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ADMINISTRATIVE REFORM AND PROCEDURES IN THE CONTEXT OF OVERCOMING "EXCESSIVE" ADMINISTRATIVE REGULATION

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Here are provided an analysis of previously conducted administrative reforms (with respect to the set and actually solved tasks) in the context of ensuring the rule of law in the activities of public authorities and their officials and the respect for the rights of citizens and legal entities. Examines administrative and procedural activity of public authorities, its normative regulation and identifies the key provisions of Russian legislation on administrative procedures.

Key words: administrative reform, administrative procedures, administrative regulating, public regulating, administrative procedures' legislation, types of administrative procedures, principles of administrative procedures.

About the goals, objectives, stages and the key visible results of administrative reform in Russia has been said and written in excess of reasonable efforts. You will notice that the ideals of the administrative reform throughout its conduct were changing. At the beginning of 2008 (and especially in the middle of 2008) was being actualized the idea of overcoming the "excessive" administrative regulation and "excessive" administrative control (supervision). Of course, who does not like this idea? Who wants to see a representative of any government or municipal administrative control and supervision? And even more to receive from them orders, instructions, and directions.

As you know, an administrative reform is conducted not primarily for the sake of administration, although, of course, we cannot exclude the fact that the administrative reforming establishes new legal conditions of organization and functioning of the administrative system of the country. Along with this an administrative reform designed to improve the system of public administration, which, in turn, will contribute to improvement of the welfare of society, development of the economy and economic relations, culture, education, science and all other spheres of public and state life. Administrative reform is designed to establish better administrative legal order. Thus, administrative reform is intended to establish the legality of committed administrative actions, the necessary procedure to implement administrative functions under any conditions and circumstances. Administrative reform must also ensure public confidence in the executive power. In the film by Nikita Mikhalkov "12", as well as in real life, one of the characters concludes: "There will never be a Russian man living by the law!" It is expected that an administrative reform is intended in each case also to "teach" a person and citizen to live "under the law". "Living by the law" is a duty of the State and society, each official and each subject of law; "living by the law" is a key to the prosperity of society and the good functioning of the State apparatus.

Among all the essential elements and manifestations of an administrative reform especial attention is paid to reducing the "excessive" administrative regulation and "excessive" administrative control. That means, as though it is noticed that in the system of public administration administrative regulation and administrative control has obtained unacceptably high value. Therefore, the "excessive" administrative regulation, according to the authors of the administrative reform, has to be eliminated or multiply reduced. Along with this, you can ask the question: is it possible to reach a solution to this issue without a radical improvement of the legal regulation of internal administrative and legal relations that permeate the organization and functioning of the bodies of executive power? It is unlikely that the system of public administration could be improved only by organizational restructuring, establishment of administrative regulations, listing of public functions and public services.

We can assume that one of the main branches of public law as for the scope of actions, legal importance, positive and negative results, is an administrative law. The attention paid by the political leadership of the country to an administrative reform and its implementation, allows being even more certain that the administrative law in Russia is the most important legal mean to improve the practice of state and municipal government. March 27, 2008 at the meeting of the State Council,

which was held in Tobolsk, representatives of the executive power sharply criticized the very executive power for the numerous mistakes, contradictory activities and lack of preparation of the administrative apparatus to effective public administration. If to summarize all the main things that were discussed at the meeting of the State Council, it is clear that on the agenda raises a new administrative reform, which is aimed to improve state administration (public administration in general).

Precisely in this context emerged the idea to eliminate "excessive" administrative control and supervision. But how to measure the "excessiveness" of administrative regulation and administrative control? As is known, in case of practical implementation of control, it means that it should be conducted legally and within the legitimate administrative procedures. It turns out that the established model and the system of the state or municipal control a priori must comply with the principle of legality. How can we find "excessiveness" inside this control?

In European countries believe that state administration should be "good". Exactly the term "good governance" is used by a legislator. In Russia in general the term "state administration" disappeared from the constitutional and legal lexicon in 1963. Article 41 of the Charter of Fundamental Rights of the European Union is called as "The right to good governance". That is, each person has the right to have his case considered by a competent authority or institution and always with the indispensable observance the principle of non-membership in any party, the case must be considered fairly and within the prescribed time limits. Every person has the right to be heard before in respect of this person will be applied coercive measure or a measure that would worsen his position. All this also means the obligation of officials of State administration to justify their decisions and actions. Thus, "good governance" in these countries is created and ensured by the basic principles of the administrative procedures. It seems that in Russia the conducting of complex state reforms, above all, should be based on this fundamental provision – the right of citizens to good governance.

Also at the meeting of the State Council in Tobol'sk were talking, in fact, about the need to ensure good governance in the country. Overcoming "excessive" administration is also due to the fact that in the country is being actualized the problem of eliminating all unnecessary "administrative". If you even look at the established in practice terms and concepts, it is clear that these terms allow us to see the essence of the problem. In Russia they say about the need to "combat administrative barriers", improve "administrative image", overcome "administrative nihilism", establishing "administrative clarity", exit from "administrative fog", form "administrative legal framework", eliminate "administrative mistakes", create

"administrative ideals", "administrative standards" and qualitatively improve "administrative rule-making", "administrative revision".

