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## ADMINISTRATIVE PROCEDURES FOR THE EXECUTION OF INDIVIDUAL LEGAL ACTS OF PUBLIC ADMINISTRATION

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Using comparative-legal method the author analyses the institute of execution individual legal acts of public administration, which has been little researched in national science of administrative law.

**Keywords:** individual acts of public administration, enforcement proceedings, administrative act, administrative procedure, comparative-legal method.

### Introduction

The issue of execution of individual acts of public administration is almost not studied in the science of domestic administrative law. The main thesis on this issue is that individual acts of public administration are legally binding, and their execution is “ensured by different organizational measures, means of persuasion, and, where necessary, by measures of state coercion”<sup>1</sup>. In the current legislation we will not find a law that would establish single rules for the execution of individual acts of public administration. At the same time, the legislation provides for certain types of administrative acts<sup>2</sup> the opportunity of their enforced execution, and also gives some administrative bodies powers to execute such acts independently.

1 Soviet Administrative Law. Methods and Forms of Public Administration [Sovetskoe administrativnoe pravo. Metody i formy gosudarstvennogo upravleniya]. Moscow: Yuridicheskaya literatura, 1977, pp. 49-50. It should be noted that the institute of execution of administrative acts is not studied in the educational, methodical literature. See, e.g.: Vasil'ev R. F. On Teaching a Special Course “Legal Acts of Representative and Executive Power Bodies” [«O prepodavanii spetsial'nogo kursa «Pravovye akty organov predstavitel'noi i ispolnitel'noi vlasti»]. Vesti. Mosk. un-ta – News of Moscow University, Ser. 11, Law, 2001, no. 5, pp. 58-71.

2 Here and hereinafter, the concepts of “administrative act” and “individual legal act of public administration” are used interchangeably.

Proper execution of an individual act of public administration is a prerequisite for its effectiveness, since its execution allows achieving the purposes for which the act has been issued<sup>3</sup>. Also, the procedure of execution of an administrative act, as rightly pointed out by R. Poscher, represents a form of legal resolution of a conflict in relations “state citizen” in conditions of a constitutional state<sup>4</sup>. This highlights the practical significance of research the institute of administrative acts execution.

Lack of the doctrine of the institute for execution administrative acts of public administration in the Russian science of administrative law led to the application of comparative-legal method. For comparison we selected the German institute of administrative acts execution, which is characterized by a long history (since the 19<sup>th</sup> century), detailed legal regulation and generally high role of administrative bodies in administrative acts execution<sup>5</sup>.

### 1. Legal nature of administrative procedure of administrative acts execution

The German doctrine of administrative law considers execution of administrative acts as a forced implementation of public-law duties of citizens or other subjects of law by administrative bodies within an independent *administrative procedure*<sup>6</sup>. Administrative bodies exercise enforced execution of those requirements, which are formalized by an administrative act and execution of which does not require recourse to the court<sup>7</sup>. Thus, the center of an administrative procedure of execution is an administrative act<sup>8</sup> which by virtue of its titular (right creating) function

3 Bakhrahk D. N. Russian Administrative Law [Administrativnoe pravo Rossii]. Moscow: 2000, p. 293.

4 Poscher R. Administrative Act and Administrative Law in the Enforcement. On the History, Theory and Doctrine of the Administrative Decision Enforcement Law [Verwaltungsakt und Verwaltungsrecht in der Vollstreckung. Zur Geschichte, Theorie und Dornatik des Verwaltungsvollstreckungsrecht]. VerwArch – Administrative Archive, 1998 (89), pp. 113-114.

5 In respect of the applicability of the German experience in the execution of administrative acts, see: Podeiko V. A. Judicial and Administrative Bodies in German Enforcement Proceedings [Sudebnye i administrativnye organy v germanskom ispolnitel'nom proizvodstve]. Zakonodatel'stvo – Legislation, 2015, no. 5, p. 58. Sattarova Z. Z. Enforcement Proceedings in Germany and Russia (comparative-legal analysis) [Ispolnitel'noe proizvodstvo Germanii i Rossii (sravnitel'no-pravovoi analiz)]. Trudy Orenburgskogo instituta (filiala) Moskovskoi gosudarstvennoi yuridicheskoi akademii – Proceedings of Orenburg Institute (branch) of Moscow State Law Academy, 2008, no. 9, pp. 184-193.

