Trends in the development of Russian administrative law: A comparative legal aspect

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The article substantiates that during the period of development of administrative law as an independent progressive branch of law in the 20th and 21st centuries, two main achievements can be distinguished in world experience. The first is the evolution of the administrative process, administrative procedures, which changed the face of public administration, making it more transparent and democratic, since citizens got the opportunity not only to challenge administrative acts, but also to participate in the procedures for their adoption, protecting their interests even before the approval of the ruling decision. The second key achievement is the approval as categorical imperatives of such principles as legality, equality, proportionality, legal stability (protection of legitimate expectations), prohibition of overformalism. These beginnings are most consistently implemented in the Russian legislation on administrative responsibility, as well as in the legislation on administrative proceedings. In the field of positive public administration, the legislator is still less receptive to these novelties. At the same time, the inertia of the legislator is to a certain extent compensated by the activity of the Russian judicial bodies. The trend towards the perception of the main innovations of administrative law cannot be called into question by special administrative regimes (high preparedness for an emergency, a special military operation, etc.), including for the reason that such regimes, for all their importance, are temporary. Therefore, despite any difficulties, it is necessary to form a regulatory system designed for "usual" normality. At the same time, it is more important than ever to maintain a balance between the goals of rationalizing public administration (protecting public and state security) and protecting the rights of citizens. It is possible to predict further "splitting" of Russian administrative law. On the one hand, administrative legislation will be tightened and politicized, first of all, on the issues of interaction between the domestic administrative system and representatives of unfriendly foreign legal orders (as well as subjects of the Russian legal system, affiliated with them). But for the basis of the model of relations between the Russian public administration and the citizens of the Russian Federation, a predominantly different paradigm should be used — a human rights one.

Keywords: administrative law, public administration, administrative process, principles of administrative law, human rights.

Introduction

The emergence of "classical" administrative law as an independent fundamental legal branch that regulates the mechanism of public administration became possible precisely in continental Europe, in the Romano-Germanic legal system, apparently due to three main circumstances.

The first factor is the division of all branches of law into private and public. At the same time, public law regulation implies special goals, methods and legal means. In the case of

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administrative law, we are certainly talking about public goals, imperative methods and an administrative act (as the main instruments of administrative legal regulation).

The second prerequisite is the achievement of a sufficiently high level of development of the state administration, the system of administrative bodies. The growth in the scale and complexity of the tasks to be solved naturally stimulated the development of the administrative apparatus, in a broader sense, of the entire relevant regulatory system.

These two factors led to the formation by the 17th–18th centuries in a number of European states of the so-called "police law", the logic of which, as well known, was based on the ideas of immanent unreason and helplessness of citizens demanding paternalism from the ubiquitous state power[1]. There were no boundaries for such state-imperious influence; inspired by the presumption of its power and wisdom, the public administration regulated everything it saw fit, down to the uniform of civilians and the number of bottles of wine at peasant weddings. As it was noted by the outstanding jurist, the founder of the science of administrative law in Russia professor A. I. Elistratov, "based on the idea of the immaturity of the subjects, wanting to do good to the layman forcibly, the royal power... in its police activities inevitably became the population in the position of a guardian..."[2]. As a result, "and what does the layman eat, and what should he wear, how to appear on the street, how to live, and most importantly — how to think and express his thought — in all this he had to be taken care of by the police"[3]. Objectivity forces us to admit: "By binding the amateur activity of the layman, deeply subordinating him to the discretion and arbitrariness of the authorities, the police were, of course, powerless to bring prosperity to the broad masses of the population. Nevertheless, it still played some historical role. The historical significance of the police lies mainly in the fact that in a certain way it subordinated the disparate elements of the Middle Ages into one whole"[4]. However, researchers of past centuries had no illusions about the current situation. As noted by A. I. Elistratov, "police 'law' was so profoundly different in nature from civil and criminal law that the ancient lawyers who followed its emergence looked at it as an ugly growth (jura pussila) in the system of law"[5].

Here, however, we come to the key, *third factor* that made possible the truly great evolutionary leap from primitive police law to an undeniably more complex branch of administrative law. We are talking about the socio-political changes of the 19th–20th centuries, which led to a gradual but steady legal recognition of the legal personality of citizens. A person in the new paradigm of legal regulation becomes not a passive object, a cog of state intervention, but a subject of legal relations with public administration; the bearer of not only duties, but also rights, requirements for public administration.

1. Important features of the branch of administrative law as an element of the legal system

As the first feature, we denote the vastness of the subject of legal regulation, unique for national branches of law. With all the historical mobility (when the epochs of the expansion of the public administration were replaced by a "rollback", the displacement of state-power interference by private-legal regulation), the general trend is the persistent

[1] On this issue see: *Mohl R.,* von. 1) Die Polizeiwissenschaft nach den Grundsätzen des Rechtsstaates. 3. Aufl. Bd. 1–3. Tübingen, 1866; 2) Staatsrecht des Königreichs Württemberg. 2. Aufl. Bd. 1–2. Tübingen, 1846.

[2] *Elistratov A. I.* Osnovnye nachala administrativnogo prava. 2nd ed., rev. and add. Moscow: G. A. Leman i S. I. Saharov Publ., 1917. P. 10–11.

[3] Ibid.

[4] Ibid.

[5] Ibid.

assertion of the dominance of the system of executive bodies and the expansion of their areas of activity.

The foregoing determines the second feature of administrative law — a complex internal structure. Here, along with positive management and legal institutions associated with it (legal personality of citizens and organizations, the system and structure of executive authorities, civil service, legal forms of management, etc.), in the developed legal order there is a place for administrative legal proceedings, and in the domestic tradition — as well as the phenomenon of administrative responsibility.

The third point is the propensity for expansion, even militarization. This feature manifests itself especially clearly in times of crisis, provided, of course, that the "capacity" of the public administration is preserved (to which we will return later).

Finally, the fourth feature is the dialectical dualism of the goals of administrative law, which runs like a red thread through all its development. On the one hand, we are talking about rationalization, increasing the efficiency of public administration, and on the other hand, about protecting the rights of citizens[6]. Speaking about the logic of the development of "true" administrative law, one should not forget the human rights aspect, which allows this law branch to rise to a height, unattainable for police law. This factor is one of the key; it cannot be "cancelled" (at least completely and in the long term) by crisis phenomena, "forgotten" due to difficult socio-economic and/or political circumstances, because it is here that we see at least the second half of the essence of administrative law — the inalienable, inevitable and beautiful.

2. The main features of the Soviet stage of the Russian administrative law development

First, the unequal fate of administrative law as a branch and the corresponding doctrine. The branch of administrative law reaches unprecedented significance, becomes a legal giant, absorbing entire institutions, pushing entire branches (for example, civil law) to the periphery. Administrative legal methods, conductors of the state will — decisive, tough and ambitious — come to the fore (here it is enough to recall the hypertrophied significance of the planning function)[7]. The science of administrative law, unfortunately, for a long time remained in the shadow of the great branch that it had to analyze. In particular, in the USSR twice (in 1918–1921 and 1929–1938), according to D. N. Bahrakh researchings and teachings of administrative law were "stopped"[8]. These strikes rolled back the scientific analysis of the legal regulation of public administration for decades. In fact, the Russian doctrine of administrative law on a number of issues has remained in the position of catching up branch of knowledge.

The second important point is the high degree of correlation between administrative law and politics. The 20th century and, as it is already obvious, the 21st century, presented Russia with unprecedented complexity and dramatic tests: two world wars, a civil war, the

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[6] *Shmidt-Assmann E.* Kodifikatsiia zakonodatel'stva ob administrativnykh protsedurakh: traditsii i modeli // Ezhegodnik publichnogo prava 2017: Usmotrenie i otsenochnye poniatiia v administrativnom prave. Moscow, 2017. P. 336–337; *Fromon M.* Tipy vnutrigosudarstvennogo administrativnogo prava v Evrope // Daidzhest publichnogo prava. 2012. No. 2. P. 326.

