative body or official connected to the execution of an administrative act or decision on an administrative complaint;

8) amounts paid to experts, specialists and translators in the execution of an administrative procedure.

2. The expenses envisaged in part 1 of this article lie with the administrative body or official who executes an administrative procedure. The expenses connected to the invitation of an expert or an interpreter are reimbursed in the manner provided for in article 79 of this Federal Law.

The expenses connected to the copying and extracts from the materials of an administrative case shall lie with the person who presented such a demand. Such expenses must not exceed the factual costs incurred by an administrative body or official on the copying and extraction.

Article 79. Monetary amounts payable to witnesses, experts and translators during implementation of an administrative procedure

1. The work of experts and translators in the implementation of an administrative procedure is paid if it is not part of their official or labor duties in a particular administrative body.

2. The costs connected to the participation of witnesses, experts and translators in the implementation of an administrative procedure are reimbursed from the corresponding budget, depending on which of the administrative bodies invited these persons (federal government

bodies, state authorities of a constituent territory of the Russian Federation or local self-government bodies).

If an expert was involved at the request of a participant to an administrative procedure, then this participant to the administrative procedure pays the costs.

Article 80. Expenditures when the provision of mutual assistance by administrative bodies or officials

The costs connected to the implementation of mutual assistance lie with the administrative bodies or officials providing assistance.

Chapter 9. Responsibility of administrative bodies and officials

Article 81. Responsibility of administrative bodies and officials

Responsibility for losses caused by administrative bodies or officials to individuals and legal entities in the implementation of administrative procedures is determined in accordance with civil legislation and this Federal Law.

Article 82. Responsibility of officials of administrative bodies

Officials of administrative bodies in accordance with the procedure established by law shall bear disciplinary, administrative or criminal responsibility for violation of the requirements of this Federal Law.

Bringing of a guilty official to disciplinary, administrative or criminal responsibility does not relieve him of the obligation to eliminate committed violations of the law requirements and compensate for the losses incurred.

Chapter 10. Final and transitional provisions

Article 83. Final provisions

1. Administrative acts adopted before the entry into force of this Federal Law shall not be brought into conformity with this Federal Law.

2. Administrative procedures that have been initiated and not completed at the time of entry into force of this Federal Law shall be implemented in accordance with this Federal Law.

Article 84. On the recognition of certain legislative acts (provisions of legislative acts) of the Russian Federation as invalid

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Article 85. Entry into force of this Federal Law

This Federal Law shall enter into force ten days after the day of its official publication.

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Jan Ziekow

The Role of Administrative Procedure Law in Modernization of the State: the Case of Germany

Prof, Dr. h.c., Distinguished Rector of the Academy, distinguished Vice Rector

I would like to sincerely thank you for this kind invitation to this most interesting international conference. Administrative procedure and administrative procedural law have long been an important part of my field of activity in science and in practice. As a member of the advisory board for the German Ministry of the Interior, which is responsible for administrative procedural law, I have been participating in the political discussions on these laws for years. Drawing on the example of Germany, I would like to take the opportunity today to present to you some reflections and observations on the role that administrative procedural law plays in the modernization of the state.

What, you may ask, does administrative procedural law have to do with the modernization of the state? Are they not actually two completely different levels: On the one hand the "big wheel of history", the future viability of the state and its administration, and on the other hand the laws that merely regulate the procedures followed by that administration? Of course, this observation is correct and the modernization of the state and administrative procedural law are not on the same level. Above all, the modernization of the state is a process, one that is founded on the ideas of permanence and comprehensiveness, touching on numerous and very different areas. Yet in order to produce effective results, this process requires tools to realize the objectives of any given reform.

In a state like Germany, which has a legalistic administrative culture, making the administration largely rule driven, government reforms are, to a great extent, carried out via the ruling

instrument of law. This applies to substantive law, which regulates the regime of rights and duties, as well as to administrative procedural law.

The procedures of public administration are not only a social system to reduce complexity, to structure communication between various parties in order to reach a decision, but also a system to shape the exercise of power. These procedures mediate between constitutional requirements and administrative reality and act as the necessary coordinating mechanism for the social reality of substantive administrative law. Thus even administrative procedural law has to react to changing social realities.