But particularly significant nevertheless was the idea of revising the practice of state control and supervision, i.e., it is about substantial democratization in the given field of relations. Against such a background may be a view that all the theory of state and administrative supervision that has been being created for decades begins to crumble.

"Excessive" state administration is regarded by the Russian politicians, legislators and scholars as one of the very negative features of modern public administration. Frankly the term "excessive administration" is not being explained, fully and deeply researched. However, one thing is clear: excessiveness of administration is the ability of officials to commit actions that are thoroughly and normatively not regulated. Besides, in practice, is permitted ineffective and may be even illegal procedure for implementing the competence of public authority bodies and the powers of appropriate officials. Excessiveness of administration can be considered as a lack of proper procedure of taking administrative decisions and implementing management actions. Today there is much talk about excessiveness of public administration in connection with the fight against corruption. Therefore planned legislative novations of overcoming corruption offenses in the system of state administration are attributed to the need of elimination excessive administration, and expansion the legal regulation of the activities of executive bodies of the public authority and their officials.

To better see the need for improvement of administrative law, the institutions of which are designed to largely eliminate "excessive" public administration, it is advisable to pay attention to "political basis" of legal reforms that should certainly contribute to ensuring government guarantees against "negative" public administration both for citizens, and for other subjects of law. Therefore, this article provides a brief theoretical analysis of the situation in Russia in late 2007 - early 2008. At the same time it provides an analysis of the views of prominent political figures of the country and the scientists on the efficiency and quality of state power, especially the executive (administrative) and judicial one. Both branches of state power, that have been formed over the last twenty years to the modern structures and institutions, in these years have been the subject of state intervention, reforming and active legislative regulation. It is well known that the process of judicial and administrative reform is currently ongoing.

The topic of state guarantees and overcoming "excessive" public administration is very relevant, but has not get so far proper research in special political and

legal literature; hardly enough attention is paid to this issue by scientists, politicians and public figures. However, the entire government activity is primarily aimed at practical providing of proclaimed state guarantees. And just therefore the issue of state guarantees in any field of legal relations deserves serious scientific understanding, analysis and criticism.

Today, the most important task is an issue of practical ensuring the envisaged by the state guarantees that exist for the possibility of society to see the real potential of a strong state, acting state; to receive state support and state provision. According to Putin, it is "a democratic state should become an effective tool for self-organization of civil society" [10]. Thus government guarantees may be real and effective under terms of the formation of a democratic State. Government guarantees of – state protection; ensuring the rights and legitimate interests, subjective public rights and freedoms of a man and citizen; well-being of a man and citizen; the efficiency of public administration, state-building. If in a country they say and take care of the state guarantees, such a country is developing in accordance with reasonable goals and objectives. If they forget about state guarantees, the country descends into chaos of "administrativizm" and the practice of violations of the principle of legality. Legitimacy without government guarantees ceases to exercise its purpose. Obviously, not every state can fully, consistently and comprehensively ensure and guarantee the established standard of public administration, welfare, social and economic development, protection of the rights and freedoms of a man and citizen, legitimate interests of legal entities.

Has the very Russian state become a guarantor of society welfare? Whether the State can effectively perform its functions? What does effective governance mean at all? In the current socio-political and legal literature is stated that the effectiveness of management lies in the very results of managerial impact [6, 68-94].

Search for answers to these questions will inevitably lead to the need to study the state power, legal system of the country, state-legal construction, already conducted and currently implemented the most important and obvious reforms, such as judicial or administrative one. Namely judicial and executive branches of state power are really "responsible" for the practical implementation and ensuring of established by the legislature guarantees; judicial and executive power, being daily exposed to public criticism, can actually contribute to strengthening state guarantees, or on the contrary, by its actions and decisions destroy a legal mechanism of state guarantees, thus making a negative contribution to the actively discussed now phenomenon of national legal nihilism. Indeed only a short time ago, Dmitry Anatol'evich Medvedev spoke about the origins of legal nihilism, "which continues

to be a feature of our society", while recalling the famous aphorism: "rigidity of laws is offset by their non-performance". [22]

Undoubtedly legal nihilism is a negative feature of Russian society (about this has been much said and written in Russia during the last decades). However, first of all, legal nihilism is a negative characteristic of the Russian state. State power and especially executive power has been showing in the past twenty years the "miracles" of legal nihilism and open aversion of the requirements of Russian law by this authority. In a country where the legal nihilism of state power is daily demonstrated by countless examples of neglecting the spirit and letter of the law, legal nihilism of society becomes indispensable companion of the country's unlawful development. It is clearly necessary to understand that the true and primary origins of legal nihilism consist in illegal manifestations of state activity, in an inconsistent and unfair functioning of state and municipal apparatus, state and municipal employees. Whether not therefore the state has to constantly initiate and carry out any reforms of state power, in particular, the executive and the judiciary?