[7] For more details on this issue, see: *Kudrjashova E. V.:* 1) Sovremennyi mekhanizm pravovogo regulirovaniia gosudarstvennogo planirovaniia (na primere gosudarstvennogo finansovogo planirovaniia). Moscow: Biblio-Globus Publ., 2013. 272 p.; 2) Pravovoe regulirovanie gosudarstvennogo planirovaniia v sovetskii period // Istoriia gosudarstva i prava. 2009. No. 21. P. 23–25.

[8] See: *Bahrah D. N.* Administrativnoe pravo Rossii: uchebnik. 2nd ed., rev. and add. Moscow: Eksmo Publ., 2006. P. 53.

Cold War, the collapse of the USSR, sanctions pressure, and so on. Domestic administrative law could not but react to all this (often with a significant delay).

Consequently (and this is third), one of the leitmotifs of the development of Soviet and post-Soviet administrative law is to respond to the increasing foreign and domestic political tension. As a result, it led to the inevitable militarization of the Soviet mechanism of administrative legal regulation, subordination (or even denial) of the human rights goal. Perhaps the most striking illustration of this thesis is the difficult fate of Russian administrative proceedings (justice)[9]. As well-known, the Soviet doctrine and legislation almost completely denied the possibility of judicial appeal by citizens against illegal decisions of public administration. For the first time, such a subjective right was enshrined in the laws of the USSR in 1987 and 1989[10], i. e. on the eve of the collapse of the Soviet regime.

3. Some aspects of development and reformation of the modern Russian administrative law

Reforming and rationalizing of the public administration system is an inevitable process. In a broad sense, it seems that we can talk about administrative reform as a natural condition for the functioning of public administration. At the same time, as noted in the research literature, until the early 1980s, the phenomenon of administrative reforms in Europe continued to be rather inconsistent and episodic. Governments focused their efforts on reforms in service delivery areas that were particularly important and therefore visible to the public (health care, pensions, construction, job security). While plans for a more general administrative reform were sometimes put forward, they were ultimately not implemented. This situation changed dramatically in the last quarter of the 20th century. First, administrative reform has become an independent political goal. Secondly, administrative reform has become one of the permanent tasks of public authorities. Third, administrative reform has become a high priority on the political agenda, accompanied by a vigorous and steadfast commitment to ensure that the state apparatus is organized as efficiently as possible to implement government policy in practice[11].

All of the above is quite applicable to Russian reality. With the only clarification that the task of radical improvement of public administration was put on the agenda due to a number of objective and subjective reasons with some delay, in the early 2000s. At the same time, we emphasize: it seems that up to now, despite some official statements and actions, in post-Soviet Russia there has not yet been a single reform that would simultaneously cover all the institutions of administrative law and public administration. Therefore, we can rather talk about the reforms of individual administrative and legal institutions and areas of public administration[12].

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[9] See, for example: Administrativnoe sudoproizvodstvo v Rossiiskoi Federatsii: razvitie teorii i formirovanie administrativno-protsessual'nogo zakonodatel'stva / ed. by Ju. N. Starilova. Voronezh, 2013. 1060 p.

[10] *Davydov K. V.* Sovershenstvovanie sistemy sudebnogo kontrolia za deiatel'nost'iu publichnoi administratsii v Rossiiskoi Federatsii: pravovye problemy i perspektivy // Ibid. P. 504–505.

[11] See: *Kasseze S.* Razvitie administrativnogo gosudarstva v Evrope // Daidzhest publichnogo prava. 2012. No. 2. P. 272–273.

[12] Very extensive scientific literature is devoted to the analysis of administrative and legal reform in Russia, including: *Avrutin Ju. E.* Bytie administrativnogo prava v sotsiokul'turnom i aksiologicheskom izmerenii (perechityvaia prof. V. D. Sorokina) // Administrativnoe pravo i process. 2014. No. 3. P. 11–21; *Vinokurov V. A.* Tupik administrativnoi reformy i puti vykhoda iz nego // Administrativnoe pravo i protsess. 2017. No. 10. P. 11–14; *Klimenko A. V.* Desiatiletie administrativnoi reformy: rezul'taty i novye vyzovy // Voprosy gosudarstvennogo i munitsipal'nogo upravleniia. 2014. No. 1. P. 8–51; Modernizatsiia administrativnogo zakonodatel'stva (tseli, zadachi, printsipy i aktual'nye napravleniia): monografiia / ed. by A. F. Nozdrachev. M.: In-t zakonodatel'stva i sravnitel'nogo pravovedeniia pri Pravitel'stve Rossiiskoi Federatsii Publ.; INFRA-M Publ., 2018. 496 p.; *Rossinskij B. V.* 1) Gosudarstvennoe upravlenie i administrativnye reformy // Za-

An analysis of the evolution of *positive governance* in Russia allows us to identify the following main areas.

Firstly, one cannot help mentioning the "official" administrative reform, the idea of which was enshrined in Decree of the President of the Russian Federation of July 23, 2003 No. 824 "On measures to carry out administrative reform in 2003–2004", which proclaimed several independent tasks: limiting state intervention in the economic activities of business entities, including the cessation of excessive state regulation; exclusion of duplication of functions and powers of federal executive bodies; development of a system of self-regulatory organizations in the field of economics; organizational separation of functions related to the regulation of economic activity, supervision and control, management of state property and the provision of services by state organizations to citizens and legal entities; completion of the process of delimitation of powers between the federal executive authorities and the executive authorities of the subjects of the Russian Federation, optimization of the activities of the territorial bodies of the federal executive authorities[13]. One of the main steps in the framework of this modernization process was the Decree of the President of the Russian Federation of March 9, 2004 No. 314 "On the system and structure of federal executive bodies"[14]. It seems that it will not be an exaggeration to say that the administrative reform of 2003–2005 consisted mainly in the transformation of the federal public administration and pursued two main goals: reducing the number of executive authorities and civil servants, as well as optimizing the competence of federal executive authorities (including the consolidation of a three-tier system of federal ministries, federal services and federal agencies). However, almost immediately it became obvious, on the one hand, a certain artificiality of the mentioned organizational transformations, and on the other hand, their limited susceptibility by the subjects of the Russian Federation[15].

The second important direction of the respective evolutions was, of course, the reform of the state service. The fundamental stage of its implementation, as well known, was the adoption of the Federal Law of May 27, 2003 No. 58-FZ "On the State Service System of the Russian Federation"[16] and the Federal Law of July 27, 2004, No. 79-FZ "On the State Civil Service of the Russian Federation"[17]. These normative acts have become a progressive step in the difficult path of modernization of service law. It seems that the formation of a relatively extensive Russian anti-corruption legislation, which was initiated by the adoption of the Federal Law of December 25, 2008, No. 273-FZ "On Combating Corruption"[18], can be considered as an element of this direction of administrative reform.

As a third element we can mention the "latest" "administrative reform", announced and carried out in January-April 2021. The main goal of the latter was proclaimed the reduction of staff in the central offices of federal executive bodies by five percent, and in the territorial bodies of federal executive bodies — by ten percent. According to media

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kony Rossii: opyt, analiz, praktika. 2018. No. 11. P. 3–9; 2) Realizatsiia kontseptsii administrativnoi reformy // Vestnik Universiteta imeni O. E. Kutafina (MGJuA). 2018. No. 1 (41). P. 31–38; *Parshin M. V.* Kachestvo gosudarstvennykh i munitsipal'nykh uslug: na puti k servisnomu gosudarstvu. Moscow: Statut Publ., 2013. 272 p.; and etc.