Indeed, German general administrative procedural law has traditionally been very cautious in its attitude towards the acceptance of political impulses for modernization. To understand this restraint, it is necessary to understand the distinction German administrative law makes between general and special administrative law.

The traditional, and still in principle justifiable, distinction between general and special administrative procedural law is characterized by the fact that special administrative law is a special law that is oriented towards area specific objective issues. Such laws are designed to find solutions to sector-specific problems. The wide range of different issues they cover creates a reservoir of solution patterns, which through reduction of area specific characteristics one can derive more generalizable solutions.

This abstraction process enables the development of universal administrative sector regulation models within general administrative procedural law that can be applied in several or even all special administrative laws. In view of this understanding, the innovation potential of general administration procedural law for state modernization will result primarily from its openness to receiving new ideas. Thus, to the extent that state modernization makes use of the instrument of administrative law, the process will start first with special administrative law. Only if these new regulations have withstood the test outlined here will they be able to generate generalizable models that can then be transformed to the more abstract level of general administrative procedural law.

Through this transformation, general administrative law can offer models that can handle functionally comparable problems more efficiently. The reservoir capacity of these models can be great enough to address even questions which had not appeared before the model's formula-

tion. An example of such model is the specialization of the doctrine of the legislative form of action, seen especially in the administrative act and contract under public law.

This two-step nature of the implementation of modernization impulses into the legal system is designed for longer time cycles and means that the status of German administrative procedural law has remained virtually unchanged for decades. However, this perspective has changed significantly in recent years. The background for this change is a stronger focus on the so-called deployment feature of law. It points to the function of administrative law as being perceived as legitimate and able to generate constitutional and situation-appropriate decisions and thus enabling effective administrative action that is also close to the citizen. Law has to provide the necessary legal forms, institutions, procedures, and types of organization. Methodologically, this means a requirement for a task- and function-oriented approach. Administrative law has to ask what functions and tasks have to be managed by the administration and provide the administration with the necessary tools to ensure that it can handle the tasks to be carried out. The above-described model of general administrative procedural law developed on the basis of generalization from institutions of special administrative law will not generate this relationship between task and reality.

Therefore, such approach of generalization is not suitable or sufficient for the function of general administrative law. The implementation of innovations into administrative law will not necessarily develop in steps through abstraction. Because of its capacity to overarch different areas, general administrative law and thus administrative procedural law are indispensable as an innovation-promoting medium. Especially, when it comes to the question of the implementation of innovation, the structural, that is the conduct-arrangig role of the trans-sectoral administrative procedural law, is essential. The introduction of normative measures for the modernization of the state will only achieve the necessary significance for administrative practice if encompassing all administrative areas. Not without reason, in politics and science, administrative procedural law is called the “constitution of administration”. This is why we can talk about an innovation guiding function for general administrative procedural law.

2. Examples from the German discourse of government modernization

In recent discourse, this innovation guiding function of administrative procedural law has become increasingly important. In what follows, I will demonstrate this fact by means of some examples from recent years.

a) New Public Management

The first example is related to the implementation of elements of the New Public Management into German administration. This example might at first surprise experts from different administrative cultures, as New Public Management is the expression of a managerial administrative culture, which is quite different from the traditional legalistic administrative culture in Germany. Yet it is precisely this legalistic administrative culture that gives room for the discussion about the juridification of the various management instruments. A typical example is the discussion about the necessity for legal regulation of contract management between the political leadership and decentralized executive authorities and agencies.

I have previously advised against the implementation of regulations for contract management and other elements of the New Public Management, such as product-oriented output control and means of controlling in administrative procedure law. I recommended implementation in administrative procedural law in regard to only two issues: quality management and the customer orientation of administration. In view of the strengthened role of the administration as a service provider, it would be advisable, for example, to aim to introduce a quality management system in administrative procedural law, thereby ensuring the quality of public services along all aspects of citizen interest. This recommendation has not been taken up by the legislators.