If you formally look at the administrative reform's goals and objectives, established at the very beginning of the change of legal and administrative systems, they, of course, slightly changing still remain unchanged, not-fully achieved and unresolved. After all, usually, we are talking about increasing the efficiency and improving state administration; ensuring the rights and freedoms of man and citizen, legitimate interests of legal entities and individual entrepreneurs; guaranteeing state interest, increasing the responsibility of state and municipal employees; simplification (or creation) of administrative procedures [32]; transparency of judicial and executive authorities; establishing responsibility for taken administrative and legal acts or judicial decisions; increasing living standards of judges and public servants. Especially actively began to reform the judicial and administrative authorities in the early twenty-first century. As a result of changes in Federal and regional legislation, administrative and judicial systems have undergone significant changes.

Administrative reform conducted a few years ago [6], was, obviously, conceived as a new optional element in improving public administration. Undertaken changes in the system of organizational and legal forms of state administration, system and structure of federal executive authorities, public administration at regional level, obviously, were intended to improve governance and establish new guarantees.

If you look at the administrative reform in terms of its results, it turns out that the desired results have stayed only in ideal designs on paper. Russian

President Vladimir Putin in mid-February 2008 said with regret: "I think that the very structure that has been created in the last four years has not worked in such a way as planned some of our colleagues: ministries are engaged only in rule-making activities, agencies and others perform their functions" [18], at that he explained that the scheme did not work because ministers "still immediately began to pull on a blanket administration" [18]. The authors of the administrative reform saw its main content in the systematization and optimization of state functions. And as the main instrument, already in 2004 was chosen the development of approximately 500 administrative regulations – normative acts detailing the interaction of officials and citizens [8]. The latest achievements, institutions and procedures that are embedded in the administrative system must change state administration, improve it; introduce "administrative clarity" in this sphere of relations. State guarantees, created in the process of administrative transformations (administrative reforms) should contribute to improvement of not only the legal and administrative system, but real improvement in the performance of state functions. It is an administrative system, based on modern principles of the rule of law, can provide, for example, the reality of such a political statement as "freedom and justice, civil dignity, well-being and social responsibility of a man" [13].

According to V. V. Putin, the main problems of modern state administration include: large bureaucracy of the state apparatus; corrupt system that is not motivated to positive changes and rapid development; excessive administrative pressure on the economy; necessity to optimize the functions and change the system of financing, which may motivate effective activity of the executive branch of the government and the very state and municipal servants; creation of competitive conditions to attract in the state service the best personnel; increasing the responsibility of management personnel to the society; over-centralization of state administration: "Any, even elementary decisions are made in the government for months, even years. Everything seems to be done on the instructions and correctly. But this is exactly the case when an order becomes a nonsense" [10]. As the most important features of the new system of public administration Vladimir Putin has formed the following: "independence and responsibility, dynamic movement forward, following the general ideology of the country development, the efficient use of resources, bold and original solutions, support for initiatives and innovations, staff turnover, competence and outlook" [10].

Reiterates the importance and exceptional significance of the so-called administrative procedures for the improvement of public administration. Substantiating the thesis that "officials should be fully aware that it is society that is their employer

and that they bear responsibility to the whole Russian society, to Russian citizens" [38] Dmitry Medvedev, as the main condition, identified the need to strengthen all administrative procedures in the regulations of public authority bodies' work. "And this should be done in order not to produce next more bureaucratic documents, but for citizens to know the responsibilities of each official and have a real opportunity to complain against unlawful actions or inactions. In this case the punishment of guilty officials should be unavoidable" [38]. It turns out that "knowing of the officials' duties by citizens" and "the inevitability of punishment" of state employees are the most important factors to improve public administration.

However, in itself the statement of such abstracts will not resolve the issue of management practice. As long exists public administration and civil service, so long they talk about the need to increase or inevitability of responsibility of the state apparatus. Here only in practice legal responsibility rarely ensues to civil servants. Although the legislator himself has long been in a lot of legislative acts has established the procedure for applying responsibility to civil servants. Then what for do constantly talk about the need of officials' responsibility if they do not perform their job duties, violate the rights and freedoms of citizens, the legitimate interests of legal entities, organizations? Responsibility has already been established. Consequently, the Institute of responsibility simply does not work. It turns out, that in practice does not work even the principle of responsibility of state employees for being developed and adopted solutions, non-performance or improper performance of their official duties. This principle of civil service is limited mostly to the establishment by legislator of the responsibility (disciplinary, administrative, financial, and criminal) for misconducts (deeds) or inactions of state employees.

The discussion of the problem of administrative procedures in some cases (in some areas of legal regulation and activity) is completed by a statement of change in the "ideology" of administrative procedures. For example, Dmitry Medvedev suggests "fundamentally change the ideology of administrative procedures related to the starting and running a business" [38]. Besides it is proposed to replace the majority of licensing procedures to notification ones that will let, according to Dmitry Medvedev, to overcome "bureaucratic indifference" and "bribery" [38]. Thus, the political policy statements regarding the essence of administrative procedures reflect the main juridical purpose of the legislation on administrative procedures: establishment the power of administrative and legal regulation (laws, administrative regulations) over the practice of state administration, implementation of functions and powers, creation of the regime of legitimacy in management actions, required order in the field of public administration. Obviously, such statements of

public figures have to contribute to the development of the "ideology" of the draft law "On Administrative Procedures".

