

THE CORRELATION OF THE CONCEPTS OF ADMINISTRATIVE PROCEDURE AND ADMINISTRATIVE PROCESS

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INTRODUCTION

To date, the science of administrative law has not formed a consensus and has not developed a unified position regarding the concepts of “administrative procedure” and “administrative process”.

The scientific discussion about the concept and content of these concepts has been going on for decades. To a greater extent, this dispute is more doctrinal, but in the context of the process of European integration and administrative reform, it acquires practical significance.

The current situation is explained by the following reasons: *firstly*, emasculating the original meaning of the concept of “administrative process” as a judicial process based on a dispute about the law between a citizen and the state, which has generated a number of theoretical problems in science regarding the administrative process¹, *secondly*, the differences among scientists are due to uncertainty about the relationship and scope of these concepts as a result of the “narrow” and “broad” concept of the administrative process, which leads to a mixed understanding and hinders the development of a unified approach, *thirdly*, the imperfection of the administrative and procedural legislation and the lack of legislation on the administrative procedure, and how consequence of the lack of fixing these concepts at the legislative level, which creates legal uncertainty.

Bearing in mind that the legal science of “terminology” is attached great importance, since it is based on legislation and enforcement activities of public authorities, it is therefore important at the stage of the study to give due consideration to the question of the relationship between the concepts being studied.

Each of them should have strictly defined “conceptually meaningful boundaries”, especially if the problem is at the stage of initial development at the legislative level (we mean the procedure), when the terminological confusion is especially unacceptable, which can lead to further endless discussions, and in practice – additional difficulties.

¹ Старилов Ю.Н. Законность как принцип административных процедур и административного судопроизводства: развитие и юридическая конкретизация в отраслевом законодательстве на основе общей теории законности. *Ежегодник публичного права-2018*: Принципы административных процедур и административного судопроизводства. Москва, 2018. С. 164–171.

Uncertainty and inconsistency in the formulation of general legal and special legal terms (legal process and administrative process) does not contribute to the practice of law enforcement, interferes with the implementation of the principle of legal certainty, and also violates the fundamental principle of building a legal system, because the ambiguity of understanding and interpretation of general and specific violates relationships, and, as a result, gives rise to a number of negative legal consequences, in particular: ambiguity and confusion in understanding, a dualistic approach.

In this regard, there is a need to develop a conceptually unambiguous position on the issue of the correlation of these concepts, which should be assessed in terms of legal relevance, utility, principled industry legal identity and functional purpose.

1. Review of doctrinal approaches and concepts

We will consider the approaches that have developed in the doctrine and in legislation regarding this issue using the comparative method. In the doctrine regarding the correlation of the concepts of “legal process” and “legal procedure” there are three main positions. They are formulated mainly on the basis of works in the field of the general theory of law, work on procedural and administrative law.

Supporters of the first position believe that the concept of “legal (legal) procedure” has a broader meaning, the second – the concepts of “legal (legal) process” and “legal procedure” are identical, and the third – the concept of “legal process” is more voluminous in content, rather than the concept of “legal procedure”².

The question of the relationship between the legal procedure and the legal process from the standpoint of the general theory of law has been worked out in great detail by V.N. Protasova³.

According to the author, the legal process is that kind of legal procedure that is aimed at identifying and implementing a material protective legal relationship.

This predetermines the specifics of such characteristic features of the process as the mandatory presence in the subject composition of the legal relationship of a public authority, the details of normative legal regulation and the relationship with substantive law. In turn, the concept of “procedure” appears in V.N. Protasov in relation to the “process” as a generic, that is, more generalizing.

However, V.N. Protasov points out that in jurisprudence the division of a procedure can be represented by three differently directed groups: material,

² Азми Д.М. Система права и ее строение: методологические подходы : монография. Москва : Юстицинформ, 2014. 392 с. URL: <http://biblioclub.ru/index.php?page=book&id=461047>

³ Протасов В.Н. Основы общеправовой процессуальной теории. Москва : Юридическая литература, 1991. 143 с.

procedural and law-making. The features of each group stem from the specifics of those legal relations, the implementation of which the relevant procedures serve. Thus, the special legal concepts “legal procedure” and “legal process” are reflected in V.N. Protasov is one and the same phenomenon, but in different aspects.