6 Wolff, Bachof, Stober, Kluth. Administrative Law I [Verwaltungsrecht I]. 12th edition by C. H. Beck, Munich: 2007, § 64, note 2.

7 Podeiko V. A. Op. cit. p. 57.

8 This in turn raises the question of correlation between an administrative act, substantive administrative law and administrative executive law, since an administrative act, which is based on the norms of substantive administrative law, is executed within the framework of administrative and executive law. As noted by R. Poscher, such a correlation is manifested in the fact that the requirements for the issuance of an administrative act and the requirements for the execution of an administrative act are strictly delimited, established by different laws. At that, there is a general principle of administrative enforcement proceedings, according to which in the performance of an administrative act the issue of its substantive legality is not affected. Poscher R. Op. cit. p. 111.

in implementing requirements and other obligations in relations like “state-citizen” performs a role similar to a court decision in civil process. It should be noted that within the framework of an administrative procedure there is also possible an enforced execution of administrative contracts, if an appropriate condition is provided for in a particular administrative contract<sup>9</sup>.

At that, the administration compared to a private creditor is a privileged entity since the administration without recourse to the court creates the ground for execution and independently may exercise enforced execution. Judicial control is exercised only in the following case<sup>10</sup>, if a citizen appeals against measures taken within the proceedings on execution of an administrative act.

Thus, execution of an administrative act is connected with the “result” (an administrative act) of administrative procedure and at the same time is an independent administrative procedure, which differs from the administrative procedure for taking an administrative act due to specific objectives that are implemented during the procedure of execution of an administrative act<sup>11</sup>.

It should be noted that in the Russian doctrine the enforcement proceedings, within which certain types of administrative acts are executed, is considered both as the institute of administrative law<sup>12</sup> and as a kind of administrative proceedings<sup>13</sup>.

## 2. The genesis of the procedure of administrative acts execution

Formation of the German administrative procedure of administrative acts execution dates back to the early 19<sup>th</sup> century, which in many respects was borrowed from the civil procedural enforcement proceedings. Although the prototype of the German administrative law was the French administrative law, in Prussia they refused the reproduction of the French model of administrative acts execution, under which enforced execution of an administrative act was possible only after obtaining an appropriate court decision. In accordance with the German model, executive authorities (particularly in the fields of military and financial management) had the powers to execute their own administrative acts<sup>14</sup>.

9 Wolff, Bachof, Stober, Kluth. Op. cit. § 64, note 2.

10 Wolff, Bachof, Stober, Kluth. Op. cit. § 64, note 2.

11 Wolff, Bachof, Stober, Kluth. Op. cit. § 64, note 8.

12 Gorbunova Ya. P. Enforcement proceedings as an Institute of Administrative Law: Problems of Organization, Practical Realization and Prospects of Legal Regulation [Iсполnitel'noe proizvodstvo kak institut administrativnogo prava: problemy organizatsii, prakticheskoi realizatsii i perspektivy pravovogo regulirovaniya]. Thesis abstract for the degree of PhD in law, Voronezh: 2007.

13 Sarychev A. N. Enforcement Proceedings as a Form of Administrative Proceedings [Iсполnitel'noe proizvodstvo kak vid administrativnogo proizvodstva]. Thesis abstract for the degree of PhD in law, Saratov: 1998.

14 Wolff, Bachof, Stober, Kluth. Op. cit. § 64, note 3. Poscher R. Op. cit. pp. 114-115.

### 3. Legal regulation of administrative acts execution

A unified (common) procedure for the execution of administrative acts was established with the adoption in 1953 of the law “On Execution of Administrative Acts” (Verwaltungs-Vollstreckungsgesetz (VwVG))<sup>15</sup>. However, given the federal structure, the Law on execution of administrative acts operates directly only for the acts of the federal executive authorities. Regulation of the order for execution of administrative acts of lands (hereinafter – the subjects of Federation) refers to their competence. The subjects of Federation, in most cases, adopt their own laws on the procedure of administrative acts execution, when this they partly use blanket rules referring to the Federal law on the order of execution of administrative acts<sup>16</sup>.

Special norms on execution of administrative acts contained in the Law on the direct application of coercive measures (Gesetz über den unmittelbaren Zwang (UZwG)), the Law on the direct application of coercive measures and the implementation of special powers by soldiers and civilian guards (Gesetz über die Anwendung unmittelbaren Zwanges und die Ausübung besonderer Befugnisse durch Soldaten der Bundeswehr und zivile Wachpersonen (UZGBw)), the Law on the procedure of collection of taxes, duties (Abgabenordnung), as well as in a number of other laws.