According to Dmitry Medvedev, "administrative reform should be brought to the end, in place of licensing procedures should come notification ones, the number of officials should become less, significant part of state functions should be transferred to the non-state sector, and corruption should be given "a real fight"; "administrative clarity (i.e., a clear understanding of on what levels are made particular decisions) is the first condition to ensure public support", "the power does not exist for itself, but for the effective management of a country in the interest of citizens. And exactly to this model, we need to strive. The model, which is essentially based on a social agreement between the government and society, on a contract, which creates mutual obligations of parties and generates full responsibility of the government to the people", "if we want to become a civilized state – we need first of all to become a legal state" [19].

Legislation on administrative procedures contradictory develops in Russia. It was formed as a result of the conducted in the country administrative reform (2003-2008). The point is that the development of the legislation on administrative procedures is implemented not by the development of the law "On Administrative Procedures" but through the establishment of appropriate sections approved by the federal and regional levels of administrative regulations on execution of state functions and rendering state services. For example, the Administrative regulation of performing by the Federal Immovable Property Cadastre Agency the state function of state land control (approved by the Order of the Ministry of Justice of the Russian Federation No. 254 from December 27, 2007) [29] in the third section includes provisions on administrative procedures, which refers to the sequence of actions in the execution of this state function. About the same legal standard of establishing the administrative and procedural relations is used in the preparation of all administrative regulations adopted at the level of the federal executive power [2, 3, and 4].

Legislation on administrative procedures is the most important term for overcoming "excessive" administrative regulation and administrative control (supervision). The formation of such legislation on administrative procedures (i.e., the norms on the sequence of implementation government functions and rendering public services), in principle, will not replace the traditional administrative and legal norms, which must be contained in the Federal Law "On Administrative Procedures". However, it is hoped, that the development of the legislation on administrative regulations will anyway contribute to the formation of the modern theory of administrative procedures and the development of the law "On Administrative

Procedures", which would contain the norms on the general principles and procedures for settling administrative cases, and adopting administrative and legal acts by state and municipal administration.

For the implementation of the competence of state bodies, resolving the tasks of state power (executive, legislative and judicial), ensuring the rights, freedoms and legitimate interests of citizens and legal entities, there are normatively established general and specific procedural forms within of which are defined and used in practice relevant legal procedures – law-making, administrative (managerial), judicial.

Legislative power is exercised by law-making legal procedures [15], directly establishing the procedure for adopting laws. However, in this area of state activity other procedures of the so-called preparatory nature are used, i.e., procedures that are not directly related to the activities of the parliament (in the literal sense of the word), but contributing to the implementation of the very legislative process.

Judicial power is exercised by court proceedings (justice), which can also be represented in the form of special legal procedures designed for this type of state activity. They are legislatively included in the Procedural Codes of the Russian Federation (for example, Civil Procedure Code, Arbitration Procedure Code, Criminal Procedure Code).

Exercising of executive power, the implementation of state administration, as well as the activities of the executive bodies of local self-government and all authorized officials cannot be imagined outside the normatively established legal procedural orders or, as sometimes they say, administration and management processes. Activity of executive bodies and their officials, state and municipal employees is defined not only by many rules of substantive law, but also by the system of procedural administrative-law norms.

Executive power is exercised by the law enforcement (law fulfillment) and law-making (rule-making) activities. However, administrative procedures are created and used only for law enforcement activities of bodies of public administration and theirs officials, including while the adoption of individual administrative acts. Rule-making activity of executive bodies is formed, as a rule, on the basis of relevant normative acts, which do not establish as a subject of legal regulation administrative and procedural activity.

Administrative procedures are of essential legal value in the practice of the state-legal building and public administration. Institute of administrative procedures is an integral part of modern administrative law. In countries that have a long practice of application the legislation on administrative procedures, in the system

of state administration has been established proper legal order, democracy, openness in functioning of state bodies apparatus, real responsibility of civil servants and officials.

Administrative procedures, whatever they are understood in the theory of administrative law and practice of state administration, are associated with the creation of a special legal order in the implementation of certain management actions, or adoption of appropriate administrative decisions. Consequently, administrative procedures should be considered as the most important administrative and legal institute that logically fits into the structure of administrative and legal regulation.

Appearing in the legislation legal procedures, including legal and administrative procedures, should be assessed from the standpoint of legal significance, practical utility, and principal sectorial legal belonging.

Administrative procedures (in the literature they are often referred to as "positive" administrative procedures), their legal regulation and, most importantly, legal quality and availability have a direct impact on the implementation by citizens and organizations of their rights and freedoms. Since all the subjects of law anyhow come into different relations with the executive bodies of state and municipal power and their officials, administrative procedures are very diverse and widespread in management practice.

