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**ADMINISTRATIVE PROCEDURES  
AS A TYPE OF MANAGEMENT PROCEDURES**

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The article deals with the issue of administrative process not through a traditional legal aspect, using mainly formally dogmatic approach, but through managerial aspect, in terms of substantial activity and, primarily, through the analysis of the managerial nature of process.

**Keywords:** management procedures, administrative procedures, administrative procedural forms of activity of executive authorities, public management.

Improvement of the administrative and procedural forms of activity of executive authorities is designated as one of the main ways of increasing the efficiency of public administration in the Russian Federation. In reforms to improve public administration in other countries, one of the central points was the changing of legal management in order to optimize procedural forms (administrative procedures). This is due to the fact that administrative procedures are the main element of procedural enshrining the interrelations of executive authorities and citizens, and, ultimately, indication of the degree of readiness of executive authorities to exercise and protect the rights and legitimate interests of citizens. Therein lies the socio-legal value of legal procedures of management process and, therefore, hence the importance of their legal regulation. It appears that legal regulation should be based not

only on a correct formation of legal constructions, but also on an understanding of the managerial nature of procedures, that will allow a correct determination of the correlation between the formal (legal) and informal procedures.

Basic concepts of administrative-legal science in varying degrees always reflect the dual nature of public management – content of management and legal form that mediates it. In its development the Russian science of administrative law faced alternately dominant influence of both legal structures and managerial realities. Pre-revolutionary administrative law was influenced by German and French administrative law, which had strong traditions of formal dogmatic approach<sup>1</sup>, during the Soviet period, much attention was paid to the study of management theory<sup>2</sup>. In modern conditions both trends take place alternately: there is formation of legal categories, brought to life by the reform of public management<sup>3</sup>, as well as there is a strengthening of legal “component” in the work of executive authorities, which is largely due to administrative and procedural regulation<sup>4</sup>.

In this respect, it seems very interesting to consider the problems of administrative process not through the traditional legal aspect, using mostly formal dogmatic approach, but through administrative aspects, in terms of substantial activity, i.e., first of all, through the analysis of the managerial nature of process. These two aspects together form the administrative process, because management process, being settled by the norms of administrative law, turns into administrative process, but the content inside this legal form remains managerial. Without analyzing the discussion in the administrative-legal literature on the issue of correlation between the concepts of “process”, “procedure” and “proceedings”<sup>5</sup>, to describe

1 See: Elistratov A. I. Basic Principles of Administrative Law [Osnovnyya nachala administrativnogo prava]. Moscow: 1917.

2 See: Kurashvili B. P. Essay on the Theory of Public Administration [Ocherk teorii gosudarstvennogo upravleniya]. Moscow: 1987.

3 Federal Law No. 210-FL from July 27, 2010 (as amended on 18.07.2011) “On the Arranging of Rendering State and Municipal Services” [Federal’nyi zakon ot 27 iyulya 2010 g. № 210-FZ (v red. ot 18.07.2011) «Ob organizatsii predostavleniya gosudarstvennykh i munitsipal’nykh uslug»]. SZ RF – Collection of Laws of the RF, 02.08.2010, no. 31, art. 4179; Resolution of the Russian Federation Government No. 373 from May 16, 2011 (as amended on 19.08.2011) “On the Development and Approval of Administrative Regulations for Performing State Functions and Administrative Regulations for Rendering State Services” [Postanovlenie Pravitel’sтва RF ot 16 maya 2011 g. № 373 (v red. ot 19.08.2011) «O razrabotke i utverzhdenii administrativnykh reglamentov ispolneniya gosudarstvennykh funktsii i administrativnykh reglamentov predostavleniya gosudarstvennykh uslug»]. SZ RF – Collection of Laws of the RF, 30.05.2011, no. 22, art. 3169.

4 Code of Administrative Court Procedure of the Russian Federation [Kodeks administrativnogo sudoproizvodstva RF]. Rossiiskaya gazeta – Russian Newspaper, 2015, no. 49.