The case is different in regard to the one-stop shops that take up the idea of customer orientation. Also in this context, I recommended a regulation to be implemented in administrative procedural law in order to place customer orientation and the front office/back office-model from New Public Management and associated questions in a prominent place. In the year 2008 the respective regulations of the administrative procedural law were amended by articles (§§ 71a to 71e) establishing the so-called single authority. The decisive impetus for this was the implementation of the EU Services Directive, which took up this element of New Public Management. The noteworthy development was that the associated issues concerning the single authority were regulated not only in special procedural law, as would have been the case in the above-described traditional German approach. Instead, an extensive regulation was implemented in administrative procedural law in order to assert this essential impulse of modernization in a prominent position.

b) Public Private Partnership

My second example relates to the instrument of Public Private Partnerships. In the 1990s the concept of a "lean government", as well as the model of the enabling state from the first decade of the new millennium, became seen as an important orientation framework for understanding the relationship between the state and society, leading to the so-called idea of shared responsibility.

This idea, were it to be met, would require expressing the most important principal lines of the changed state-society relationship within administrative procedural law. Therefore, the Federal Ministry of the Interior instructed me to deliver a comprehensive opinion on the necessary reforms. Among others, I suggested further developing the already existing regulations in paragraphs 54 ff. of the law on the public contracts and to complement it with provisions for a new type of administrative cooperation contract. This proposal has until recently been discussed very intensively within administrative law sciences. A vast majority considered it appropriate to implement regulations for the administrative cooperation contract into administrative procedural law. This led to a specimen draft for the officials responsible for administrative procedural law in the ministries of the federation and the federal states, which then provided for explicit regulations for a new type of cooperation contract. This development could be seen as a clear expression of a paradigm shift that recognizes the significant role of administrative procedural law in the modernization of the state.

However, a corresponding law has not yet been adopted, as in recent years the evaluation of the value of public-private partnerships in Germany has again changed. With the financial and economic crisis, one can see a decline in the use of the PPP instrument in administrative practice. After the crisis, the image emerged of the state as the only actor able to act during such difficult periods. Nowadays, as compared to before the crises, the performance of public services has become more the exclusive task of the state alone. Associated with this shift, service tasks that had been privatized before the crisis have been transferred back to the state and local authorities in recent years.

c) Citizen participation

The third example deals with the improvement of citizen participation when it comes to the realization of large projects. Until the first decade of the new millennium, Germany has re-

garded the international trend for more citizen participation with caution. Due to historical experiences in Germany, the organs of representative democracy were absolutely dominant over instruments of direct democracy.

The completely new perception and evaluation of citizen participation arose due to incidents in the context of the expansion of Stuttgart's main railway station in the year 2010, a project known in Germany as "Stuttgart 21". With the beginning of the construction of the new railway terminal, citizens protested very vigorously. In order to calm the situation after controversial police interventions, the former federal minister Geissler was appointed to act as a mediator. His conciliation efforts did not lead to the complete disappearance of mass protest in the streets; however, they did decrease significantly.

As a consequence of these events, political opinion in Germany shifted, coming to recognize that the relationship between the state and citizens had changed fundamentally in the 21st century and that this change had to be expressed by means of new legal regulations. For two years I was a member of a parliamentary Enquete Commission on "citizen-participation", which developed a variety of proposals in this context.

While regulations on citizen participation were previously established in special administrative law, which regulates the conduct of large projects, now there was from the beginning unanimity about the fact that this question has become so politically important that the change in the understanding of the state should be manifested in administrative procedural law. A corresponding regulation that aims at early public participation has thus been inserted in a prominent position as the new section 25 (3) (§25 Abs. 3) within the general procedural principles.

d) E- government

The last example relates to the area of e-government. In modernization theory, there is an intense discussion whether digitalization of the internal and external business processes of administration and its communication constitutes a mere instrument for the effective and efficient fulfillment of administrative tasks, or whether we are seeing a comprehensive digital transformation of administration. The Speyer institute supports the latter position and therefore has called one of its core program areas "Transformation of the state *through* digitalization". The German government's broad-based program "Digital Agenda" shows that the Federal Government views it the same way.