Administrative procedures – actually existing procedural legal norms, which can be structured and codified. And if in the process of structuring are found any gaps and contradictions, it's not a reason to deny the legal nature of this group of procedures. The place for them is prepared by the whole system of administrative law sector, without them, this branch of law is not comprehensive and complete.

Administrative procedures are traditionally included by authors in the structure of administrative process [37]. However, in literature maintains the view that managerial process does not refer to administrative process on any of the traditional grounds that separate one branch of the procedural law from the other. Besides, It is proposed to link management process with numerous administrative procedures that legally "draw up" practical management activity [21, 35, 570-576]. Management process is referred to the procedure to achieve normatively stated objectives of governance with help of legal, organizational and other means of managerial impact [35, 572].

Administrative procedures are included by legislators in the legal system and the structure of a modern state of law in general, and in the system of exercising of executive power, in particular, because of the need to enter to the organization and functioning of public authority a proper order, ensuring the compliance

with the principle of legality, providing the guarantees of usefulness, efficiency and transparency of administrative actions. For example, in European countries operate special laws on management (the laws on Administrative Proceedings or on Procedural Activity in the Field of Management) [5, 28]. Russia is just approaching this legal standard in the area of managerial process. One can even assume that the absence of the laws on administrative procedures shows "immaturity" of the Russian administrative legislation and the Russian theory of administrative law. Because historically, the formation of modern administrative law was carried out in the direction of strengthening the influence and power of law (laws, order) on the public administration, i.e., administrative practice in all its variety and scope ought to experience a normative "burden" and be carried out under the normatively established rules. Management process should be based on legal norms established in laws. Hence, the most important direction in law-making activity in the field of managerial process is the adoption of laws governing administrative (managerial) procedures (the title of this law in the Russian scientific literature is being produced today, for example: Managerial Procedural Code; the Law "On Administrative Proceedings", the Law "On Administrative Procedures") [21].

Theoretical analysis of existing in the current literature views of scientists about the nature, purpose, prospects of legislative regulation and sectorial affiliation of administrative procedures allows us to conclude that administrative procedures are considered in the theory of administrative law in the following aspects: forms of exercising executive power [12]; legal acts of administration (or administrative and legal acts); administrative procedure [17]; settlement of legal disputes [31]; administrative justice, the protection of the rights and freedoms of individuals and citizens [9, 33, 41 and 42]. In Russia were published scholarly works directly devoted to the study of all the sides of this complex administrative and legal institute [6, 11, 23, 26, 30, 36, and 40].

In recent years on this issue have been defended several dissertations [7; 14; 16; 20; 24; 25; 27 and 34].

On administrative procedures are saying as about the system of administrative and procedural legal relations that are emerging in various administrative and legal institutions. Administrative and procedural legal relations having the features of homogeneity are located in the system of broader administrative and procedural relations.

The structure of administrative and procedural legal relations includes: "positive", i.e., non-conflict legal relations that form between the executive bodies of state or municipal power on the one hand, and citizens and organizations – on the

other hand. The content of such legal relations in the field of public administration (state or municipal administration) is the need of exercising or realization by citizens and organizations of their rights, freedoms or legitimate interests (these relations are sometimes called "external public legal relations").

The main purpose of forming administrative and procedural legal relations is establishing administrative legal order of implementing managerial activities; realization of rights and performing duties of citizens and organizations; ensuring the legality of public administration; establishing the guarantees of fairness and reasonableness of adopting administrative acts or fulfillment of managerial actions; performing of legally significant actions with regard to the applicants.

Content of administrative procedures consists of the following elements: purpose of administrative procedures; their legal regulation; principles of administrative procedures; procedure for implementing managerial actions; consideration and resolution of administrative cases; execution decisions made on administrative cases.

Modern legislator understands administrative procedures as the established order of activity of administrative bodies to consider and resolve administrative cases. At the same time in other countries in current laws on administrative procedures is established the procedure for "consideration and resolution of administrative cases" through the use of administrative proceedings (i.e., "the settled by an administrative procedure process of consideration and resolution of an administrative case").

Signs of administrative procedures are:

1) implementation of the competence of an appropriate executive body of public authority; administrative powers of authority ensure the performance of appropriate management functions;

2) establishment of procedural forms promoting the realization of the rights and freedoms of man and citizen, as well as the legitimate interests of organizations, legal entities and individual entrepreneurs;

3) legal form of executing of public administration and executive power;

4) normativity of administrative procedures, i.e., normatively established order for their use and application;

5) administrative-legal regulation of the goals and objectives of a relevant administrative procedure;

6) determination of administrative and legal status of participants (subjects) of administrative procedures, i.e., subjects of procedural legal relations;

7) consideration and resolving of an individual administrative case;

8) exercising of an administrative procedure is associated with the application of various sectors of substantive law;

9) adopt various legal acts of management (both intermediate and final).

By content the administrative and procedural activity is related neither to judicial consideration of disputes about subjective public law (administrative and legal disputes), nor to the application the measures of administrative coercion.