5 See: Bakhrakh D. N. Administrative Law in Russia: Textbook for Higher Schools [Administrativnoe pravo Rossii: Uchebnik dlya vuzov]. Moscow: 2000, p. 302; Sorokin V. D. Administrative Process and Administrative Procedural Law [Administrativnyi protsess i administrativno-protsessual’noe pravo]. St. Petersburg: 2002, pp. 186-190; Starilov Yu. N. From Administrative Justice to Administrative Court Procedure. Series “Anniversary, Conferences, Forums” [Ot administrativnoi yustitsii k administrativnomu

the organizational content we may offer to use concepts applicable in the management literature – *process* (sequence or cyclicity of certain stages (phases) and *procedure* (set or sequence of actions (operations) with the help of which a management process is exercised)<sup>6</sup>.

In accordance with the separation of management content and the legal form, we can distinguish two types of managerial procedures – formal or legal (*administrative-legal*) procedures regulated by the rule of law and other *managerial (informal) procedures* that are not enshrined in the law norms, exist as a common practice, as an organizational custom, forming a non-legal part of managerial activity of executive authorities. As you can see, this classification is closely linked to the types of forms of public administration, traditionally distinguished in the science of administrative law<sup>7</sup>. Depending on the legal properties, forms are divided into legal (entailing legal consequences) and non-legal (not entailing legal consequences)<sup>8</sup>. Legal activity directly entails legal consequences, is based on the rule of law and requires a certain legal formulation. Non-legal forms include institutional actions and logistical operations not entailing legal consequences. They are holding of meetings, discussions, checks, dissemination of best practices, development of forecasts, methodical recommendations, organization of press conferences, exercising of statistical records, etc.<sup>9</sup> Logistical actions (operations) traditionally include clerical operations, actual actions for the transfer of funds or property, statistic, information and reference (preparation of reports, briefs, and so on), auxiliary technical operations (procurement of equipment)<sup>10</sup>, in modern conditions occur such actions as the supply of an authority with modern technical means, computers and other office equipment, office furniture, repair of offices, buildings and so on<sup>11</sup>.

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sudoproizvodstvu. Seriya «Yubilei, konferentsii, forumy»]. Voronezh: 2003, no. 1, p. 41; Stakhov A. I., Nesterenko I. A. Administrative Procedure in the Russian Federation: Concept, Essence, Structure and Scope [Administrativnaya protsedura v Rossiiskoi Federatsii: ponyatie, sushchnost', struktura, sfera primeneniya]. Administrativnoe pravo i protsess – Administrative Law and Process, 2012, no. 4, pp. 37-42.

6 See: Atamanchuk G. V. Theory of Public Administration [Teoriya gosudarstvennogo upravleniya]. Moscow: 2004, pp. 252-256.

7 Staros'tsyak E. Legal Forms of Administrative Activity [Pravovye formy administrativnoi deyatel'nosti]. Moscow: 1960, p. 16; Scientific Foundations of Public Administration in the USSR [Nauchnye osnovy gosudarstvennogo upravleniya v SSSR]. Moscow: 1968, pp. 349-351.

8 Administrative Law of Russia: Textbook [Administrativnoe pravo Rossii: uchebnik]. Editor-in-chief N. Yu. Khamaneva, Moscow: 2010, pp. 124-125; Administrative Law: Textbook [Administrativnoe pravo: Uchebnik]. Under edition of L. L. Popov, M. S. Studenikina, Moscow: 2008, pp. 235-237.

9 Bakhrakh D. N. Russian Administrative Law [Administrativnoe pravo Rossii]. Moscow: 2001, p. 269.

10 Scientific Foundations of Public Administration in the USSR [Nauchnye osnovy gosudarstvennogo upravleniya v SSSR]. Moscow: 1968, pp. 364-365.

11 Administrative Law of Russia: Textbook [Administrativnoe pravo Rossii: uchebnik]. Editor-in-chief N. Yu. Khamaneva, Moscow: 2010, p. 128.

