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The Principles of Administrative Procedures: European and Russian Experience

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

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

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

Friedrich Carl von Savigny

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[177] Art. 6 "The right to a fair trial":
1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
(b) to have adequate time and facilities for the preparation of his defence;

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

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

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

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

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

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court. (Reference legal system "Konsultant Plus").

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[189] Russian Gazette, 2008. December 30.

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

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

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

1.3. The principle of proportionality.

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

[190] See: Decisions of the Constitutional Court of the Russian Federation No. 11-P from June 19, 2002, No. 2-P from 19.01.2016; Rulings No. 1387-O from June 13, 2016, No. 1428-O from July 07, 2016, No. 1460-O from July 19, 2016, and others.

[191] *Armin von Bogdandi, Peter M. Huber*, The State, Public Administration and Administrative Law in Germany // Public Law Diges, 2014. no. 1 (3). p. 46.

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

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

This principle has a constitutional basis in the Russian Federation. According to ɜart 3 of article 55 of the RF Constitution, "the rights and freedoms of man and citizen may be limited by the federal law *only to such an extent to which it is necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defence of the country and security of the State*". However, in general, this principle is applied not so much in positive, as in protective, jurisdictional procedures (for example, in dealing with issues of deportation, administrative expulsion of foreign citizens). Moreover, the Russian courts not being fully aware of its content essentially declare this principle. In fact, the proportionality test is not applied in the Russian legal system; courts only use a nice foreign term, in fact discussing about the fairness, reasonableness, acceptability (or, accordingly, injustice, unreasonableness, unacceptability) of various measures. Paradoxically, the Anglo-Saxon doctrine of "natural justice" is now closer to law enforcement practice, in spite of the fact that traditionally German influence on the Russian public legislation cannot be overestimated. The scientific doctrine of this principle in Russia is still in its infancy.[193]

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

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

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

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

3. Principles of administrative procedures themselves.

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

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

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

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

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

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

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

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

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

3.2. The principle of prohibition of abuse of rights.

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

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

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

1) refusal to satisfy claims;

2) transfer of costs to a dishonest person;

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

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

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

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

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

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

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

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

3.4. The principle of uniform application of law.

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

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

3.5. Presumption of reliability.

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

[199] *Sin M.P.* Op. cit.. p. 150.
[200] This rule, for example, is directly enshrined in part 3 of article 45 of the Law on Administrative Procedures of Finland (see: Collection of Legislative Acts on Administrative Procedures, Almaty, 2013. p. 376).
[201] URL: https://rospravosudie.com/

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

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

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

3.7. The principle of coverage of bigger by smaller.

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

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

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

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

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

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

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

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

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

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

[207] Russian Gazette, July 30, 1997.

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

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

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

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

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

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

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

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

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

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

However, the emergence of "good administration" as a relatively holistic legal framework needs to be linked not so much to individual and little-coordinated experiments of national legislators, but to the activities of European supranational bodies.

Firstly, we are talking about several fundamental acts of the Council of Europe. Indeed, it is difficult to overestimate the importance of the resolution of the Council of Europe of September 28, 1977 On the Protection of the Individual in Relation to the Acts of Administrative Authorities. This act rightly emphasizes the tendency to increase the role of the public admin-

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

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

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

[216] Here we can recall articles 31, 103 of the Spanish Constitution of 1978, according to which the public administration must act objectively and impartially, in accordance with the principles of efficiency, economy, coordination and prohibition of abuse of power.

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

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

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

As noted in the research literature, this resolution became an important step towards the formation of a legal framework for the main procedural principles that form the "core" of the right to "good administration".[217] Here it is possible to mention the Recommendation of the Council of Europe (adopted by the Committee of Ministers on March 11, 1980) Concerning the Exercise of Discretionary Powers by Administrative Authorities. This resolution, along with other principles, paid special attention to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1) consideration of a case fairly and impartially within a reasonable time (part 1, article 41 of the Charter, article 8 of the Code of Good Administrative Behaviour);
2) right to be heard before the adoption of an act that may lead to adverse consequences for a person (part 2, article 41 of the Charter, article 16 of the Code);
3) right of access to a case, if a measure applied can affect the legal status of a person (part 2, article 41 of the Charter);
4) obligation to motivate taken decisions in writing (part 2, article 41 of the Charter, article 18 of the Code);
5) right to access to documents (article 42 of the Charter);
6) legality (Article 4 of the Code);
7) prohibition of discrimination (article 5 of the Code);
8) the principle of proportionality (article 6 of the Code);
9) obligation of service-mindness (article 12 of the Code);
10) prohibition of abuse of right (article 14 of the Code);
11) obligation to indicate legal remedies to persons entitled to appeal (article 19 of the Code);
12) obligation to notify persons about a decision taken (article 20 of the Code);
13) obligation to document, record, protocol procedures (article 23, 24 of the Code).

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

1. *The right to be heard*.

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

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

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

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

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

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

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

5. measures of administrative enforcement are to be taken;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. when this derives from a legal provision;

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

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

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

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

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

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

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

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

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

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

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

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

[234] This conclusion does not apply to tort administrative law, which just got hypertrophied development in the Russian legal system.

[235] The Swedish Agency for Public Administration, the principles of good governance in the member states of the European Union, 2005. pp. 72-74

[236] *Guido Corso*, Administrative Procedures: Twenty Years Later, Italian Journal of Public Law, Volume 2, no. 2/2010, pp. 274-275.

[237] The Swedish Agency for Public Administration, the principles of good governance in the member states of the European Union, 2005. p. 77.

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

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