Administrative procedure, in terms of its internal structure, is considered as a system of coherently committed by authorized subject organizational actions drawn up in the intermediate and final decisions on each administrative case. The main stages of administrative procedures are: institution of an administrative proceeding, consideration of an administrative case; taking of a decision on an administrative case (adopting of an administrative act), revision of a decision on an administrative case; execution of a decision on an administrative case.

Decision making on an administrative case is usually identified with the adoption of an administrative act. Thus, in practice, the administrative procedures are considered as a form of adoption of an administrative act. Therefore, the central part of the laws of different countries "On Administrative Procedures" contains a chapter called "Administrative act". It includes the following articles: form and content of an administrative act; adoption and entry into legal force of an administrative act; explaining of an administrative act; cancellation of an administrative act; return and compensation in connection with the cancellation of an administrative act; revising of an administrative act on newly discovered evidences. The final chapter of administrative and procedural law is an "Execution procedure", which sets out the rules of execution of an administrative act, period of its voluntary performing, forcible execution of an administrative act and the consequences of its non-performance.

The basic principles of administrative procedures are:

- *legitimacy*, i.e., the exact observance by participants of administrative proceedings of the Constitution of the RF, federal laws and other federal normative legal acts, laws of subjects of the Russian Federation; any action or decision of an administrative body must comply with the laws; administrative authorities shall act only within the limits of their legal competence;

- *presumption of reliability*, i.e., information, submitted by applicants about the actual circumstances of an administrative case that is being considered by an administrative body, shall be considered reliable and genuine in all cases up to the moment when the opposite is proven by officials of the administrative body;

- *prohibition of abuse of rights*, the application by an administrative body of any

legal act should be performed in strict accordance with its meaning and the main purpose; it is unacceptable to abuse the gaps or ambiguities in the current legislation in the process of administrative bodies' activity;

- *prohibition of arbitrariness*, i.e., unconditional exclusion from administrative practice of manifestations of unequal approach in the assessment of the same factual circumstances of a case in similar legal situations;

- *prohibition of bureaucratic formalism*, i.e., a ban of administrative bodies to burden concerned parties with obligations or to deny them the right only in order to meet their corporate rules and requirements; if a considered administrative case may be resolved without complying with these rules, administrative bodies are prohibited to use to the detriment of persons concerned the fact of non-compliance by them with corporate rules and requirements;

- *public hearing* of administrative cases in the executive bodies of state power and local self-government;

- *conducting of proceeding* on administrative cases *in Russian*; administrative proceedings may also be conducted in the official language of the Republic, which is the subject of the Russian Federation. Interested parties, who do not speak the language in which is conducted the proceedings on an administrative case, are explained and provided with the right to get acquainted with the all materials of the case, to give explanations, to appear in court and to submit petitions, to enter appeals in their native language or in any freely chosen by them language of communication, as well as to use the services of an interpreter in accordance with the procedure established by law;

- *proportionality* of the implementation of any actions of administrative bodies to the goals and objectives for which they are carried out in practice;

- *the right to be heard*, that is, an administrative authority shall be entitled to take an administrative act only on the condition that the person, whose rights or legitimate interests are supposed to be limited by the act, is given the opportunity to express his views on all the circumstances relevant to the legitimate and correct settlement of a case;

- *impartiality*, i.e., administrative body's officials are required to provide impartial consideration and settlement of an administrative case;

- *substantiation* of every administrative decision or action; an administrative body incur an obligation of a thorough and comprehensive examination of all the circumstances relevant to the legitimate, proper and fair resolution of a case;

- *ban* of an administrative body *to demand* from persons concerned the documents, the details of which are already contained in existing in a case more

general documents that provide clear and sufficient understanding of their content for the proper settlement of this administrative case (principle of "greater includes the lesser");

- *efficiency and economy*, i.e., a proceeding in sufficient short time and with reasonable economy of forces and means of an administrative body in the exercise of its powers.

Types of administrative procedures are defined primarily by the spheres of relations regulated by the legislation on administrative procedures, such as: registration administrative procedures; administrative procedures for licensing; certification administrative procedures; procedures to implement the competence of a managerial body; procedures that implement the legal status of a citizen or a legal entity; permitting administrative procedures.

The main type of administrative procedures is positive ones, i.e., it is the procedures of forming, organization and activities of the executive bodies of public authority to ensure the rights and freedoms of man and citizen, as well as the legitimate interests of organizations; procedures that contribute to the implementation of competence of ruling subjects of public administration (e.g., the adoption of acts of governance; consideration of citizens' complaints); procedures of exercising by executive bodies of public administration of specific legal actions for registration, licensing, permitting, control or supervision.

Positive administrative procedure is a normatively settled and designed to achieve a particular result formalized activity of authorized executive bodies of public authority and their officials to consider and resolve individual administrative cases and take administrative decisions that contribute to the exercising of the established in laws rights, freedoms and legitimate interests of citizens and organizations.

If we proceed from the view that in the application of administrative coercive measures are also used administrative procedures, then we can talk about so-called jurisdictional procedures [41, 95]. Jurisdictional or administrative and tort procedures are law-enforcement procedures used by authorized administrative bodies and officials to implement the protective function of public administration. As a rule, from the system of jurisdictional administrative procedures are excluded those, which are enshrined in the Code on Administrative Offences of the RF [41, 94].