There is an intense debate about how the administration related questions of this agenda could be implemented in law. In the first instance, the Federal Government did not have full confidence in the innovation guiding function of general administrative procedural law. They were of the opinion that in addition to amending administrative procedural law, it would be necessary to establish an independent E-Government Act, which even in its title alone emphasizes the special significance of the modernization impact of e-government. This law was enacted in the year 2013. Since then, the government has left the path of creating special procedural law and has chosen reform via amendments to administrative procedural law in order to provide a further substantial impetus for modernization.

This relates especially to opening-up the possibility for an administrative act that is adopted fully automated, that operates without the contribution of any human decisions when applied to given concrete cases. Two weeks ago, the Federal government enacted a corresponding law.

3. Conclusion

In conclusion, I think that my comments have made clear that general administrative procedure law has undergone a substantial change of meaning during the last years. Recently, the innovation guiding function of administrative procedural law has become increasingly evident. At the least it is necessary to consider how essential measures for the modernization and its administration can be embedded in administrative procedural law. Within Germany this question has at the very least been discussed, while these discussions have sometimes also led to various changes and amendments of the law. As a result, procedural law has gained a significant role in the modernization of the state.

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Savanovich N.A.

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,

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[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.

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.

Universal Decimal Classification 342.9

Chvosta Peter

Administrative Procedures with Adversarial Parties – Extent and Restrictions of the Right to Inspect on Relevant Facts

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A. Introduction

The following issue is a problem of the daily practice for the administrative authorities, lawyers and the Administrative Courts in Austria. At the outset I want to demonstrate the problem with a legal provision regulating the party status of an administrative court proceeding. Art. 18 of the Austrian Proceedings of Administrative Courts Act[243] states the following:

„Parties

§ 18. The respondent authority shall also be a party."

This Paragraph does not give any remark *who else* could *also* be a procedural party. And there is no other legal provision after this paragraph (and none before) to add who could be party of the proceeding. It is obvious that the complainant will be party too. But who else? This legal provision is not a joke but an excellent example for the poor quality of the Austrian legislation in the last 20 years leaving it up to the jurisdiction to find answers instead of the legislator. Of course the Courts will find reasonable results in the way of the interpretation of procedural rules, but it should be up to the legislator to regulate because there are very

[243] Verwaltungsgerichtsverfahrensgesetz, Federal Act on Proceedings of Administrative Courts, Federal Law Gazette No. 33/2013.

important political aspects behind the question who should be participant of an administrative procedure.

In the following I don't want to focus on the typical administrative procedural scenario with the administrative authority deciding on a motion on the one hand and the applicant as the one and only party of the procedure on the other hand.

There are many constellations where other persons are potentially directly and intensively affected by an administrative decision. This phenomenon is called in the Austrian and German doctrine "administrative acts with third-party effect". The classical example for that is the administrative procedure concerning a construction permit for a building: Many Building Regulations provide that certain neighbours are entitled to participate in the procedure to pursue their rights when the application for the construction permit is considered and examined by the administrative body.

No one would deny the question if a person concerned by a decision of the administration authority may participate in the procedure dealing with the decision. Without a doubt it is not compatible with the Principle of the Rule of Law and many other fundamental rights that a person whose legal sphere is affected intensively by a decision is not entitled to be involved in the proceeding leading to this decision. In Austria jurisdiction and science derive from the Rule of Law Principle that in case of (significant) interferences in a person's right by actions of the administration body there must be provided the possibility to lodge a remedy with the courts by the affected person.[244]

B. Who is a Procedural Party?

1. The latest jurisdiction of the Court of Justice of the European Union

In Austria the issue of the party status of third persons has become more and more important in the near past, inter alia because of the latest jurisdiction of the Court of Justice of the European Union about the participation of neighbours in administrative procedures concerning environmental impact assessments: In Austria every big project, like the

[244] See VfSlg. 13.223/1992, 13.699/1994; see for example *Ludwig Adamovich/Bernd-Christian Funk/Gerhart Holzinger/Stefan L. Frank*, Österreichisches Staatsrecht IV (2010), p. 188.

construction of an airport, a motorway, wind park facilities or a power station, requires not only a building permit, but also an *environmental impact assessment* in order to examine the possible impacts of the project on the environment and to reduce negative effects on the environment (and other aspects like the health of the citizens living in the area where the project shall be realized).