It appears that there is a special (so to say, “genetic”) link between traditionally distinguished forms of public administration and their processual mediation. Not accidentally a number of authors<sup>12</sup>, in addition to the traditional forms of management activity, allocates (as forms of) procedural forms of public administration, but this approach has not found significant response in literature. However, it is clear that the activities of executive authorities aimed at commencement of legal effects (adoption of regulations, the publication of individual acts, etc.), is carried out according to a certain procedure, governed by the rule of law. However, it is clear that the activity of executive authorities aimed at emergence of legal effects (adoption of normative acts, issuance of individual acts, etc.) is carried out according to *a certain procedure, governed by the rule of law*. The activity of the authorities in non-legal forms (institutional actions and logistical operations) not involving legal consequences is not regulated by the rule of law, but is exercised also through a certain *management procedure*. This procedure forms a kind of “custom of management practice”, is used at the discretion of employees and in accordance with established practice, the recommendations of the theory of management, directives of heads. Although the management activity of entities in non-legal forms is exercised in the absence of legal regulation of a procedure, but it should be carried out within legal frameworks. As mentioned in this regard in German literature, freedom of actions of bodies in non-legal forms means freedom from the requirements of the law, but not “freedom from law”<sup>13</sup>. Consequently, the orientation of actions of management entities to obtaining a legal result determines a strict procedural form, i.e., requires administrative-legal procedures for these actions, the absence of the legal result implies the absence of regulated legal procedures.

Thus, one of the criteria for the study of administrative procedures as a kind of management procedures is a focus on the emergence of *legal consequences*, and the *types* of these legal consequences (e.g., normative or individual acts), that determines the presence or absence of legal regulation of process.

As you know, when describing administrative process, scientists highlight positive and negative types of procedures (proceedings). In scientific debates on the issues of administrative process there have been formed proposal of scientists on division into administrative-procedural and administrative-jurisdictional kinds of process<sup>14</sup>. The criterion in such cases is *the nature of the relationship between subject*

12 The Forms of Public Administration [Formy gosudarstvennogo upravleniya]. Editor-in-chief B. M. Lazarev, Moscow: 1983.

13 Maurer H. Allgemeines Verwaltungsrecht. München. 2010. S. 423.

14 Administrative Law: Textbook [Administrativnoe pravo: uchebnik]. Under edition of Yu. M. Kozlov and L. L. Popov, Moscow: 2000, p. 384.

and object of management, and accordingly, *methods of exposure* and nature of consequences for the powerless party. So, by the methods of exposure of the subject of management on the object, they distinguish *positive and negative* kinds of administrative process, what is also reflected in the terminology: for example, administrative *procedures* of rendering services and disciplinary proceedings or *proceedings* on cases of administrative offenses<sup>15</sup>. Thus, though the Russian literature does not usually distinguish positive and negative public administration as the main types (unlike foreign administrative law, where it is generally accepted to divide public administration into positive, providing benefits to citizens, and negative, burdening citizens<sup>16</sup>), however, the phenomenon that is “not noticed” by the domestic science of administrative law is manifested in positive and negative forms of process.

The described criteria characterize the legal aspect of the study of administrative process; these criteria are *the presence or absence of legal consequences, their types, and their positive or negative nature for the recipient*. If we take as a basis of the study the content of management process, it allows you to look at administrative procedures from a different angle.

Such *management criterion as the functions* of executive authorities (or in other words, types of activities) creates the grounds for division into law establishing, law-enforcement and law enforcement types of process<sup>17</sup>. Such types of proceedings distinguished in the literature, as a monitoring and oversight proceedings, permissive, licensing, registration and etc. types of proceedings are also based on the implementation of those or other functions of bodies.

So, in the literature, when the referring to administrative-procedural norms, it is proposed to focus on a kind, nature, consistency, duration, as well as the order for documenting the actions of executive authorities and their officials associated with the execution of functions such as the provision of state services, monitoring and supervision within the assigned area of activity, administrative prosecution of persons who have committed administrative offences, pre-trial resolution of administrative disputes, etc.<sup>18</sup>

15 Administrative Law: Textbook [Administrativnoe pravo: uchebnik]. Under edition of Yu. M. Kozlov and L. L. Popov, Moscow: 2000, p. 384; Administrative Law of Russia: Lectures [Administrativnoe pravo Rossii: kurs lektzii]. Under edition of N. Yu. Khamaneva, Moscow: 2007, pp. 505-506.

16 See: Vasil'eva A. F. State of Services: Administrative-legal Research of the Provision of Public Services in Germany and Russia [Servisnoe gosudarstvo: administrativno-pravovoe issledovanie okazaniya publichnykh uslug v Germanii i Rossii]. Moscow: 2012, p. 45-58; Mitskevich L. A. Fundamentals of Administrative Law in Germany [Osnovy administrativnogo prava Germanii]. Krasnoyarsk: 2008, p. 20.