The law "On Administrative Procedures" creates the possibility for the formation of relatively isolated group of legal norms governing the positive administrative procedures of law. From a scientific and theoretical point of view, are of great importance the different aspects of the concept of administrative procedures, their

essence, features, necessity, background and reasons for existence, value, function, types, sources of administrative procedures. From a practical point of view, by relevant issues can be considered the ones of legal quality, effectiveness of the laws on administrative procedures, problem of their legal regulation and the issues of improvement of the legislation on administrative procedures.

The problem of streamlining administrative procedures is inextricably linked to the ensuring of the regime of legitimacy in state administration, improvement the organizational structure of the executive bodies of state power, its system of internal and external communications, as well as the exercising of rights and freedoms of individuals and organizations. The current state of the Russian legislation on administrative procedures does not meet modern needs and standards of administrative and legal regulation of the public administration rules and the procedure of resolving administrative cases. The lack of a single normative act on administrative procedures is a huge gap in administrative law, while foreign lawmakers have long since filled it (in the U.S.A., Germany, France and other countries) having adopted appropriate laws. In many countries already for several decades has been operating the legislation containing norms on administrative procedures. Relevant laws regulate not only controversial (or negative) procedures (when there is a dispute between a citizen and an administration or has been committed an administrative offence), but also non-controversial (positive) procedures (when there is not such a dispute).

The legal regulation of administrative procedures in the activities of officials, state and municipal employees will contribute to the elimination of legal collisions, as the relevant administrative procedures will ensure the legitimacy of practical exercising of the administrative and legal status of officials, that is, they will not go beyond the limits of their powers and violate the competence of state bodies.

The need for proper legal regulation of administrative procedures in the special Russian Federal law "On Administrative Procedures" is driven by the need of:

- creating opportunities to form relatively isolated group of legal norms governing the positive administrative legal procedures;

- settlement by law of interrelations that are emerging between the bodies of state and municipal authorities, on the one part, and numerous unsubordinated subjects – citizens or organizations, on the other;

- establishment of the full, effective and relevant to current standards in the field of public administration procedure of implementation managerial actions, adopting administrative acts, as well as the consideration and resolution of individual administrative cases;

- ensuring the legality of public administration, since the normative establishment of procedural rules in public administration will serve the purpose of the ensuring of legitimacy, first of all, by that it will settle actual relations, the law will give them a formal certainty and thereby prevent abuse of law or significantly restrict such an abuse;

- determination of the administrative and legal status of administrative procedures' participants (individuals and legal entities who exercise the granted to them rights and freedom, and protect their legitimate interests);

- taking into account high prevalence of administrative procedures in the practice of public administration and their classification.

During the last decade have been developed two draft laws "On Administrative Procedures". The first is a project developed by the "Fund Constitution" [42, 16-17; 39]. This draft law includes eight sections: 1) scope of the law; 2) general principles of a legal state and principles of an administrative procedure; 3) procedural principles and the procedure for implementation of administrative actions and taking decisions (participants (parties) of a procedure, their procedural status, etc.); 4) procedure in the first instance; 5) procedure for appeals and taking decision; 6) special types of administrative procedures; 7) execution of orders; 8) responsibility (state bodies and their employees). Thus, according to the authors of the draft law, it must establish a process for the issuing, modification, cancellation and execution of orders (legal acts of management). As the orders they understand the based on public law individual acts of administrative bodies, related to a specific cases, the subject of which is: a) justification, changing and termination of rights and obligations; b) determination of the presence or absence, as well as the scope of rights and obligations, c) rejection of petitions on justification, changing, termination or determination of the existence of rights or obligations, refusing consideration of such petitions.

The second draft of the federal law "On Administrative Procedures" is a legislative draft introduced for consideration in 2001 to the State Duma by a Deputy of State Duma V. V. Pokhmelkin. This draft law was aimed at establishing rules of consideration and resolving administrative cases by executive bodies of state power, executive bodies of local self-government and their officials.

This draft law established the principles and procedure for the exercising of managerial activity on the provision, certification, registration, or suspension (termination) of certain competences of organizations, individual entrepreneurs and individuals. Administrative case in it is defined as a set of documents and materials that record the process of preparation, consideration and taking a decision on

the provision, certification, registration or suspension (termination) of a concerned person's competence. In the role of administrative procedures are proposed the established by legislative acts regulation norms that establish the grounds, conditions, sequence and procedure for settlement of administrative cases.

Considered draft law contains the following chapters: main provisions of the legislation on administrative procedures (pp. 1-8); general conditions of consideration administrative cases (pp. 9-14); representation in relations regulated by the legislation on administrative procedures (pp. 15-18); evidences (pp. 19-30); administrative expenses (pp. 31-35), procedural deadlines (pp. 36-38); filing application for the considering of an administrative case (pp. 39-44); preparation of an administrative case for consideration in administrative proceeding (pp. 45-48), consideration of an administrative case (pp. 49-56); decision on an administrative case (pp. 57-62); simplified procedure for consideration of certain categories of cases (pp. 63-66); terms and procedure for appeals on administrative cases (pp. 67-70); filing of an administrative complaint (pp. 71-74); consideration of an administrative complaint (pp. 75-80); execution of decisions on administrative cases (pp. 81-88).