[13] Ros. gaz. 2003. July 25.

[14] Ibid. 2004. March 12.

[15] One of the first monographic works on the analysis of the first results of administrative reform in the Russian Federation is the following publication: Administrativnaia reforma v Rossii: nauch.-prakt. posobie / In-t zakonodatel'stva i sravnitel'nogo pravovedeniia pri Pravitel'stve Rossiiskoi Federatssii; ed. by S. E. Naryshkin, T. Ja. Habrieva. Moscow: Kontrakt: INFRA-M Publ., 2006. 341 p.

[16] Ros. gaz. 2003. May 31.

[17] Ibid. 2004. July 31.

[18] Ibid. 2008. December 30.

reports, this (it must be admitted, rather local) transformation ended with the reduction of over thirty thousand posts[19].

The fourth direction is the constitutional reform of public administration, initiated by the Law of the Russian Federation on the amendment to the Constitution of the Russian Federation of March 14, 2020 No. 1-FKZ "On improving the regulation of certain issues of the organization and functioning of public authority"[20]. From the point of view of administrative law, we are talking primarily about the redistribution of managerial powers between the President of the Russian Federation, the Government of the Russian Federation and the federal parliament (a detailed analysis of which is beyond the scope of this article).

The fifth relatively independent component is the development of the administrative-legal institution of control. Control activity has traditionally attracted the attention of both the legislator and researchers, which is not surprising in the context of the permanent increase in the importance of this function (especially noticeable against the background of the well-known fading role of direct state management). Noteworthy are the systematic efforts of the legislator, persistently carried out since the early 2000s, to introduce elements of human rights guarantees of "good governance"[21] into legal relations that are traditionally "unfriendly" to powerless persons, including the establishment of more stringent requirements for unscheduled inspections, securing the rights to participate in certain control procedures, for familiarization with procedural documents (such as an inspection act), etc[22]. The latest Federal Law of July 31, 2020 No. 248-FZ "On State Control (Supervision) and Municipal Control in the Russian Federation" (hereinafter — the State Control Law 2020) attempts to "codify" many new (or at least partially already tested) ideas and practices, including a risk-based approach[23], declaring the principle of proportionality, etc. Special mention deserves experiments to simplify legislation in the framework of the so-called "regulatory guillotine"[24]. However, it seems that estimates of the effectiveness of this undertaking are still somewhat premature.

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[19] URL: https://www.rg.ru/2021/04/04/ekspert-ocenil-rezultaty-pervogo-etapa-administrativnoj-reformy.html. (accessed: 08.01.2023).

[20] Ros. gaz. 2020. March 16.

[21] The concept of "good governance" (Gute Verwaltung), which originated in the second half of the 20th century in continental Europe, was initially emphatically procedural in nature, substantiating (largely by analogy with the litigation) the need to ensure the participation of citizens in the mechanism of making managerial decisions of public administration.

For an overview of the historical development of this theory, see, for example, the following work: *Davydov K. V.* Administrativnye protsedury: rossiiskii i zarubezhnyi opyt / ed. by Ju. N. Starilov. Novosibirsk: Akademizdat Publ., 2020. P. 162–175. On this issue see: *Nehel H. P.* Principles of Administrative Procedure in EC Law. Hart Publishing, Oxford. 1999; Principles of Good Administration in the Member States of the European Union / Swedish Agency for Public Management, 2005. URL: http://www.statskontoret.se/globalassets/publikationer/2000-2005-english/200504.pdf (accessed: 15.06.2018); *Schmidt-Assmann E.* Structures and Functions of Administrative Procedures in German, European and International Law // Transforming Administrative Procedure / ed. by J. Barnes. Sevilla: Global Law Press, 2008. P. 62.

[22] Here we can recall the Federal'nyi zakon ot 8 avgusta 2001 goda No. 134-FZ 'O zashchite prav iuridicheskikh lits i individual'nykh predprinimatelei pri provedenii gosudarstvennogo kontrolia (nadzora)' (SPS 'Konsul'tantPlius') i prishedshii emu na smenu Federal'nyi zakon ot 26 dekabria 2008 goda No. 294-FZ 'O zashchite prav iuridicheskikh lits i individual'nykh predprinimatelei pri osushchestvlenii gosudarstvennogo kontrolia (nadzora) i munitsipal'nogo kontrolia' (Ros. gaz. 2008. December 30).

[23] *Martynov A. V.* Risk-orientirovannyi kontrol' i nadzor: poniatie, soderzhanie i osnovnye napravleniia vnedreniia v sushchestvuiushchuiu praktiku // Aktual'nye voprosy kontrolia i nadzora v sotsial'no znachimykh sferakh deiatel'nosti obshchestva i gosudarstva: mat. II Vseros. nauch.-prakt. konf. (Rossiia, g. Nizhnii Novgorod, 9–10 iunia 2016 goda) / ed. by A. V. Martynov. N. Novgorod, 2016. P. 50–85.

[24] On this issue, see: *Martynov A. V.* Perspektivy primeneniia mekhanizma 'reguliatornoi gil'otiny' pri reformirovanii kontrol'no-nadzornoi deiatel'nosti // Vestnik Nizhegorodskogo universiteta im. N. I. Lobachevskogo. 2019. No. 5. P. 143–165.

The sixth margin of the reform of positive management is the implementation of the phenomenon of state (more broadly — public) services into domestic practice[25]. Much attention was paid to this direction even in the Concept of administrative reform in 2006–2010[26]. An important step in the legalization of this institution was the adoption of the Federal Law of July 27, 2010 No. 210-FZ "On the organization of the provision of state and municipal services" (hereinafter — the Law on Public Services), which really brought a lot of positive novelties. In particular, it created the legislative foundations for a unified system of interdepartmental interaction (a kind of analogue of the German institution of "mutual assistance" of administrative bodies), while prohibiting the demand from citizens (organizations) of documents located in the databases of state (municipal) bodies. Secondly, the 2010 law "legalized" electronic administrative procedures. Thirdly, for the first time in a normative act of the highest legal force, the institutions of administrative regulations and multifunctional centers were consolidated.

Closely adjacent to the previous one is the seventh vector of the reform of Russian positive administrative law, which consists in the introduction of electronic technologies and artificial intelligence into public administration[27]. The crisis challenges of recent years, including the coronavirus pandemic, have given a powerful acceleration to this trend. Symptomatically that one of the first after the introduction in March 2020 of the regime of "high preparedness for an emergency situation" was the adoption of the Federal Law of April 24, 2020, No. 123-FZ "On conducting an experiment to establish special regulation in order to create the necessary conditions for the development and implementation of technologies artificial intelligence in the subject of the Russian Federation — the city of federal significance Moscow and amending Articles 6 and 10 of the Federal Law "On Personal Data"[28] (the meaning of which has yet to be comprehended). As another example, we can cite the introduction of the phenomenon of the so-called "proactive procedures". This novel was legalized in Art. 7^3 of the Law on Public Services and involves the provision of public services (for example, the implementation of social payments) in connection with the occurrence of certain legal facts, often without a statement from the addressee of a favorable administrative act. The merits of this novel have already been appreciated by millions of Russian citizens, when new payments introduced during the pandemic (for example, to families with children) were automatically accrued to recipients subject to registration on the public services website. Of course, such legal technologies can only be welcomed in legal relations devoid of discretion.