Neighbours had always had party status in an approval procedure and could raise any defences or objections against the project, but they didn't have any party status in a special declaration procedure where the preliminary question is clarified if there is an environmental impact assessment necessary at all (the applicant may initiate such a procedure to obtain assurance whether an environmental impact assessment is necessary or not; in this proceeding special environmentalist's organisations and the local municipality are recognized as parties instead of neighbours). If the administrative authority decided within such a declaration proceeding that a particular project did not require an environmental impact assessment, the neighbours didn't have any opportunity to assert their rights in case of a wrong decision. After the Austrian Supreme Administrative Court had asked to the Court of Justice of the European Union for a preliminary ruling, the Court of Justice[245] held that such a national legislation breaches the law of the European Union when persons with "sufficient interest" or persons "impaired of a right" (such as neighbours) are precluded from bringing an action against the administrative decision declaring that a project does not require an environmental impact assessment.[246]

Due to this judgement of the Court of Justice of the European Union the Republic of Austria had to change the national legislation immediately and had to provide that neighbours may assert their rights in the way that they can lodge an objection when the administrative authority decides that an environmental impact assessment is not required in case of a special project.[247]

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[245] Judgement of the Court of the European Union, 16th of April 2015, C-570/13, Karoline Gruber: The Judgement concerned the interpretation of Article 11 of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment and Paragraph 3 of the Austrian Law on Environmental Impact Assessments stipulated that only a special ombudsman for the environment and the host municipality shall have the status of parties to the procedure. See for further details *Wolfgang Berger*, EuGH verneint Bindungswirkung von UVP-Feststellungsbescheiden, RdU 2015, p. 123; *Julia Kager*, **Neues zur Parteistellung in der UVP, ZVG 2016, p. 110**.

[246] See Paragraph 3 (7a) of the Law on Environmental Impact Assessments as amended by Federal Law Gazette No. 6/2016.

[247] The requirement of an environmental impact assessment depends on the concrete project: larger projects or those with potentially the most significant environmental effects, such as airports, oil refineries, or motorways always require an

2. The legal framework for the party status

In the end it is up to the legislator to determine if and in which extent a person is granted party status: In Austria the General Administrative Procedure Act[248] contains in Paragraph 8 the provision that

"Persons who make use of the services performed by an authority or who are affected by the activity of such authority, are persons involved, and, to the extent they are involved in the matter on the grounds of a legal title or a legal interest, they are parties."

Paragraph 8 of the General Administrative Procedure Act is not the basis for subjective rights but it is referring to the substantive laws where the subjective rights are implemented. An example for such a substantive provision is Paragraph 6 of the Construction Ordinance of Lower Austria which binds the party status to the direct proximity of the neighbours' property to the building or building project:

"(1) In building permit procedure laws and building supervisory procedures ... have party status:

1. the applicant and the owner of the building

2. the owner of the building property

3. the owner of the land adjacent to the plot ..."

The law establishes the legal interest of the neighbour. Another example is Section 75 of the Austrian Industrial Code requiring the participation of neighbours in the administrative procedure concerning the approval of production facilities and defines neighbours as "persons who might be endangered by the construction, the existence or operation of an operating system or harassed or threatened their property or other rights in rem".

This legal construction seems to me very usual as you can find similar regulations also in Germany[249], Norway[250], Switzerland[251], Kyrgyzstan[252] and in many other countries.[253]

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environmental impact assessment. In other cases the requirement of carrying out an environmental impact assessment depends on whether it is likely to have a significant effect on the environment, by virtue of factors such as its size, nature or location (see for example Annex I and II of the Directive 2011/92/EU).

[248] Österreichisches Bundesgesetz über das allgemeine Verwaltungsverfahren (AVG), Federal Law Gazette No. 172/1925.