Thus, the structure of the German legislation governing administrative procedure of execution of administrative acts is rather difficult or, as pointed out by German scientists, “hard to foresee”<sup>17</sup>. Firstly, given the federal structure the regulation is exercised both at the federal level and at the level of the subjects of Federation. At that, the Federation is entitled to regulate only the administrative procedure of execution of administrative acts adopted by federal administrative bodies. The order of execution of administrative acts adopted by the administrative bodies of the subjects of Federation is established by the subjects of Federation. Secondly, along with the general rules determining the order of execution of administrative acts, there are special norms for certain types of administrative acts.

In the Russian legal system, the basic law governing the execution of individual legal acts of public administration is the Federal Law No. 229-FL from 02.10.2007

15 Russian text of the law see: Administrative Procedural Law in Germany: the Law on Administrative Court Procedure; the law on Administrative Litigation; the Legislation on the Execution of Administrative Decisions [Administrativno-protsessual’noe pravo Germanii: Zakon ob administrativnom proizvodstve; Zakon ob administrativno-sudebnom protsesse; Zakonodatel’stvo ob ispolnenii administrativnykh reshenii]. Compiler V. Bergmann, Moscow: Volters Kluver, 2007.

16 Wolff, Bachof, Stober, Kluth. Op. cit. § 64, note 6.

17 Enegelhardt, App, Schlatmann. Commentary to the Law on Execution of Administrative Decisions [Verwaltungs-Vollstreckungsgesetz Kommentar]. 10th edition by C. Z. Beck, 2014, note 2.

“On Enforcement Proceedings” (hereinafter – FL on Enforcement Proceedings)<sup>18</sup>. In accordance with article 1 of the FL on Enforcement Proceedings this law regulates not only the order of execution of judicial acts, but also *acts of other bodies and officials*, which in the implementation of powers provided by the federal law are granted the right to impose on individuals (hereinafter – citizens), legal entities, the Russian Federation, the subjects of the Russian Federation, municipal entities (hereinafter – organizations) *obligations to transfer* to other citizens, organizations, or to appropriate budgets *cash and other property* or to *commit certain actions in their favor* or *refrain from certain actions*.

In accordance with article 3 of the FL on Enforcement Proceedings the legislation on enforcement proceedings consists of the FL on Enforcement Proceedings, the Federal law No. 118-FL from 21.07.1997 “On bailiffs” and *other federal laws* governing the conditions and procedures for the enforced execution of judicial acts, acts of other bodies and officials. At that the norms of federal laws *governing the conditions and procedures for the enforced execution* of judicial acts, acts of other bodies and officials must comply with the FL on Enforcement Proceedings. Thus, the norms of the FL on Enforcement Proceedings have priority.

At that the literature indicates that despite the fact that neither article 71 nor article 72 of the Constitution of the Russian Federation assigns legislation on enforcement proceedings to the sole jurisdiction of the RF or to the joint jurisdiction of the RF and the constituent entities of the Russian Federation, enforcement proceedings, like procedural branches of law, should be referred to the jurisdiction of the RF<sup>19</sup>.

Thus, at the moment, the order of execution of administrative acts is regulated at the federal level.

#### **4. Types of individual legal acts of public administration that shall be executed**

According to the German Act on execution of administrative acts (§§ 1, 6), the following of two types of administrative acts are subject to execution: firstly, the acts which contain the requirements of monetary nature, and secondly, the acts that impose on the recipient an obligation to transfer a thing, to make a certain action, undergo an action or refrain from certain actions. The procedure of execution of administrative acts is dualistic: the law distinguishes the procedure of execution of

18 The initial text of the document published in SZ RF – Collection of Laws of the RF, 2007, no. 41, article 4849.

19 Commentary to the Federal Law “On Enforcement Proceedings” and its Practical Application [Kommentarii k Federal’nomu zakonu «Ob ispolnitel’nom proizvodstve» i praktike ego primeneniya]. Editor-in-chief I. V. Reshetnikova, Moscow: Volters Kluver, 2009, p. 13.

monetary (property) requirements and the procedure of forcing to the commission, refraining or undergoing of certain actions. Such a dual approach entails legal and technical differences of these procedures in part of application coercive measures in the performance of administrative acts<sup>20</sup>.