Article 2 of the analyzed draft law establishes relations regulated by the legislation on administrative procedures. Legislation on administrative procedures regulates the relations on the consideration and resolution by the executive bodies of state power, the executive bodies of local self-government, their officials administrative cases on the provision, certification, registration and suspension (termination) of competence of organizations, individual entrepreneurs and physical persons.

According to the authors of the draft law, applicability of the legislation on administrative procedures applies in respect of relations in the fields of:

a) registration of legal entities and individual entrepreneurs;

b) licensing of particular types of activity;

c) registration of rights to real estate and transactions with it;

d) granting plots of land, subsoil plots, forest plots, water objects, as well as withdrawal of these plots and objects from the owner or other lawful possessor;

e) providing land plots, subsoil, forests, water bodies, as well as the removal of these sites and objects from the owner or other lawful owner;

f) providing organizations, individual entrepreneurs or individuals credits, loans, subsidies, grants, subventions, subsidies, compensations, financial and material assistance, investment, quotas, guarantees, privileges and benefits from the federal budget, the budgets of the Russian Federation subjects, local budgets, as well as Non-budgetary funds;

g) placement of the State (municipal) orders;

h) management of state and municipal property or property rights;

i) issuance of a permit to carry out construction and erection works (construction permits), exploit building and other facilities or equipment, as well as to take another managerial decisions on the issues of investment activity;

j) mandatory certification of products, works and services;

k) registration of citizens on place of residence and stay;

l) vehicles registration;

m) providing citizens of living accommodation in houses of state and municipal housing funds and use these facilities;

n) privatization of dwelling premises;

o) award and payment of pensions and allowances;

p) recognition of an individual's status that gives ground to obtain benefits and privileges;

q) issuance of documents with legal significance;

r) provision, certification, registration and suspension (termination) of another competences of organizations, individual entrepreneurs and physical persons;

Applicability of the mentioned draft of a federal law does not apply to relations in the fields of:

a) preparation and adoption of normative legal acts by the bodies of state power and local self-government;

b) privatization of state and municipal property, except for dwelling premises;

c) proceedings on the cases on administrative offences, the criminal and civil court proceedings;

d)imposition, introduction and collection of taxes and fees, including customs fees;

e) state and municipal service or employment relationships;

f) holding of a public competitive tenders and other relations with the participation of state bodies and bodies of local self-government, regulated by civil legislation of the Russian Federation;

g)issue and circulation of securities;

h) preparation and taking managerial decisions not related to the provision, certification, registration and suspension (termination) of competences of organizations, individual entrepreneurs and physical persons;

i) preparation and taking managerial decisions by the subjects other than

the executive bodies of state power, executive bodies of local self-governments or their officials.

There are other suggestions for creation of the legislation on administrative procedures. For example, S. D. Khazanov, discussing about the possible subject of legal regulation of the federal law on administrative procedures, points out that it should apply to the following types of administrative and procedural relations: a) licensing procedures; b) registration procedures; c) right ensuring (right lodging) procedures; d) information and documentation procedures; e) examination and certification procedures; f) controlling and supervising procedures; g) jurisdictional procedures; h) administrative and tort procedures (except those which are provided for by the CAO RF); i) administrative and executive procedures (except those provided for by the Federal Law "On Execution Proceedings" and the CAO RF); j) public-service procedures related to the ensuring of the legal status of civil servants; k) disciplinary and organizational procedures; l) procedures for the application of measures of administrative and legal coercion [41, 94-95].

Some authors suggest to adopt a federal law "On Administrative Procedures", which comprehensively regulating this type of managerial relations, would spread its effect only on the so-called out-of-apparatus administrative procedures [27, 14]. If we talk about the levels of legal regulation of administrative procedures, here is proposed to create, for example, a three-tier system of legal regulation of these relations: the first level – federal law "On Administrative Procedures"; the second level – federal laws regulating separate procedural proceedings; the third level – normative legal acts adopted in pursuance of federal laws, and administrative regulations of executive bodies [16, 9].

From the given analysis of opinions of Russian scientists regarding the essence, content and value of administrative procedures in the system of executive power and public administration, become relatively clear the ideas about the main features, principles and model characteristics of the future law "On Administrative Procedures".

The desire of legislators to create a quality, in terms of the content and system of procedural norms, law "On Administrative Procedures" is a timely and correct step towards building the rule of law and, therefore, restrictions of arbitrary and unlawful official conduct of public servants. Unfortunately, adopted Federal Law No. 210-FL of July 27, 2010 "On the Organization of the Provision of State and Municipal Services" covers only a part of relations stipulated for regulation in the law "On Administrative Procedure", and the draft law proposed by V. V. Pokhmelkin was rejected by the State Duma of the Federal Assembly of the RF in 2009 [1].

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