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ADMINISTRATIVE PROCEDURES IN THE REPUBLIC OF BELARUS

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The author notes the key role in the legal system of the Republic of Belarus of the Law of the Republic of Belarus "On the Fundamentals of Administrative Procedures" from October 28, 2008, in terms of legal regulation of submission and consideration of application from a concerned person, the order of taking an administrative decision, as well as the appeal mechanism and execution of the taken decision. The shortcomings and problematic issues of the Law are explored in the article.

Keywords: administrative procedures, administrative procedures in the Republic of Belarus, de-bureaucratization of state apparatus.

After the collapse of the USSR Belarus started the formation of legal system of an independent state, based on the new value system and corresponding to the changed social relations. Reforms have been undertaken primarily in the fields of constitutional legislation and legislation on economic activity. As for administrative legislation, this field has preserved the old model of regulation, which we inherited from Soviet times.

It was characterized by the focus on the interests of the state, rather than on human rights, providing convenient conditions for the work of state bodies, and not for the visitors, regulation of procedures of interrelation authorities and a person primarily at the level of departmental acts, opacity of decision-making.

As a consequence, the absence or lack of information, limited time of reception of visitors, large queues, lack of conditions for visitor services, necessity to visit a wide range of different government agencies to collect documents and approvals, often became typical characteristics of work with population.

The increase of dissatisfaction with the work of state institutions, the desire to eliminate negative phenomena in the field of interrelations of a man and authorities have led to an understanding of the need to reform the relevant legislation. As a result, since the mid-2000s an active work on de-bureaucratization of the state apparatus has started.

De-bureaucratization of the state apparatus becomes a priority of public policy. Its key ideas are reflected in the special political and legal act – Directive of the President of the Republic of Belarus No. 2 from December 27, 2006 "On Measures for Further De-bureaucratization of the State Apparatus and Improving the Quality of Life Support of the Population", which for years has defined the direction of development of legislation in this area.

One of the most important directions of de-bureaucratization of the state apparatus is the improvement of the legislation on administrative procedures. At present Belarus has a significant legislative array in the field of administrative procedures.

In general terms, the structure of domestic legislation on administrative procedures consists of:

- the Law of the Republic of Belarus "On the Fundamentals of Administrative Procedures" from October 28, 2008;
- list of administrative procedures;
- normative legal acts regulating the implementation of specific procedures.

The key role in this system is given to the Law of the Republic of Belarus "On the Fundamentals of Administrative Procedures" from October 28, 2008, which lays

down general requirements for submission and consideration of an application by a interested person, the order of taking administrative decision, and also defines a mechanism for appeal and exercising of a taken decision.

The law enshrines the requirements to the level of regulation of administrative procedures. The names of administrative procedures, bodies that implement them, lists of documents to be submitted, the timing of administrative procedures, validity of the document issued in the implementation of administrative procedures, fees for the implementation of administrative procedures can be established only by laws, decrees and edicts of the President of the Republic of Belarus, decisions of the Government of the Republic of Belarus. This allowed bringing out of the regulation the order of implementation administrative procedures from the scope of departmental rulemaking, and providing a strong legislative foundation for the regulation of relevant issues.

Attention should be paid to strengthening in the Law of a very specific principle applicable in administrative procedures – the priority of interests of interested parties. In case of ambiguity or fuzziness of legal act prescriptions, administrative decisions should be taken by competent authorities on the basis of the best meeting the interests of such persons. This principle is intended to some extent rationalize the use of available discretionary powers by authorized bodies.

Another important provision of the Law is the prohibition to reclaim from an interested person any documents that may be requested by an authorized body itself, aimed at creating conditions for the implementation of the one stop-shop principle. In order to implement this principle there is an approval of lists of documents to be submitted by interested persons, and those that must be requested by authorized bodies themselves.

The Law regulates in detail the procedure for appeal against an administratively taken decision, consolidating the traditional for domestic law approach on the possibility of sending a complaint to a superior organization. This method remains a priority way of appealing against administrative decisions, due to its simplicity and accessibility, the absence of need to bear procedural costs. Often, even with the possibility of judicial appeal, interested persons prefer to repeatedly complain to superior organizations.

In 2014, courts of general jurisdiction received 1512 complaints against decisions, actions (inactions) of state bodies and officials. 556 complaints were satisfied[1].

1 Brief statistics on the activity of courts of general jurisdiction in the administration of justice for 2014 [Kratkie statisticheskie dannye o deyatel'nosti sudov obshchei yurisdiktsii po osushchestvleniyu pravosudiya za 2014 god]. Available at : http://court.by/justice/press_office/fca8015f7fc6586c.html (accessed : 22.05.2015).

The number of complaints lodged in administrative order against administrative decisions many times exceeds this figure[2]. So, in 2014, the Ministry of Housing and Communal Services of the Republic of Belarus, only on the issue of privatization of dwellings, received 694 complaints, the majority of which related to disagreement with decisions taken on privatization.