The most common approach of the Russian administrative law is that the law establishes mandatory execution of individual legal acts, without the possibility of enforced execution. At the same time the duty of execution is ensured by the possibility of bringing the addressee of an act to administrative responsibility. For example, in accordance with article 36 of the Federal law No. 135-FL from 26.07.2006 "On Protection of Competition", there is an obligation to exercise decisions and orders of antimonopoly body within a time period established by such decisions and orders. At that, the Code on Administrative Offences of the RF establishes responsibility for the failure to comply with an injunction.

Article 12 of the FL on Enforcement Proceedings lists individual legal acts of public administration that have the status of executive document:

- acts of the Pension Fund of the RF and Social Insurance Fund of the RF<sup>21</sup> *concerning the recovery of money from the debtor-citizen, who is duly registered as an individual entrepreneur, without the attachment of documents with marks of banks or other lending institutions, if the debtor has the right to exercise entrepreneurial activity without opening a checking and other accounts*<sup>22</sup>;

20 Wolff, Bachof, Stober, Kluth. Op. cit. § 64, note 12. In addition, there are various procedural forms of administrative acts execution, which differ from each other by a set of stages of enforcement proceedings: elongated proceedings, immediate execution, shortened execution, immediate application. The correlation of these forms in detail is considered by R. Poscher: "Elongated proceedings is a standard, ordinary order of execution of administrative acts in all cases where there is no urgency of execution of an administrative act, the administrative act does not meet the requirements of immediate execution. In contrast to the procedure of immediate execution, within the framework of ordinary execution, it requires a valid administrative act that brings this execution procedure closer with the procedure of court judgment execution. Within the procedure of immediate execution an administrative act, which has not entered into force, is subject to execution. A characteristic feature of the shortened execution is the lack of the stage of notification the debtor about the application of coercive measures in the absence of voluntary execution of an administrative act. The procedure of immediate application is implemented in the absence of an administrative act. Not an administrative act, but directly the norm, on the base of which the administrative act can be issued, is subject to enforced execution. It is believed that the procedure of immediate application was provided for by the legislator for the execution of tacit decisions." Poscher R. Op. cit. p. 120-130.

21 Pension Fund of the RF and Social Insurance Fund of the RF, although not being executive authorities in the institutional sense, but are referred to other government entities created by the state to implement public tasks (are the executive authorities in the functional sense). For more details see: Mitskevich L. A. Essays on the Theory of Administrative Law: Modern Content [Ocherki teorii administrativnogo prava: sovremennoe napolnenie]. Moscow: Prospekt, 2015, pp. 135, 150-152.

22 As follows from the provisions of articles 19 and 20 of the Federal Law No. 212-FL from 24.07.2009 "On the Insurance Premiums to the Pension Fund of the RF, Social Insurance Fund of the RF, Federal Fund of Compulsory Medical Insurance" the Pension Fund and its local bodies are entitled to take authoritative

- acts of bodies exercising control functions<sup>23</sup> on the recovery of money with the attachment of documents with marks of banks or other lending institutions, where checking and other accounts of the debtor are open, about the complete or partial non-fulfillment of requirements of these bodies due to the absence on the accounts of the debtor sufficient funds to meet these requirements;

- acts of other bodies and officials on the cases of administrative offences<sup>24</sup>;

- acts of other bodies in cases stipulated by the Federal law<sup>25</sup>.

It should be noted that there are administrative acts, which are executed not by bailiffs under the FL on enforcement proceedings, but directly by administrative bodies (officials), who has issued them. As an example, we consider the decision of a police officer on the use of physical force, the execution of which is settled in article 19 of the FL "On the Police"<sup>26</sup> (hereinafter – FL "On the Police"). So, in particular, the procedure of use of physical force includes the duty of a police officer

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decisions in relation to individual entrepreneurs and drive them to enforced execution extrajudicially. Review of judicial practice the Supreme Court of the RF for the first quarter 2013. Konsul'tant Plus. Professional version [Electronic resource], Moscow: 2015.

Resolution of a bailiff not to institute enforcement proceedings found to be unlawful because the decision of the state institution – the Office of the Pension Fund of the RF on recovery of money from the debtor-citizen ... is an executive document: Ruling of the Supreme Court of the RF No. 301-KG14-4876 from 01.30.2015, [Opređenje Verkhovnogo Suda RF ot 30.01.2015 g. № 301-KG14-4876], Decision of the Arbitration Court of the Ural District No. F09-9922/14 from 02.27.2015 [Postanovlenie Arbitrazhnogo suda Ural'skogo okru-ga ot 27.02.2015 g. № F09-9922/14]. Konsul'tant Plus. Professional version [Electronic resource], Moscow: 2015.