The development of the second key block of Russian administrative law — administrative responsibility — is also subordinated to a certain internal logic. Let's start with the fact that the Code of Administrative Offenses of the RSFSR of 1984 became the first domestic code of an administrative legal nature. The Code of Administrative Offenses of

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[25] See: *Vinnickij A. V.* Institut publichnykh uslug v Rossii: perspektivy v kontekste evropeiskogo opyta // Administrativnoe i munitsipal'noe pravo. 2013. No. 4. P. 299–308; *Gricenko E. V.* Administrativnye protsedury organizatsii okazaniia uslug v stranakh Evropeiskogo Soiuza: problemy implementatsii Direktivy ob uslugah v natsional'nom prave (na primere Germanii) // Izvestiia vysshikh uchebnykh zavedenii. Pravovedenie. 2009. No. 3. P. 133–153; Publichnye uslugi i pravo: nauch.-prakt. posobie / O. V. Gutnikov [i dr.]; ed. by Ju.A. Tihomirova; In-t zakonodatel'stva i sravnitel'nogo pravovedeniia pri Pravitel'stve Rossiiskoi Federatsii Publ. Moscow: Norma Publ, 2007. 415 p.; Publichnye uslugi: pravovoe regulirovanie (rossiiskii i zarubezhnyi opyt): sbornik statei / ed. by E. V. Gricenko, N. A. Shevelevoi. Moscow: Volters Kluver Publ., 2007. 245 p.

[26] Koncepitsiia administrativnoi reformy v Rossiiskoi Federatsii v 2006–2010 godakh (utv. Rasporiazheniem Pravitel'stva RF ot 25.10.2005 No. 1789-r) // SZ RF. 2005. No. 46. St. 4720 (expired).

[27] On this issue, see, for example: *Amelin R. V., Channov S. E.* Tendentsii i perspektivy ispol'zovaniia gosudarstvennykh informatsionnykh sistem v gosudarstvennom upravlenii: pravovye aspekty. Moscow: DMK Press, 2019. 172 p.

[28] Ros. gaz. 2020. April 28.

the Russian Federation of 2001, which replaced it, with all the many amendments, as a whole, demonstrates enviable stability; work on new draft codes, which was launched in the spring of 2019, has not yet led to a practical result.

Modern trends of the development of administrative responsibility in Russia seem to be multidirectional. On the one hand, we are dealing with its tightening: the emergence of new elements of administrative offenses, the expansion of the system of administrative penalties, the increase in the size of "traditional" penalties (for example, if the maximum amount of an administrative fine determined in rubles until 2012 for individuals was 5 thousand rubles, for officials — 50 thousand rubles, for legal entities — up to 5 million rubles, then at present the size of the sanctions has increased to 500 thousand, 1 million and 60 million rubles, respectively). Moreover, the Code of Administrative Offenses of the Russian Federation in part 1 of Art. 3.5 also establishes the so-called "turnaround" administrative fines, the amount of which is determined according to a legislatively fixed algorithm (multiplicity of the cost of the subject of an administrative offense, the share of the amount of revenue, etc.). It is noteworthy that it was in 2022, against the backdrop of countering the sanctions and information aggression of Western countries and corporations against Russia, that a kind of law enforcement record was set: when Google was brought to administrative responsibility under part 5 of Art. 13.41 of the Code of Administrative Offenses of the Russian Federation (repeated failure to delete illegal information), it was assigned an administrative fine in the amount of 21.7 billion rubles[29]. Finally, the federal legislator is constantly expanding the system of administrative offenses. Chronologically, the latest surge in relevant activity is associated with a special military operation of Russian troops in Ukraine in 2022 and the establishment of administrative and criminal liability for a number of acts sensitive from the point of view of security and public order, including discrediting the Armed Forces of the Russian Federation.

On the other hand, it is impossible not to note the opposite trend — towards the humanization of administrative responsibility. So, in the spring of 2022, the Code of Administrative Offenses of the Russian Federation was supplemented with norms on the possibility of reducing the amount of administrative fines for socially oriented NGOs and small and medium-sized businesses[30]. However, the assertion that this particular trend is dominant seems to be some exaggeration.

Finally, even the briefest review of the development of Russian administrative law is incomplete without the problems of *administrative justice*. As is it known, the latter can be viewed through the prism of both institutional and procedural competence aspects. In the first case we are talking about the creation of specially authorized bodies (as a rule, administrative courts), in the second — about the special legal regulation of the competence of the subjects of administrative justice and the procedure for its implementation. Now it is almost obvious that hopes for the creation of an independent branch of the judiciary in the Russian Federation will not come true. This fact is quite fairly criticized in the russian research literature on administrative law[31], however, the potential costs of inadequate regulation of judicial powers and administrative proceedings appear to be even greater. It should be noted here that the first three post-Soviet decades passed under the sign of even doctrinal denial (on the part of specialists in civil law and procedure) of the administrative-legal nature of relations on appealing against illegal administrative acts. The posi-

[29] URL: https://www.vedomosti.ru/business/news/2022/09/09/940169-sud-utverdil-oborotnii-shtraf-google?utm_source=yxnews&utm_medium=desktop (accessed: 08.01.2023).

[30] See: Federal'nyi zakon ot 26 marta 2022 goda No. 70-FZ 'O vnesenii izmenenii v Kodeks Rossiiskoi Federatsii ob administrativnykh pravonarusheniiakh' // Ros. gaz. 2022. March 29.

[31] On this issue, see, for example: *Starilov Ju. N.* Administrativnoe sudoproizvodstvo v Rossiiskoi Federatsii: razvitie teorii i formirovanie administrativno-protsessual'nogo zakonodatel'stva. Voronezh, 2013. P. 27 ff.

tion of the legislator, who for a long time regulated the relevant relations in civil procedural codes, was also distinguished by a certain categoricalness. The situation changed significantly with the adoption in 2015 of the Code of Administrative Proceedings of the Russian Federation, the potential of which has not yet been fully realized[32]. However, excessive pessimism also seems to be erroneous; the expansiveness of progressive judicial practice to a certain extent fills in the gaps and frankly controversial positions of the legislator.

Summing up the intermediate results of the transformations of the administrative law of Russia, one should agree with the criticism, expressed by L. B. Khvan about a similar "organizational" understanding by the executive branch itself of the administrative reform launched in 2003 in Uzbekistan (optimization of the structure of public administration, revision and optimization of the functions of government bodies, optimization of the number of public official): "These are indeed important areas for reforming the state mechanism of government, but there was no place for the most important and difficult direction — changing the content of the activities of executive authorities in terms of their relationship with the citizen, a radical change in the formula that determines the duties of officials in relation to the citizen (the institution of administrative procedures), their transparency..."[33].

4. Analysis of the main achievements in the development of modern administrative law in the Romano-Germanic legal system

Let us take the liberty of asserting that for the entire 20th century in the world experience, two main achievements in the development of administrative law can be distinguished.

The first is *the evolution of the administrative process, administrative procedures*, which changed the face of administrative law, public administration, making it more transparent and democratic, since citizens got the opportunity not only to challenge an administrative act, but also to participate in the procedure for its adoption, protecting their interests even before the approval of the decision[34]. Indeed, the passive expectation of an act adopted by an official in the silence of his office by a citizen, deprived of any legal opportunity to defend his legal position, seems to be a much less progressive system of government, vulnerable to arbitrariness and injustice. On the contrary, the opportunity to substantiate one's position (at least by providing additional written evidence in case of the threat of an unfavorable administrative decision) is a huge boon for citizens and organizations. It is this evolutionary leap that eliminates the immanent "kneeling" (and, moreover, defenselessness) of the latter in the face of the threatening discretion of the public administration.