17 Administrative Law: Textbook [Administrativnoe pravo: uchebnik]. Under edition of Yu. M. Kozlov and L. L. Popov, Moscow: 2000, p. 384.

18 Stakhov A. I. Federal Administrative Procedural Legislation: Concept, some Features of Structure and Content [Federal'noe administrativno-protsessual'noe zakonodatel'stvo: ponyatie, nekotorye

At the same time, to distinguish between managerial and judicial meaning of functions we should note that these functions began to appear in legal science in the form of legal concepts only with their enshrining in normative legal acts in the course of administrative reform<sup>19</sup>. As you know, up to this moment the functions were considered as the least legal concept of administrative law<sup>20</sup>. Thus, “non-legal” purely managerial concept turned into a legal one, but at that substantively remained related to administrative process. It is very interesting to consider the impact of the subjective factor in the legal registration of this “metamorphosis”, since the equal in its managerial essence functions have gained completely different legal regulation, including (or even primarily), administrative-procedural one. As has been repeatedly noted in the literature<sup>21</sup>, the ideology of administrative reform in the Russian Federation was oriented to the experience of countries of Anglo-Saxon system, so the main direction of development of the legislation was the development and adoption of administrative regulations. As a result there were formed two different segments of the domestic legislation, on the one hand, traditional laws and bylaws, on the other hand, numerous administrative regulations. The norms of these acts are in the internal conflict, while the traditional correlation of general and special legal regulation is not applicable here, as there is the conflict of not different acts, *but of different legal systems*. As a result administrative procedures in carrying out the functions of providing services became regulated differently than all other functions of the bodies, including the consideration of citizen’s applications<sup>22</sup>. At the same time exercising of other functions of the bodies, primarily the functions of monitoring and oversight, is regulated by the traditional way (by federal law), and the complaints procedure

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osobnosti struktury i sodержaniya]. *Administrativnoe pravo i protsess – Administrative Law and Process*, 2013, no. 2, pp. 13-16.

19 On the System and Structure of Federal Bodies of Executive Power: Decree of the President of the Russian Federation No. 314 from 09.03.2004 [O sisteme i strukture federal'nykh organov ispolnitel'noi vlasti: Ukaz Prezidenta Rossiiskoi Federatsii ot 09.03.2004 № 314]. Konsul'tant Plus. Professional version [Electronic resource], Moscow: 2015].

20 Bachilo I. L. Functions of Control Bodies: Legal Problems of Formulation and Implementation [Funktsii organov upravleniya: pravovye problemy oformleniya i realizatsii]. Moscow: 1976, pp. 23-44.

21 Mitskevich L. A. Supranational Tendencies in the Russian Administrative Law [Nadnatsional'nye tendentsii v rossiiskom administrativnom prave]. *Porivnyal'ne pravoznavstvo: suchasny stan i perspektivi rozvitku: zbirnik naukovikh prats' – Comparative Law: Current State and Prospects of Development: Collection of Scientific Papers*, under edition of S. Shemshuchenko and others, Lviv: 2012, pp. 434-437; Mitskevich L. A. Legal Value of Not-legal Forms of Public Administration [Yuridicheskoe znachenie nepravovykh form gosudarstvennogo upravleniya]. *Rossiiskoe pravo v internete – Russian Law on the Internet*, 2012, no.1.

22 See: Ponkin I. V. Simplification of Legislation as a Tool of the “New” Model of Public Management [Uproshchenie zakonodatel'stva kak instrument «novoi» modeli publichnogo upravleniya]. *Administrativnoe pravo i protsess – Administrative Law and Process*, 2014, no. 4, pp. 8-12.

is implemented on the basis of the Federal Law on appeals of citizens. It is quite natural that the judicial practice on such disputes is controversial; in some cases courts indicate precedence of the norms of the FL on services, rather than of the FL on appeals of citizens<sup>23</sup>.

Thus, the one order functions (in terms of the management process) appeared resolved by completely different administrative-procedural norms and turned into different kinds of administrative procedures (proceedings).