In turn, appeals against administrative decisions in the courts are regulated by the Civil Procedure Code and Economic Procedure Code. Under the general rule, a prerequisite for a citizen's complaint to the court is a preliminary appeal against the decision in administrative procedure. However, in some cases, legislative acts may provide for possibility to complain directly to the court.

A specific feature of the Belarusian legislation is the existence of lists of administrative procedures – comprehensive normative legal acts that contain information about where you should apply for the implementation of an administrative procedure, lists of documents to be submitted, the timing of administrative procedures, validity of the document issued in the implementation of administrative procedures, as well as fees for the implementation of administrative procedures.

The lists represent an example of doubling the normative material, providing information that is usually enshrined in other normative legal acts in an accessible and standardized form, what greatly facilitates its search. Furthermore, such lists fill up the missing elements of administrative procedure, if in a normative legal act regulating this procedure they are not defined (for example, there is no information on the validity of document, the amount of fees).

At present there are two lists of administrative procedures approved in Belarus:

- list of administrative procedures carried out by state bodies and other organizations towards citizens, approved by the Decree of the President of the Republic of Belarus No. 200 from April 26, 2010. This list contains about 600 procedures divided by respective areas. At the same time, in order to prevent unjustified emergence of new administrative procedures there was established a ban on exercising procedures that are not included in this list;
- unified list of administrative procedures carried out by state bodies and other organizations in relation to legal entities and individual entrepreneurs, approved by the decision of the Council of Ministers of the Republic of Belarus № 156 from February 17, 2012 (contains about 800 administrative procedures).

These lists, despite the complexity of keeping them up-to-date (for example, only in the year 2014, the unified list of administrative procedures carried out by

2 Unfortunately, the majority of authorized bodies do not do separate accounting of administrative complaints. Often these complaints are registered together with the complaints filed under the legislation on appeals of citizens and legal entities.

state bodies and other organizations in relation to legal entities and individual entrepreneurs was updated 53 times), are a very convenient way to streamline legislation and in demand among population and practitioners.

Another component of the legislation on administrative procedures is acts governing the order of exercising of specific administrative procedures. Examples include the Law of the Republic of Belarus from July 22, 2002 "On State Registration of Real Estate, Rights on it and Transactions with it", Decree of the President of the Republic of Belarus No. 450 from September 1, 2010 "On Licensing of Certain Kinds of Activity", Decree of the President of the Republic of Belarus No. 41 from January 19, 2012 "On State Targeted Social Assistance".

In some cases such acts contain only some provisions of an administrative procedure, and in others, provide for a very detailed procedural regulation. In both cases, the content of the said acts must conform to the Law of the Republic of Belarus "On the Fundamentals of Administrative Procedures".

Along with the establishment of the necessary legal framework, in Belarus we can see a large-scale work on the introduction into practice of a new mechanism of interaction of authorities and citizens in exercising of administrative procedures on the basis of one stop-shop principle.

Local authorities obtain special units – "one-stop shop" services, which provide the possibility of filing in one place of applications for the exercising administrative procedures in various areas.

A unified portal of electronic services has been created and is developing.

There is a fully functioning single reference number for administrative procedures (142), where you can get information on how to exercise procedures in a particular locality.

Monitoring of the order of exercising administrative procedures is conducted on an ongoing basis.

Establishment of responsibility for violation of the legislation on administrative procedures is designed to promote the ensuring of its practical implementation. In particular, the Code of the Republic of Belarus on Administrative Offences is supplemented by a special article, which provides for administrative responsibility for violation of the legislation on administrative procedures (discovery of documents, which must be requested by a public authority or another organization itself, unlawful charging, delays in implementation of procedures, etc.).

However, a significant number of outstanding issues remains in the sphere of exercising administrative procedures, both in part of legal regulation and in part of practical implementation of regulatory prescriptions.

We would like to stay on the problematic issues of the Law of the Republic of Belarus "On the Fundamentals of Administrative Procedures". Its adoption raised great expectations regarding the establishment of unified standards of exercising administrative procedures, strengthening guarantees of interested persons in the course of exercising administrative procedures.

Unfortunately, these expectations were not fully realized. This is partly due to too broad description of the order for filing applications and taking administrative decision, the existence of a significant number of blanket rules.

A significant drawback is a very narrow subject of regulation. The definition of administrative procedure is limited to the adoption of administrative decisions on the basis of application of a person concerned, that excludes from the scope of the Law all decisions taken by own initiative of administrative bodies.

In addition, administrative decision covers only those decisions that establish, change or terminate the rights or obligations of persons.

As a result, the Law does not cover a significant number of applications relating to the scope of the Law of the Republic of Belarus "On Appeals of Citizens and Legal Entities". Parallel action of the legislation on administrative procedures and legislation on appeals of citizens and legal entities, which regulate very similar issues, complicates enforcement, each time requiring identification of the institutional affiliation of a submitted application.

In such a situation, the Law, despite its fairly common name, does not establish a universal administrative procedures and is more similar in governed matters to the legislation on public (administrative) services of the Russian Federation, Kazakhstan and Ukraine.