The second key achievement in the development of the mechanism of legal regulation of public administration *is the approval as categorical imperatives of such principles of administrative law and process as legality, equality, proportionality, legal stability (pro-*

[32] See also: Administrativnoe sudoproizvodstvo: Problemy i perspektivy razvitiia: Sbornik nauchnykh trudov. Moscow: RGUP Publ., 2019. 236 p.

[33] *Hvan L. B.* Administrativnaia iustitsiia v sovremennoi pravovoi sisteme Respubliki Uzbekistan: postanovka voprosa // Administrativnaia iustitsiia: K razrabotke nauchnoi kontseptsii v Respublike Uzbekistan: materialy Mezhdunarodnoi konferentsii na temu: 'Razvitie administrativnogo prava i zakonodatel'stva Respubliki Uzbekistan v usloviiakh modernizatsii strany', 18 marta 2010 goda / ed. by L. B. Hvan; Un-t mirovoi ekonomiki i diplomatii. Tashkent: ABU Matbuot-Konsalt Publ., 2011. P. 49–50.

[34] There is an extremely extensive scientific literature on this issue, to name just a few monographic studies: *Kunnecke M.* Tradition and Change in Administrative Law. An Anglo-German Comparison. Springer-Verlag Berlin Heidelberg, 2007. 266 p.; Transforming Administrative Procedures / ed by J. Barnes. Seville: Global Law Press — Editorial Derecho Global, 2008. 429 p.; *Falco V., de*. Administrative Action and Procedures in Comparative Law. The Hague: Eleven International Publishing, 2018. 263 p.

tection of legitimate expectations), prohibition of super-formalism[35]. Administrative law, devoid of these elements, becomes a soulless machine of methodical coercion — blind and ruthless. Many examples of such a mutation of public administration can be cited from domestic administrative and judicial practice. Here we can recall cases of administrative expulsion of foreign citizens, accepted without taking into account a number of important circumstances (such as the existence of family relations with citizens of the Russian Federation or the respectfulness of missing the deadlines for legalization); vindication in favor of the public administration of property from illegal bona fide owners who have all the necessary (including registration) documents; disproportionately strict unfavorable decisions of control and supervisory authorities, etc. All the described cases have one thing in common: the public administration follows the vulgarly understood letter of the law, the refusal to provide a meaningful analysis of the situation. As a result, decisions are made that are clearly unfair, which means that they are essentially unlawful.

As known, principles are the "soul of law". The branch of law, devoid of guiding ideas, degrades to the level of the branch of legislation, i. e. mechanical accumulation of diverse legal sources. Unfortunately, the administrative law of Russia still does not have a unified system of such principles, simultaneously recognized by doctrine, legislator and judicial practice.

At the same time, it is difficult to imagine modern administrative law without the *principle of proportionality*. This principle in the most general sense means a reasonable concentration of efforts and resources of state bodies, officials in the exercise of existing powers. Its content is most obvious in protective relations, both in substantive and procedural aspects. We believe that from a procedural point of view, proportionality, on the one hand, is expressed in the maximum permissible simplification of the procedure for bringing a person to administrative responsibility (compared to the criminal process, of course), and on the other hand, in indulgence in minor violations of such a procedure. The substantive-legal facet of "protective" proportionality is manifested in the imposition of proportionate punishments (that is, their adequacy to the circumstances of the case) or even the termination of prosecution due to the insignificance of the administrative offense. In administrative proceedings, proportionality, it seems, has only a substantive-legal dimension and means a test by the court of the reasonableness of the contested administrative act.

Here we inevitably move on to the principle of proportionality in positive administrative legal relations. It is noteworthy that at least two main approaches can be distinguished within this framework. The German "proportionality test", as known, includes three criteria: first, the means intended to achieve the goal of the government must be suitable for achieving this goal (property); secondly, of all suitable means, the one that least restricts the right of a private person (necessity) must be chosen; thirdly, the damage to a private person from the restriction of his right should be proportional to the benefit of the government in relation to achieving the goal (proportionality in the narrow sense)[36]. The principle of proportionality applies only in cases where the law allows administrative discretion. However, a different approach has become much more widespread both in foreign

[35] The problem of the principles of administrative law and administrative procedures is one of the most popular in foreign scientific literature; In addition to those already mentioned, we will name a few works: *Alder J.* General Principles of Constitutional and Administrative Law. Fourth Edition. London, 2002. 598 p.; *Schmidt-Assmann E.* Das allgemeine Verwaltungsrecht als Ordnungsidee. Springer Berlin, Heidelberg, 2006. P. 43 ff; *Thomas R.* Legitimate Expectations and Proportionality in Administrative Law. Oxford, 2000. 129 p., etc.

[36] *Kojen-Jelija M., Porat I.* Amerikanskii metod vzveshivaniia interesov i nemetskii test na proportsional'nost': istoricheskie korni // Sravnitel'noe konstitutsionnoe obozrenie. 2011. No. 3 (82). P. 61. — Sometimes this "test" is formulated in a slightly different way: the legitimacy of the goal, the suitability of the means to achieve it, proportionality in the narrow sense.

countries and in Russia, when proportionality in positive procedures is viewed through the prism of conditionally legalized reasonableness. In the latter case, proportionality means, in essence, taking into account the actual circumstances of the case by the administrative body and making a relatively rational discretionary decision that meets at least the minimum legal requirements (such as compliance with the purpose of the law)[37].

It is noteworthy that the principle of proportionality has a constitutional basis in the Russian Federation. According to part 3 of Art. 55 of the Constitution of the Russian Federation, "the rights and freedoms of a person and a citizen may be limited by federal law only to the extent necessary to protect the foundations of the constitutional order, morality, health, rights and legitimate interests of others, to ensure the defense of the country and the security of the state". References to proportionality can be found in separate legislative acts of the Russian Federation. So, according to part 8 of Art. 18 of the Federal Law of December 29, 2008 No. 294-FZ "On the Protection of the Rights of Legal Entities and Individual Entrepreneurs in the Implementation of State Control (Supervision) and Municipal Control", officials of control bodies during an audit must "take into account when determining measures taken to facts of detected violations, compliance with the indicated measures of severity of violations, their potential danger to life, human health, animals, plants, the environment, objects of cultural heritage (historical and cultural monuments) of the peoples of the Russian Federation, museum objects and museum collections... state security, for emergencies of a natural and man-made nature, as well as to prevent unreasonable restriction of the rights and legitimate interests of citizens, including individual entrepreneurs, legal entities". Even more extensively, this principle is enshrined in Art. 9 of the State Control Law 2020. Firstly, this Article also emphasizes the need to ensure that the measures chosen are proportionate to the nature of violations of mandatory requirements, harm (damage) that has been or may be caused to legally protected values. Secondly, the requirement to limit state and municipal control only to those control (supervisory) measures and actions that are necessary to ensure compliance with mandatory requirements is fixed. Finally, the third aspect of proportionality in the interpretation of this law is as follows: when organizing and exercising state control (supervision), municipal control, it is not allowed to cause unlawful harm (damage) to controlled persons, their representatives, or property in their possession, use or disposal or their business reputation. Here we can also recall the gradual introduction of a risk-based approach into Russian public law. However, the actual law enforcement practice in the control and supervision sphere is often very far from regulatory wishes.