Another reason for the study the impact of management content on legal regulation could be *stages nature of managerial cycle*. It is known that management process, as a complex of continuous, interconnected and sequentially carried out actions, is cyclic, consists of several stages, at each of which the subject of management and other actors make a series of certain, successive actions. The distinguishing of the following stages is considered to be universal: collection and processing of information, adoption of a managerial decision, implementation of a managerial decision, monitoring of its execution<sup>24</sup>. It is believed that management stages are somewhat uneven, for example, the development and taking of managerial decisions –are the main, most crucial stages, as well as the procedure that form them. Other stages, such as the collection and processing of information, are of security nature.

In administrative procedures these stages are reflected differently depending on the consequences for a citizen. Jurisdictional proceedings in detail regulate the actions of the subject of management at each stage, including at the stage of data collection and analysis, due to the need to gather and process evidence. Positive procedures regulate in greater details the stages of adoption and implementation of decisions and the stages of data collection and processing are described in general terms. For example, article 10 of the FL “On the Procedure of Consideration of Citizens’ Appeals” indicates that a body or official provides an objective, comprehensive and timely consideration of an application, requests the necessary materials, gives a written reply on the merits of issues set out in the application. These provisions can be described more as the tasks of an authority, the procedure, i.e., the sequence of actions in the stage of collecting and processing information, as well as the order of actions when it takes a managerial decision and prepares the response, is determined by the authority (official)

23 The decision of the Supreme Court of the RF No. AKPI14-730 from August 20, 2014 [Reshenie Verkhovnogo Suda RF ot 20 avgusta 2014 № AKPI14-730]. Konsul'tant Plus. Professional version [Electronic resource], Moscow: 2015.

24 See: Atamanchuk G. V. Theory of Public Administration [Teoriya gosudarstvennogo upravleniya]. Moscow: 2004, pp. 252-256.

itself. These actions can be attributed to managerial procedures; they are carried out in accordance with the customs of organizational practice. Thus, managerial (non-legal) procedures at certain stages take place in the positive administrative procedures.

In the rule-making process the regulation of a procedure can also be considered in terms of the correlation of administrative-legal and managerial procedures at individual stages of process. The legislation enshrines in detail the procedure of elaboration of a draft act, harmonization and adoption of a sub-legislative normative legal act, its registration and publication. The stage of collecting and processing information on the necessity and feasibility of such an act, about the possible consequences of its adoption has received legal regulation only recently, and it is not a subject to strict and detailed regulation. For example, the Resolution of the Government of the RF from 13.08.1997 "On Approval the Rules of Preparation of Normative Legal Acts of the Federal Executive Authorities and their State Registration"<sup>25</sup> states that in the process of drafting a normative legal act there should be a study of the legislation of the Russian Federation related to the draft's theme, the treaties on the delimitation of powers between the public authorities of the Russian Federation and authorities of the subjects of the Russian Federation, the practice of application of relevant normative legal acts, scientific literature and materials of periodical press on the considered issue, as well as data of sociological and other studies, if such have been carried out. Thus, the responsibility of bodies has been established, but the procedure for performing this duty of the bodies is determined by themselves in accordance with the common practice. About the same nature is typical for the provisions on mandatory preliminary discussion of draft normative legal acts at meetings of public councils under the federal bodies of executive power (in the presence of these councils).

Thus, the analysis of positive administrative procedures allows detect the fact that the correlation of informal (non-legal) managerial procedures and formal procedures depends on the role of those stages of management process in which they are carried out when making a management decision.

**Conclusion.** Management process, being settled by the norms of administrative law, turns into administrative process, what allows you to analyze both legal form and management content.

As criteria for the description of procedures we can take both legal factors (the presence or absence of *legal consequences, their types, as well as the nature for the recipient*) and managerial (management *functions, stages of management process*),

25 Konsul'tant Plus. Professional version [Electronic resource], Moscow: 2015.



to a large extent, these factors influence on the presence or absence of legal regulation of procedures. Along with the formal administrative procedures there are informal managerial procedures, the role and significance of which, as it seems, have not yet been adequately reflected in researches.

The role of procedural forms is to ensure not only legality, but also rationality of public management, since any procedural form is not an end in itself, but a means of achieving management efficiency. To achieve these objectives, the legal regulation of procedures should not be overly formalized, including creating the illusion of anti-corruption measures, but in fact, hindering creative and rational foundations of management activity. Administrative-legal procedures must be in correct proportion with non-legal, informal management procedures providing for the possibility of administrative discretion.

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