[249] Section 13 of the German Administrative Procedure Act requires the participation of persons "opposing an application" or persons "whose legal interests may be affected by the result". Where "such a result has a legal effect for a third party, the latter may upon request be involved in the proceedings as a participant."

[250] According to Art. 3 of the Norwegian General Administrative Procedure Act, a party is "a person to whom a decision is directed or whom the case otherwise directly concerns (see Act of 10 February 1967 relating to procedure in cases concerning the public Administration).

In the daily practice substantive legal provisions as I already cited defining who is exactly party of an administrative procedure appear rather rare and occasionly. The absence of an explicit statement of the legislator must not lead to the conclusion, that the legislation did not recognize any party status. In many cases the Administrative Courts analyse on the basis of the legal provisions if there is an interest of a person which is legally protected by the law.

3. Legal interests

The legal interest of a person is in Austria the main criteria for his participation as a party in an administrative proceeding. Social interests or economical interests are not sufficient.[254] For example in case of a creditor who wanted to take part in the administrative proceeding of his debtor in order to prevent the withdrawal of his approval for the business pursuant to the Industry Code, the Supreme Administrative Court denied the legal interest of the creditor because his intention to participate in the proceeding in order to prevent the own credit default reveals an economical interest but not a legally protected interest.[255] In some cases it is rather complicated do distinguish between legal and especially economical interests.[256]

The recognition or appreciation as a party is closely linked to the question of the *subjective* (individual) *rights* of a person. The Austrian jurisdiction accepts a subjective right (and consequently) party status in favour of a person, when "the objective law imposes a duty on the administrative authority to act in the interest of a *specially concerned person and not only in the interest of the public in general"*.[257] The legal obligation of the administrative body shall not be

[251] Pursuant to Art. 6 of the Swiss Federal Act on Administrative Procedure of 20th of December 1968 Parties are persons whose rights or obligations are intended to be affected by the ruling and other persons, organisations or authorities who have a legal remedy against the ruling.

[252] Also the Constitutional Law on the fundamentals of administrative action and administrative procedure of the Kyrgyz Republic declares in Art. 2 "concerned persons" as participants of the administrative proceeding and states that a person whose rights and legally protected interests are potentially affected by the administrative act are such concerned persons.

[253] For further international comparison see *Jean-Bernard Auby* (edt.), Codification of Administrative Procedure (2013), 4.1.3.

[254] See *Dieter Kolonovits/Gerhard Muzak/Karl Stöger*, Verwaltungsverfahrensrecht (2014) 10th Edition, p. 55; *Magdalena Pöschl*, Wirtschaftliche Interessen und subjektive Rechte, in Festschrift Wimmer (2007), p. 494.

[255] VwSlg. 16936 A/2006.

[256] See *Magdalena Pöschl*, Subjektive Rechte und Verwaltungsrecht, in Verhandlungen des 16. Österreichischen Juristentages (2006) I/2, p. 18.

[257] See VwSlg. 9151 A/1976; VfSlg. 12.838/1991; for further details see for example *Christian Ranacher/Markus Frischhuth*, Handbuch Anwendung des EU-Rechts (2009), p. 351.

restricted to the public interest but shall (at least also) be in the interest of individuals which means that the legal provision serves to protect the interest of individual citizens.[258]

In detail the jurisdiction of the last decades turns out to be very casuistic and complex: In general a citizen does not have a subjective right or personal claim to certain police powers as long as he is not personally affected by its exercise. A neighbour has a subjective right to compliance with the building regulations, but only in that extent, that the concrete rules serve (also) to protect the neighbour.[259] Another example demonstrating the complexity of the jurisdiction may be the legal position of candidates for the occupation of major or higher positions in public office, for example for headmasters of schools: Pursuant to the jurisdiction of the Constitutional Court no candidate has a subjective right or claim to a special job but if a candidate was selected onto the shortlist of the nomination proposal, this person is allowed to lodge a complaint against the decision in favour of the successful candidate.[260]