It should be noted that the development of the doctrine of administrative procedures has produced tangible results in terms of improving judicial practice. Thus, according to paragraph 17 of the Decree of the Plenum of the Supreme Court of the Russian Federation of June 28, 2022, No. 21 "On some issues of application by the courts of the provisions of Chapter 22 of the Code of Administrative Proceedings of the Russian Federation and Chapter 24 of the Arbitration Procedure Code of the Russian Federation" (hereinafter — the Decree of the Plenum of the Supreme Court of the Russian Federation No. 21), "when checking the legality of a decision, action (inaction) on the grounds, related to non-compliance with the requirement of proportionality and the resulting violation of the rights, freedoms and legitimate interests of citizens and organizations, the courts, taking into account all the significant circumstances of the case, should find out whether the disputed measures justified, reasonable and necessary to achieve a legitimate goal, whether their application leads to an excessive burden on citizens and organizations". Separately,

[37] Among the latest publications on this subject, we point out the following work: Annual Comparative Administrative Law Review 2021 / ed. by O. N. Sherstoboev, K. V. Davydov, A. Cenerelli. Novosibirsk, 2022. 188 p.

paragraph 18 of the abovementioned Decree emphasizes: violation of the requirements of proportionality in the adoption of discretionary (law enforcement) decisions, actions is the basis for declaring them illegal.

Another principle, without which modern administrative law is unthinkable, is the idea of *legal stability*. The demand for immutability is, of course, in constant dialectical combat with the dynamics of social life itself. On this issue, the austrian researcher P. Kvosta writes: "…there are different possibilities for legislative design, which are always under the influence of two postulates that are in fundamental contradiction with each other, although both of them follow from the principle of the rule of law: the goal is to ensure as much as possible 'legal correctness' of state actions, on the one hand, and… the task of guaranteeing the 'stability of law' and 'protection of confidence', on the other hand"[38].

According to K.-P. Sommermann, in all European legal orders the principle of legal guarantee (Rechtssicherheit) is recognized as the most important principle in the field of guaranteeing the right of individual freedom of a citizen. Also, following, among other things, the practice of the Court of Justice of the European Union, the principle of the protection of confidence (Prinzip des Vertrauensschutzes) is increasingly being established as a general principle[39]. On the other hand, the features of this principle appear with unequal speed in the portrait of a particular legal system. The latter is the most obvious and easy to understand in protective legal relations. Here we may recall Art. 54 of the Constitution of the Russian Federation, which establishes a ban on the retroactive effect of a law that worsens the situation of a person brought to criminal responsibility (and vice versa, fixes the retroactive effect of a criminal law that improves the situation of such a person). This norm was accepted without any effort by the institution of administrative responsibility (Article 1.7 of the Code of Administrative Offenses of the Russian Federation).

In administrative proceedings, the procedural aspect of this principle does not seem to be clearly expressed: an amendment to the legislation on administrative proceedings will mean a change in the applicable procedural law; in such a case, the participant is not recognized as claiming to maintain the validity of the previous norms. So, according to part 5 of Art. 2 of the Code of Administrative Proceedings of the Russian Federation, administrative proceedings are carried out in accordance with the rules of procedural law that are in force during the consideration and resolution of an administrative case. The substantive-legal dimension of the principle of stability for administrative proceedings (as, indeed, for administrative responsibility) is manifested in aspects of the effect of a court decision. So, a decision that has not entered into legal force, of course, does not generate legally significant expectations for its addressee. On the contrary, the entry into force triggers a complex mechanism in which the legal consequences caused by such a decision acquire inviolability unprecedented for positive public administration (when the cancellation of the decision is possible only due to extremely valid circumstances, and only by a higher authorized instance).

Finally, the principle of legitimate expectations for positive administrative procedures and administrative acts (compliance with which, by the way, must certainly be a subject of judicial supervision) in the most general sense means the inadmissibility of an arbitrary change in administrative decisions; with a broader interpretation, citizens are recognized to have legally significant expectations regarding the adoption of certain decisions by the public administration, by analogy with already established practice, and also based on

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[38] *Kvosta P.* Znachenie i predely zakonnoi sily administrativnykh aktov v Avstrii, ili 'udivitel'nye posledstviia zakonnoi sily' // Ezhegodnik publichnogo prava 2018: Printsipy administrativnykh protsedur i administrativnogo sudoproizvodstva. Moscow, 2018. P. 133.

[39] *Zommermann K.-P.* Printsipy administrativnogo prava // Daidzhest publichnogo prava. 2016. No. 1. P. 67.

the (material) legislation in force at the time the procedure was started[40]. Upon further approximation, the following two important details can be distinguished. We believe that from a procedural point of view, the adjustment of administrative procedures, which significantly worsens the position of the addressee of the future administrative act, should be taken into account by the public administration, up to the refusal to apply new norms in such a specific procedural legal relationship that has not yet been completed. From a substantive point of view, we believe that the German approach is fair, which implies differentiation of the regimes for the abolition of adopted administrative acts, depending on their content. Decisions, that are unfavorable for the recipients, can be reversed, even if they are legal. On the contrary, favorable even illegal (!) administrative acts have greater stability (of course, provided that their addressees are conscientious)[41].

Unfortunately, Russian administrative legislation regarding positive administrative procedures and acts still largely ignores these fundamental ideas[42]. However, the aforementioned Decree of the Plenum of the Supreme Court of the Russian Federation No. 21, finally, directs the russian courts to observe the principle of legal stability (protection of legitimate expectations). According to paragraph 22 of this important document, decisions, that are denied to citizens, organizations in granting rights or as a result of which their rights are limited or duties are illegally assigned, as well as their situation is otherwise worsened, can be changed or canceled by authorized public authorities, their officials without any restrictions, provided that such change or cancellation does not violate the law and does not worsen the legal position of other persons. Revision of decisions of public authorities, their officials, confirming the rights, granting citizens, organizations new rights or canceling the duties assigned to them, as well as otherwise improving their position, must be legal, justified, excluding the arbitrariness of their change, cancellation or suspension of their action. The courts should proceed from the fact that the inadmissibility of arbitrary change, cancellation or suspension of such decisions means the obligation of the body or person endowed with public powers to justify the need to change, cancel or suspend the decision, pointing out the inconsistency of the previously adopted decision with the rules of law, legitimate purpose, actual circumstances.

Another still underestimated Russian mechanism of public administration is a *ban on super-formalism for public administration*. It seems that the constitutional roots of this requirement go back to the norm of part 3 of Art. 17 of the Constitution of the Russian Federation, which establishes a more general ban on the abuse of subjective rights. Not properly reflected in the administrative legislation, the principle of the prohibition of overformalism is gradually being established in judicial practice. Thus, according to paragraph 17 of the Decree of the Plenum of the Supreme Court of the Russian Federation No. 21, "…the courts should take into account that the legality of the disputed decisions, actions (inaction) cannot be considered only as a formal compliance with the requirements of legal norms. From the principles of the priority of the rights and freedoms of man and citizen, the inadmissibility of abuse of rights (parts 1 and 3 of Article 17 and Article 18 of the Constitution of the Russian Federation), it follows that public authorities, their officials are prohibited from burdening individuals or legal entities with duties, refusing to provide them with any rights only for the purpose of satisfying formal requirements, if the corresponding decision, action can be taken, committed without their observance, except for cases expressly provided by law".

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[40] On this issue see: *Singh M. P.* German Administrative Law in Common Law Perspective. New York, 2001. P. 150–161.

[41] For the rules for applying the relevant norms of the German law of 1976 "On Administrative Procedures", see: *Rihter I., Shuppert G. F.* Sudebnaia praktika po administrativnomu pravu / transl. by N. Kuznecov, D. Mironova. Moscow, 2000. P. 275–277.

[42] See, for example: *Davydov K. V.* Administrativnye protsedury… P. 132–137.

Thus, the situation with the implementation of modern principles of administrative law into the domestic mechanism of legal regulation is not hopeless. Relying on constitutional norms, these are gradually approved in judicial (and hence, in the future, in administrative) practice. These circumstances, in our opinion, at least partially reduce the negative effect of the well-known inertia of the Russian legislator, who is in no hurry to give detailed regulation to these guiding ideas. In general, it is impossible to overestimate the role of modern principles of administrative law in the humanization and rationalization of public administration.