In the legal literature of the late XX century, an approach was developed to the concept of a legal procedure, acting as a normatively established procedure for carrying out legal activities, ensuring the implementation of substantive law and substantive legal relations based on them, protected from violation by legal sanctions⁴.

When referring to the requirements of the law, one can pay attention to the fact that a broader understanding of the legal process than the legal procedure is derived from them. As a general rule, the use of the term “procedure” in normative legal acts focuses on the delimitation of the behavior carried out within the framework of the procedure itself from the actions characteristic of the whole process.

Meanwhile, one can see the difference between a procedure and a process even with their lexical comparison. From the point of view of the Dictionary of Foreign Words, a procedure (lat. *procedere* – to advance) is an officially established sequence of actions for the implementation or execution of a business; process (lat. *processus* – moving forward) is a sequential regular change of any phenomena, states, etc., the course of development of something⁵.

Based on these definitions, we can conclude that both of these concepts are associated with movement, activity that takes place in a certain order, however, it is still possible to identify some differences between the procedure and the process: 1) the procedure is characterized by the official nature of establishing a sequence of actions, which implies a strict settlement and the absence of unforeseen opportunities for freedom of action; the process, on the contrary, provides greater freedom and suggests the possible, most probable, often repeated development of events, the change of state phenomena, etc., and not just the prescribed actions⁶; 2) if the process refers to any phenomenon as a whole, then the procedure refers to the behavior of individuals⁷.

Despite the differences revealed during the lexical comparison, it is still impossible to isolate from these definitions the order of correlation of these

⁴ Байтин М.И. Теоретические вопросы правовой процедуры / М.И. Байтин, О.В. Яковенко. *Журнал российского права*. 2000 № 8. –С. 93–102.

⁵ Локшина С.М. Краткий словарь иностранных слов. Москва, 1984. С. 201.

⁶ Копина А.А. К вопросу о соотношении понятий «налоговый процесс» и «налоговая процедура». *Финансовое право*. 2005. № 10. С. 45–52.

⁷ Сладкова А.В. К вопросу об административно-процедурном процессе и административных процедурах. *Вестник университета им. О.Е. Кутафина*. 2016. № 5 (21). С. 190–195.

concepts with each other, and therefore we can agree with D.V. Vinnitsky, who notes that from a practical point of view it is necessary to move away from the problem of the lexical interpretation of the words “process” and “procedure” and establish for them a special legal meaning that expresses their normative, regulatory nature⁸.

Regarding the doctrinal aspect of the concept of “administrative process”, we propose to turn to scientific schools that were formed in the Soviet and modern periods.

In modern administrative science, there are three classical conceptual approaches to understanding the essence of the administrative process.

1) management (wide understanding of the administrative process) – the activity of public administration bodies in resolving all categories of individual legal cases subordinate to them, both related and unrelated to the resolution of disputes and conflicts;

2) jurisdictional (narrow understanding of the administrative process) – the activities of public administration bodies, as well as judges in resolving individual legal cases subordinate to them arising from administrative disputes and administrative offenses;

3) a judicial understanding of the administrative process – the activity of only courts (judges) in considering cases arising from substantive administrative legal relations, i.e., the administrative process is reduced only to administrative legal proceedings (judicial understanding of the administrative process)⁹.

Recently, a fourth is so-called integrative approach to understanding the administrative process has been proposed in the literature on administrative law, the essence of which boils down to the fact that the term “administrative process” covers not only the activities of public administration bodies in resolving administrative matters under their jurisdiction (administrative and procedural and administrative and jurisdictional processes), but also the activities of courts to consider, in the framework of administrative legal proceedings, court cases arising from administrative legal relations (judicial administrative process)¹⁰.

We consider the “integrated” (“integrative”) approach to researching the problems of the conceptual content of the administrative process, which, in fact, is a certain kind of “managerial” concept, a promising scientific direction. This

⁸ Винницкий Д.В. Проблемы правовой регламентации процедурных (и процессуальных) отношений в российском налоговом праве. *Налоги и налогообложение*. 2005. № 1. С. 23–31.