4. The right of appeal for an "ignored party"

In reality it may happen that a party with a legal interest is not involved by the administrative authority in the administrative proceeding although it should have happened. Pursuant to the jurisdiction of the Supreme Administrative Court a socalled "ignored party" can either apply for receiving the administrative decision issued at the end of the administrative proceeding and appeal against this decision, or the party can appeal directly against the administrative decision.[261]

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[258] See for example Supreme Administrative Court, 26th February 2003, 2000/03/0328. This approach has its origin inter alia in the theories of *Hans Kelsen* (see for example *Hans Kelsen*, Allgemeine Staatslehre [1925, reprint 1993], p. 152 et seq.). The legal scholarship calls that „protection standard principle" (see *Magdalena Pöschl*, Subjektive Rechte und Verwaltungsrecht, in Verhandlungen des 16. Österreichischen Juristentages (2006) I/2, p. 11 et seq.).

[259] For example the neighbour has the right to claim the compliance with the rules concerning the distance of a building to the neighbour's property boundary but not the compliance with the regulations regarding the interior's building at the neighbouring property (see in detail *Ludwig Adamovich/Bernd-Christian Funk/Gerhart Holzinger/Stefan L. Frank*, Österreichisches Staatsrecht IV (2010), p. 328).

[260] Though the appointing authority has wide discretion when selecting the most appropriate applicant, the subjective right of an unsuccessful candidate allows an examination of the exercise of discretion. See VfSlg. 9923/1984, 12.102/1989, 12.476/1990, 18.095/2007, 19.670/2012.

[261] See *Johannes Hengstschläger/David Leeb*, AVG² (2014), § 8 Rz 21; furthermore *David Leeb*, Die Bescheidbeschwerdelegitimation „übergangener Parteien", ÖJZ 2015, p. 975 ed seq. see also Administrative Court, 15th of November, 2001, 2000/07/0100; 21st of March, 2013, 2011/06/0118, 11th of March 2015, Ro 2015/17/0001.

C. Rights of a concerned person in an administrative procedure

1. Competitive situation and "Equality of arms"

The legal position and the extent of the rights of a party can be designed by the legislator in various ways. But you have to keep in mind that usually these parties are in a competitive situation of interests: The neighbour has special interests which very often might conflict with the interests of the applicant applying for a construction licence or a positive environmental impact assessment for a building or a tunnel railway through a mountain. These parties are in almost the same situation like parties of a civil litigation in a civil procedure. The same constellation appears in cases with several parties applying for a concession or permission and only "the best candidate" for the permission has to be found within the proceeding. The Austrian law provides such procedures for example to award a radio broadcasting licence or a permission for running special services like gambling licences for a casino or ground handling services on airports. In all of these cases when the applicant with the best qualification is granted the concession or licence, the unsuccessful candidates have the right to lodge a complaint with an administrative court to claim that he should have received the permission instead of the chosen candidate.[262]

There is no need to say that especially in such administrative procedures with several (adversarial) parties the "principle of equality of arms" has to be considered. Therefore a concerned person shall have basically the same rights like an applicant: That includes usually the right to be notified on launching of an administrative procedure, to reject officials of the authority, of experts or translaters in case of partiality, the right to receive the decision and to appeal against the decision and of course the right to a fair hearing, the right of access to the files and so on.[263]

[262] See for example Federal Administrative Court, 21st of July 2015, W139 2010508-1, concerning the award of a gambling licence for a casino in Vienna by the Federal Minister of Finance, or Federal Administrative Court 12th of August 2014, W194 2013711-1/12E, about the admission to use a certain transmission capacity for a radio programme in Vienna.

[263] See for example *Ludwig Adamovich/Bernd-Christian Funk/Gerhart Holzinger/Stefan L. Frank*, Österreichisches Staatsrecht IV (2010), p. 342.