5. Development of Russian administrative law in the context of modern political crises

Here we come to an important question: how relevant are the progressive intentions described in the situation of growing large-scale crises? The answer to it is not just non-trivial, and, we think, largely depends on the worldview of the researcher, on his natural tendency to optimism or pessimism. However, let us make the first preliminary remark: it has long been obvious that crises are the era of executive power, its displacement of other branches of state power; it is also a time of growth of administrative discretion, which is far from always amenable to judicial control.

Secondly, the mentioned dualism of the goals of administrative law (rationalization of public administration and protection of the rights of citizens) can evolve into trialism due to the coming to the fore (as once in the era of police law) of the goal of ensuring public order and security. However, we repeat: all this cannot finally "cancel" the essential, genetically inseparable human rights idea.

Finally, thirdly, it is necessary to delimit the viscous network of momentary measures and transformations from long-term and large-scale processes. Speaking of the latter, it seems methodologically useful to recall the German concept of the so-called "life-supporting" (Leistungsverwaltung) and aimed at maintaining public order and security (Ordnungsverwaltung) state administration. The first characterizes the relationship of rights, emphasizes the service aspect of the activities of public administration, while in the second case it is mainly about public coercion[43]. Following this dichotomous logic, one can state the development of Russian "anti-crisis" administrative law in both directions. A striking example of a "life-supporting" principle is the discussed above phenomenon of "proactive administrative procedures". At the opposite pole — coercive administrative law — in the context of the response to economic crises and military-political challenges, such immanent features of this law branch as expansiveness, "militarization" and politicization are most clearly manifested. Which is not surprising, moreover, inevitable, if we recall the socio-economic, political and even cultural context: the coronavirus pandemic, a special military operation, sanctions against Russia by unfriendly states, etc.

At the same time, it is important to emphasize two important factors: firstly, the current situation, with all the kaleidoscopic speed of development in 2022, did not arise all at once; the corresponding processes matured for decades. Secondly, the "militarization" of Russian administrative law is reactive in nature, being a forced reaction to external pressure from abroad. Let us illustrate these theses on the example of state control in relation to non-profit organizations (hereinafter — NPOs) and certain categories of individuals.

Analyzing the dynamics of the development of the relevant administrative and legal institution from the present, it is difficult not to be surprised at the caution, one might even say delicacy, of the Russian legislator. The use of NGOs by Western countries as an instrument of influence on the domestic (and, ultimately, foreign) policy of other states

[43] On this issue see: *Vasil'eva A. F.* Servisnoe gosudarstvo: administrativno-pravovoe issledovanie okazaniia publichnykh uslug v Germanii i Rossii. Moscow, RAP Publ., 2012. 332 p.

has long been a self-evident fact. Thus, in 2004, one of the first coups d'etat in the post-Soviet space ("Orange Revolution") took place in Ukraine, the success of which led to increased pressure on the internal political situation in the Russian Federation. Only in 2006 in Art. 32 of the Federal Law of January 12, 1996 No. 7-FZ "On Non-Commercial Organizations"[44] (hereinafter — the Law on Non-Commercial Organizations), amendments were made, in accordance with which NCOs were required to submit reports to the Ministry of Justice of the Russian Federation on receipt of foreign funding, for non-fulfillment of which the liquidation of the legal entity was envisaged in a judicial proceeding[45]. However, already in 2009 these requirements were somewhat relaxed, especially in terms of NGOs whose founders were not foreign citizens or organizations that did not receive funding over the established amount (three million rubles) during the year[46].

However, a retrospective analysis allows us to conclude that this was the last "détente" in recent history (at least on this issue); in the future there was a forced trend for the Russian legal system to tighten administrative legal regulation.

In December 2012 the so-called "Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012" (better known in the media as the "Magnitsky Act"), which imposed personal sanctions on a number of Russian officials, according to the US Parliament, for violating "human rights" and "the principle of the rule of law in Russia". In response to this clearly expressed legally aggressive step, Russia quite quickly adopted a normative act that became the legal basis for the ever more complex administrative legal mechanism for countering adverse foreign influence on the domestic political situation in the country. We are talking about the Federal Law of December 28, 2012 No. 272-FZ "On measures to influence persons, involved in violations of fundamental human rights and freedoms, the rights and freedoms of citizens of the Russian Federation"[47]. In the media this normative act is better known as the "Dima Yakovlev Law": one of the measures envisaged by it was a ban on the adoption (adoption) of Russian children by US citizens, which was a reaction, among other things, to the negligent death of a two-year-old child from Russia by an American adopter. In fact, the 2012 Law entered the history of Russian law due to other, much more important provisions: 1) the introduction of a ban on entry into the territory of the Russian Federation for American citizens involved in violations of the rights and freedoms of Russian citizens (in the very first months after the enactment of the law more than 30 American politicians were banned from visiting the Russian Federation); 2) arrest of the assets of the abovementioned persons in the territory of the Russian Federation; 3) finally, from a practical point of view, the requirement to suspend the activities and seize the property of NGOs, engaged in political activities in the Russian Federation and financed by US citizens and organizations, should be recognized as a key norm. It was the last, rather brave in its time, defensive step of the Russian legal order, that caused a sharply negative emotional reaction from both US officials and the subjects of law, financed by them.

In parallel with the indicated restrictive measures the institution of the so-called "foreign agents" began to actively develop in the Russian administrative legislation. Initially, it was about NGOs, engaged in political activities and funded by foreign and/or international entities of law (let us recall, that financing of such specifically by US citizens and organizations has been completely prohibited in Russia since 2012). The Law on Non-Commercial Organizations established the obligation to include these persons in a special register (the authority to conduct which was entrusted to the Ministry of

[44] Ros. gaz. 1996. January 24.

[45] Federal'nyi zakon ot 10 ianvaria 2006 goda No. 18-FZ "O vnesenii izmenenii v nekotorye zakonodatel'nye akty Rossiiskoi Federatsii" // Ros. gaz. 2006. January 17

[46] Federal'nyi zakon ot 17 iiulia 2009 goda No. 170-FZ "O vnesenii izmenenii v Federal'nyi zakon 'O nekommercheskih organizatsiiah" // Ros. gaz. 2009. July 22.

[47] Ros. gaz. 2012. December 29.

Justice of Russia) and also provided for periodic reporting and the need to indicate the appropriate status in the implementation of activities. In response to the recognition in the United States of the Russian media Sputnik and Russia Today as foreign agents in 2017, the Law of the Russian Federation of December 27, 1991 No. 2124-1 "On the Mass Media"[48] was amended to allow the assignment of the status of foreign agents to the media[49]. Somewhat later, the system of types of foreign agents was supplemented by the phenomenon of individual media persons, recognized as foreign agents (we are talking about media persons receiving foreign funding)[50]. Finally, in 2020, the 2012 Law "On measures to influence persons, involved in violations of fundamental human rights and freedoms, the rights and freedoms of citizens of the Russian Federation" was amended to establish such a rather unusual category as "individuals, performing the functions of a foreign agent" (if they act on the territory of the Russian Federation in the interests of a foreign state, its state bodies, international or foreign organization, foreign citizens or stateless persons, political activity and/or targeted collection of information in the field of military, military-technical activities of the Russian Federation, which, if obtained by a foreign source, can be used against security Russian Federation, in the absence of signs of the relevant crimes corpus delicti)[51].