Another disadvantage of the current Law is inadequate regulation of a number of issues that are important for the implementation of administrative procedures.

So, the range of participants in administrative procedures does not include such an important entity as the third parties, whose rights or duties may be affected by a taken administrative decision. Such persons are forced to undertake protection of their rights within the framework of the legislation on appeals of citizens and legal entities.

The rights of interested parties do not include an already traditional for foreign administrative-procedural legislation "right to be heard" in the event of an unfavorable decision to the applicant. Attempts to enshrine this right stumble on the objections of practical nature (lack of suitable premises, increased load on the management bodies, possibility to slow procedures, etc.).

The issue of the invalidity of an administrative decision, the order of its cancellation and recognition invalid, also remains unresolved.

All this reduces the role of Law as a pivotal piece of legislation in the sphere of exercising administrative procedures. Not coincidentally, among practitioners, the Law rarely stays among the acts governing day-to-day work on the implementation of administrative procedures, and even rarer they are able to call its procedural provisions. References to the general Law are practically not included in judicial decisions when considering complaints related to the implementation of administrative procedures.

As a consequence, currently the main "driving force" of the legislation on administrative procedures becomes not the Law, but acts governing the order of implementation of certain procedures, within which there can be created its own procedural regulation, as well as the existing lists of administrative procedures.

The effective functioning of the institute of administrative procedures is hindered also by a certain "gap" between the standard of administrative procedure at the legislative level and its practical implementation by state bodies and organizations.

In some cases, there are such negative phenomena as collection by interested parties of documents that must be requested by the authorized bodies, violation of the terms of administrative procedures, non-compliance to the work regime, long waiting lines, etc. Along with objective reasons, such shortcomings are caused by the attitude of certain categories of employees of public bodies and organizations towards the procedural rules as to somewhat secondary, compliance with which can be ignored in certain situations.

At that, there is a very interesting phenomenon. Many citizens do not consider procedural violations made by state bodies and organizations as violations of their rights. This is largely explained by the Soviet pattern of interrelations "official-citizen", in which the position of the representative of a public authority was regarded as "derivative" rights, which should not be doubted, as well as the conviction that a dispute with such an authority will not contribute to a positive solution of the applicant's issue.

All this shows that unlike traditional criminal or civil processes, understanding of the importance of respecting procedural forms in the sphere of public administration have not yet been fully established.

In the current situation there is a need for the adoption of measures for the further improvement of the legislation on administrative procedures, as well as the practice of its application.

Priority issues requiring resolution at the legislative level, include:

- extension of the scope of the Law;

- elimination of overlapping between the legislation on administrative procedures and legislation on appeals of citizens and legal entities, the creation of a unified procedural order of consideration of applications and complaints in public authorities;

- search for a balance between the norms of the general Law on administrative procedures and norms of the sectoral legislation, regulating the order of implementation of specific procedures;

- filling gaps in the current Law.

Currently, according to the plan of preparation of draft laws for 2015, approved by the Decree of the President of the Republic of Belarus No. 55 from 13.02.2015, there is an elaboration of amendments and additions to the Law of the Republic of Belarus "On the Fundamentals of Administrative Procedures", within which, we hope, certain mentioned issues will be resolved. In particular, clarification of the range of participants in administrative procedure and regulation for the order of validity of an administrative decision in time are presupposed.

References:

1. *Code on Administrative Offences of the Republic of Belarus* [Kodeks Respubliki Belarus' ob administrativnykh pravonarusheniyakh]. Available at : http://etalonline.by/?type=text&regnum=Hk0300194#load_text_none_1_ (accessed : 22.05.2015).

2. *Law of the Republic of Belarus "On the Fundamentals of Administrative Procedures"* [Zakon Respubliki Belarus' ot 28 oktyabrya 2008 goda "Ob osnovakh administrativnykh protsedur"]. Available at : http://www.pravo.by/main.aspx?guid=3871&p2=2/1530 (accessed : 22.05.2015).

3. *Directive of the President of the Republic of Belarus No. 2 from December 27, 2006 "On Measures for Further De-bureaucratization of the State Apparatus and Improving the Quality of Life Support of the Population"* [Direktiva Prezidenta Respubliki Belarus' ot 27 dekabrya 2006 g. № 2 "O merakh po dal'neishei debyurokratizatsii gosudarstvennogo apparata i povyshenii kachestva obespecheniya zhiznedeyatel'nosti naseleniya"]. Available at : http://etalonline.by/?type=text&regnum=p00600002#load_text_none_1_ (accessed : 22.05.2015).

4. *Brief statistics on the activity of courts of general jurisdiction in the administration of justice for 2014* [Kratkie statisticheskie dannye o deyatel'nosti sudov obshchei yurisdiktsii po osushchestvleniyu pravosudiya za 2014 god]. Available at : http://court.by/justice/press_office/fca8015f7fc6586c.html (accessed : 22.05.2015).