23 E.g., the decision of a tax authority on the recovery of taxes (fees), fines and tax penalties from the assets of a taxpayer – organizations and individual entrepreneurs (paragraph 7 article 46, paragraph 1 article 47 of the Tax Code of the RF), resolution of the Presidium of the Higher Arbitration Court of the RF No. 8421/07 from 20.11.2007, Commentary to the Federal Law "On Enforcement Proceedings" and its Practical Application [Kommentarii k Federal'nomu zakonu «Ob ispolnitel'nom proizvodstve» i praktike ego prime-neniya]. Editor-in-chief I. V. Reshetnikova, Moscow: Volters Kluver, 2009, p. 66.

24 The most studied in administrative law is the procedure of execution of decisions on cases of administrative offences taken by the officials of administrative bodies. See., e.g.: Buznikova N. E. Enforcement Proceedings on Cases of Administrative Offenses [Ispolnitel'noe proizvodstvo po delam ob administrativnykh prav-onarusheniyakh]. Thesis for the degree of PhD in law, Moscow: 2001; Kuprina N. Yu. Enforcement Proceedings on Cases of Administrative Offenses [Ispolnitel'noe proizvodstvo po delam ob administrativnykh prav-onarusheniyakh]. Thesis for the degree of PhD in law, St. Petersburg: 2004; Bakurova N. N. Execution of Decisions on the Imposition of Certain Types of Administrative Punishments: General Characteristics of Enforcement Proceedings [Ispolnenie postanovlenii o naznachenii otdel'nykh vidov administrativnykh nakazanii: obshchaya kharakteristika ispolnitel'nogo proizvodstva]. Vestnik Universiteta imeni O. E. Kutafina – Bulletin of the University named after O. E. Kutafin, 2014, no. 2, pp. 89-94.

25 Higher Arbitration Court of the RF acknowledged the resolution of the Office of the Pension Fund of the RF on recovery of insurance premiums from the property of a payer in the absence of information about its accounts as an independent executive document: Decision of the Presidium of the Higher Arbitration Court of the Russian Federation No. 8545/13 from 05.11.2013, analytical review from 2/25/2014 [Postanovlenie Prezidiuma VAS RF ot 05.11.2013 g. № 8545/13, Analiticheskii obzor ot 25.02.2014 g.]. Konsul'tant Plus. Professional version [Electronic resource], Moscow: 2015.

26 The initial text of the document is published in SZ RF – Collection of Laws of the RF, 2011, no. 7, article 900.

before using of physical force, special means and firearms to inform persons, in respect of which he assumes to use physical force, special means and firearms, that he is a police officer, to warn them of his intention and give them the opportunity and time to carry out the legitimate demands of the police officer<sup>27</sup>.

### Conclusion

The procedure of execution of individual acts of public administration requires a thorough scientific investigation, because the legal result, which is expected by the subject of law-enforcement in the adoption of an act, is reached exactly at the stage of execution. At the same time it is still difficult to find works on this subject matter in the domestic literature.

Analysis of domestic legislation and the German experience lets us say that the domestic system of execution of individual legal acts gravitates towards the French model, according to which an enforced execution of an individual legal act requires a court decision. However, in the Russian system we can detect some elements of the German model, since some individual administrative acts are subject to enforced execution without a court decision.

We can state the lack of a unified procedure for execution of individual legal acts of public administration. It seems possible to single out the following administrative procedures for execution of individual legal acts of public administration. Firstly, within the framework of enforcement proceedings under the FL on enforcement proceedings enforced execution may be applied only to those individual acts of public administration that are directly listed in the FL on enforcement proceedings. Secondly, enforced execution is possible under other federal laws establishing the procedure for execution of administrative acts by the bodies (officials) that have adopted them (e.g. coercive measures used by the police).

27 See details: Solovei Yu. P. Legal Regulation of Physical Force Use by Police Officers [Pravovoe regulirovanie primeneniya sotrudnikami politsii fizicheskoi sily]. *Administrativnoe pravo i protsess – Administrative Law and process*, 2012, no. 7.

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