Such an intensive development of regulatory material in disparate legal sources ultimately led to a logical step — the adoption of a new, consolidating Federal Law of July 14, 2022 No. 255-FZ "On Control over the Activities of Persons Under Foreign Influence", which entered into force 1 December 2022[52]. This legal act, of course, is destined for an outstanding role in the system of Russian administrative legislation. Its first important feature is the further development of the trend towards an ever broader understanding of the subject of regulation. In particular, the original concept of a foreign agent (as a Russian non-profit legal entity engaged in political activities and financed by foreign entities), which, as noted above, has undergone significant transformations, has been replaced by an even more decisive approach. According to Art. 1 of the Law of 2022, both a Russian and a foreign legal entity (regardless of its organizational and legal form) can be recognized as a foreign agent, moreover, an association operating without forming a legal entity, as well as an individual, regardless of his citizenship, "received support and (or) being under foreign influence in other forms" and carrying out, in accordance with Art. 4 of the Law, "political activity, targeted collection of information in the field of military, military-technical activities of the Russian Federation, distribution of messages and materials intended for an unlimited circle of persons and (or) participation in the creation of such messages and materials" (and certain other types of activities established by named article). It is noteworthy that Art. 5 of the Law provides for the maintenance of a unified register of foreign agents, consolidating all previously existing registers. At the same time, according to Art. 6, the Ministry of Justice of Russia is empowered to maintain another register — of individuals, affiliated with foreign agents (which, however, is supposed to be closed to the public).

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[48] Ibid. 1992. February 8.

[49] Federal'nyi zakon ot 25 noiabria 2017 goda No. 327-FZ "O vnesenii izmenenii v stat'i 10.4 i 15.3 Federal'nogo zakona 'Ob informatsii, informatsionnykh tehnologiiakh i o zashchite informatsii' i stat'iu 6 Zakona Rossiiskoi Federatsii 'O sredstvakh massovoi informatsii'" // Ibid. 2017. November 27.

[50] Federal'nyi zakon ot 2 dekabria 2019 goda No. 426-FZ "O vnesenii izmenenii v Zakon Rossiiskoi Federatsii 'O sredstvakh massovoi informatsii' i Federal'nyi zakon 'Ob informatsii, informatsionnykh tekhnologiiakh i o zashhite informatsii'" // Ibid. 2019. December 4.

[51] Federal'nyi zakon ot 30 dekabria 2020 goda No. 481-FZ "O vnesenii izmenenii v otdel'nye zakonodatel'nye akty Rossiiskoi Federatsii v chasti ustanovleniia dopolnitel'nykh mer protivodeistviia ugrozam natsional'noi bezopasnosti" // Ibid. 2021. January 11.

[52] Federal'nyi zakon ot 14 iiulia 2022 goda No. 255-FZ "O kontrole za deiatel'nost'iu lits, nakhodiashchikhsia pod inostrannym vliianiem" // Ibid. 2022. July 19.

Finally, it is the 2022 Law that not only systematizes, but also creatively rethinks the obligations (Art. 9) and restrictions, associated with the status of a foreign agent (Art. 11). In particular, an individual, included in the register of foreign agents, is deprived not only of access to public service, elections and state financial support, but also of expert and consulting activities, participation in advisory and other bodies, formed under public authorities, and also loses the right to carry out educational activities in relation to minors and (or) pedagogical activities in state and municipal educational organizations.

Separate mention should be made of the 2015 amendments to the 2012 Law on countering persons, involved in violations of the rights of citizens of the Russian Federation, allowing the General Prosecutor or his deputies in agreement with the Russian Foreign Ministry to decide on the recognition of undesirable activities of a foreign or international non-governmental organization, that poses a threat to the foundations of the constitutional order in the Russian Federation, country's defense capability or state security[53].

Let us repeat: it is easy to see that the process of tightening of the Russian control administrative legislation in politically sensitive areas dragged on for at least a decade and a half and was of a forced, "reactive" nature.

Conclusions

In conclusion, let us formulate a forecast of the possible (and, in our opinion, optimal) development of administrative law in Russia.

First, despite the obvious importance of the currently implemented special administrative legal regimes (high preparedness for an emergency, a special military operation, countering the sanctions of unfriendly countries), it is advisable to proceed from the fact that they are temporary. Despite any difficulties (and, to a certain extent, temptations), it is necessary to form a regulatory system, designed for "usual" normality.

Secondly, it is more important than ever before to maintain a balance between the goals of rationalizing of public administration (or even public and state security) and protecting the rights of citizens. Therefore, it is possible to forecast further "splitting" of the Russian administrative law. On the one hand, it will predictably tighten and politicize, first of all, in the field of the interaction of the domestic administrative system with representatives of unfriendly foreign legal systems (as well as subjects of the Russian legal system, affiliated with them). The intensity and scale of such militarization will largely depend on the aggressiveness of foreign pressure on Russia. But for the basis of the model of relations between the Russian public administration and the citizens of the Russian Federation, a predominantly different paradigm should be used — the human rights one. It is the Russian "right-granting" administrative law that should become the "cradle" of new principles of public administration (which, we emphasize, turned out to be betrayed by Western legal systems).

Finally, the third thesis is as follows: further improvement of human rights judicial practice should create a legal foundation for the codification breakthrough in the form of legislation on administrative acts and administrative procedures, which will open a new era in the development of Russian administrative law[54].

We believe that if this logic is implemented, the Russian legal system will receive new progressive development guidelines, that provide it with greater stability, attractiveness and rationality, allowing to look with confidence into the future of Russian statehood, law and society.

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[53] Federal'nyi zakon ot 23 maia 2015 goda No. 129-FZ "O vnesenii izmenenii v otdel'nye zakonodatel'nye akty Rossiskoi Federatsii" // Ibid. 2015. May 26.

[54] For more on this issue, see: *Davydov K. V.* Administrativnye protsedury... P. 387–416.

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Тенденции развития российского административного права: сравнительно-правовой аспект

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В статье обосновывается, что в период развития административного права как самостоятельной прогрессивной отрасли права в XX и XXI вв. в мировом опыте можно выделить

два основных достижения. Во-первых, это эволюция административного процесса, административных процедур, которые изменили лицо государственного управления, сделав его более прозрачным и демократичным, поскольку граждане получили возможность не только оспаривать административные акты, но и участвовать в процедурах их принятия, защищая свои интересы еще до утверждения властного решения. Вторым ключевым достижением является утверждение в качестве категорических императивов таких принципов, как законность, равенство, соразмерность, правовая устойчивость (защита правомерных ожиданий), запрет чрезмерного формализма. Эти начала наиболее последовательно реализованы в российском законодательстве об административной ответственности, а также в законодательстве об административном судопроизводстве. В сфере позитивного государственного управления законодатель все еще менее восприимчив к этим нововведениям. В то же время инерция законодателя в определенной мере компенсируется активностью российских судебных органов. Тенденция к восприятию основных новаций административного права не может быть поставлена под сомнение специальными административными режимами (повышенной готовности к чрезвычайной ситуации, специальной военной операции и т. п.), в том числе и по той причине, что такие режимы, при всей их значимости, являются временными. Поэтому, несмотря ни на какие трудности, необходимо формировать систему регулирования, рассчитанную на «обычную» нормальность. При этом как никогда важно соблюдать баланс между целями рационализации государственного управления (охраны общественной и государственной безопасности) и защитой прав граждан. Можно прогнозировать дальнейшее «расщепление» российского административного права. Представляется, что административное законодательство будет ужесточаться и политизироваться, прежде всего, в вопросах взаимодействия отечественной административной системы с представителями недружественных иностранных правопорядков (а также аффилированных с ними субъектов российской правовой системы). Но за основу модели взаимоотношений российского государственного управления и граждан Российской Федерации должна быть положена преимущественно иная парадигма — правозащитная.

Ключевые слова: административное право, государственное управление, административный процесс, принципы административного права, права человека.

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