These rights shall provide that the concerned persons can pursue their rights effectively. Most of them are also guaranteed by Art. 6 of the European Convention on Human Rights, the right to a fair trial in criminal law cases and cases to determine civil rights.[264]

2. Specific features in multiple-party procedures

The right to a hearing and the right to be heard are one of the core elements of an administrative procedure complying with demands of the Rule of Law and every modern legal state. Further more the right to be heard would not be worth much if it did not include the right of access to the files and the right to inspect and comment all evidence relevant for the case. It would be unbearable to restrict the right to be heard by limiting the access to the documents and facts which are substantial for the decision of the administrative authority.

But in special constellations like multiple-party procedures also this fundamental principle faces restrictions, as the preliminary ruling of the Court of Justice of the European Union in the case Varec vs. Belgium[265] demonstrates:

The decision was proceded a contract award procedure in respect of the supply of track links for "Leopard" tanks. When examining the two tenders, the Belgian State as the deciding instance considered that the tender submitted by Varec was unlawful and, by contrast, the tender by the second tenderer, Diehl Remscheid Inc., satisfied al the selection criteria. Varec brought an action for annulment of the award decision in favour of Diehl Remscheid Inc. to the Administrative Court. The file delivered to the Court did not contain the successful tender of Diehl Remscheid. Therefore Varec requested that the tender shall be added to the file, but Diehl Remscheid objected the transmission of the tender on the ground that Varec would be able to peruse confidential data and information relating to business secrets included in the tender. Varec claimed that the right to a fair hearing means that the parties are entitled to a process of inspecting and commenting on all documents or observations submitted to the court with a view to influencing its decision.

The Court of Justice of the European Union emphasized that the unlimited access for an economic operator to confidential informations of another competitor like in this case could be

[264] See for example *Grabenwarter* Europäische Menschenrechtskonvention (2008) 3rd edition, p. 340; *Heinz Mayer/Gerhard Muzak*, B-VG (2015) 5th edition, p. 732.
[265] Court of Justice of the European Union, 14th of February 2008, C-450/06, Varec vs. Belgium.

used to distort competition or damage the legitimate interests of economic operators who participated in the contract award procedure. Such an opportunity could even encourage economic operators to bring an appeal solely for the purpose of gaining access to their competitors' business secrets (on the other hand economic operators would not participate in contract award procedures when it is evident when they have to expose their business secrets). The adversarial principle and the right to process of inspecting and commenting on the evidence submitted to the court do not mean that the parties are entitled to unlimited and absolute access to all of the information relating to the award procedure concerned which has been filed with the body responsible for the review of the award procedure. On the contrary, that right of access must be balanced against the right of other economic operators to the protection of their confidential information and their business secrets. The deciding authority must be able to have at its disposal the information required in order to decide in full knowledge of the facts, including confidential information and business secrets. But the authority also has to decide that the information in the file relating to such an award should not be communicated to the parties or their lawyers if that is necessary in order to ensure the protection of fair competition or of the legitimate interests of the economic operators whose rights are also enshrined in Art. 8 of the European Human Rights Convention which guarantees the right to respect for private life.[266]

This preliminary ruling of the European Court of Justice related to a contract award procedure but the problem is the same in many other administrative procedures with adversarial parties.

The balance between the right to be heard and the right of protection of business secrets, the Court of Justice pointed out, has to be solved from case to case (and even document to document in a file) individually.

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[266] See further discussions concerning this decision *Claudia Hanslik*, Parteiengehör und Geheimnisschutz im Verwaltungsverfahren (2013) p. 25; *Claudia Hanslik*, **Keine bloße Augenscheinsprüfung bei der vereinfachten Zulassung eines Pflanzenschutzmittels. Offenlegung der Formel im Zuge des Parteiengehörs?, ZVG 2014, p. 374;** *Albert Oppel*, Betriebs- und Geschäftsgeheimnisse im Vergaberechtsschutz, ZVB 2015, p. 490.

D. Conclusio

The Administrative Procedure shall be the framework for applying different administrative laws with various difficulties and specific features. The legislation has to regulate Administrative Procedures in the way that the administrative authorities are able to face different challenges by the substantive laws. The procedural participation of persons potentially affected by an administrative decision is one of those challenges in the daily practice.

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Stages of an Administrative Procedure: a Comparative Legal Analysis

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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

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[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,

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[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

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[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

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[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).