⁹ Административно-процессуальное право России. В 2 ч. Часть 1 : учебник для бакалавриата, специалитета и магистратуры / А.Б. Зеленцов, П.И. Кононов, А.И. Стахов. 2-е изд., перераб. и доп. Москва : Издательство Юрайт, 2018. 311 с.

¹⁰ Синогин В.Ю. Административная процедура: проблемы дефиниции. *Административное право и процесс*. 2014. № 10. С. 30–33.

approach can be traced in the works of Yu.S. Adushkin, Z.A. Bagishaev, Yu.M. Kozlov, V.M. Manokhin, I.V. Panova, Kononov, Stakhov. who proposed to consider the administrative process as an organic complex of functional elements (law-making of executive authorities, positive and jurisdictional law enforcement).

The multidimensional and multilevel enforcement activities of public administration bodies, as well as the large number and variety of issues addressed by government bodies and their officials, predetermined a broad understanding of the administrative process in the science of administrative law. The scientific prerequisites for the “managerial” concept of the administrative process began to be laid in domestic legal science from the late 1940s.

Most scholars, both administrativeists and theoreticians, recognized the concept of administrative process in a broader sense. These include D.N. Bahrakh, A.E. Lunev, V.M. Manokhin, G.I. Petrov, V.D. Sorokin, S.S. Studenikin, C.A. Yampolskaya. Perhaps the most clearly revealed the essence of the administrative process in the USSR A.P. Korenev. A.P. Korenev, V.D. Sorokin, S.S. Studenikin, D.N. Bahrakh, V.I. Novoselov, V.M. Manokhin, A.E. Lunev, V.M. Gorshenev, R.S. Pavlovsky Yu.P. Bityak, V.K. Kolpakov, N.M. Tishchenko, O.V. Kuzmenko and others.

In a broad sense, the term “administrative process”, in addition to the specified administrative-jurisdictional process, also refers to various kinds of managerial activities for the consideration and resolution of specific cases arising in the field of public administration.

According to this approach, an administrative process is defined as a “positive administrative process”, which applies not only to the jurisdictional, but also to the regulatory managerial activity of administrative bodies and is considered as regulated by the rules of administrative procedural law, the procedure for considering individually defined cases in the field of executive activity of public authorities, and in cases provided for by law, and other authorized persons bodies.

Thus, in its most general form, the concept of “administrative process” encompasses the entire set of existing administrative procedures¹¹. Scientists highlight the essence of the administrative process through the scope of substantive administrative law.

Consequently, the “managerial” concept most fully reflects the legal elements of public administration (law-making and various law enforcement activities of executive authorities). In the framework of the “managerial” concept, for the

¹¹ Губерська Н.Л. Адміністративні процедури у сфері вищої освіти : автореф. дис. ... д-ра юрид. наук : 12.00.07 / наук. конс. Л.К. Воронова ; Київ. нац. ун-т ім. Т. Шевченка, Нац. юрид. ун-т ім. Ярослава Мудрого. Харків, 2016. 37 с.

first time, the fact that of the three branches of state power only the executive branch bears a “double legal burden”, that is, it is characterized both by law-making and law enforcement functions.

In this context, the legislative branch is characterized only by law-making functions, and the judicial branch is characterized only by law enforcement functions. The judiciary, for example, received its legal embodiment in civil and criminal trials, and the executive branch in the administrative process¹².

Other administrative scientists such as N.G. Salishcheva, V.S. Tadevosyan, A.P. Klyushnichenko, M.I. Piskotin, A.V. Samoilenko, A.A. Demin et al. Used a narrow approach to defining the administrative process. So, the exclusively jurisdictional nature of the administrative process was emphasized by V.S. Tadevosyan and M.I. Piskotin, considering it the process of considering a dispute on administrative law¹³; as activities related to the consideration of cases of administrative offenses and the application of administrative coercion measures to offenders); any jurisdictional activity that is regulated by law¹⁴.

It should be noted that N.G. Salishcheva formed the basis of the “jurisdictional concept”, the administrative process is the activity regulated by law to resolve disputes arising between the parties to an administrative legal relationship that are not in a relationship of official subordination, as well as the application of administrative coercive measures¹⁵.

But later she revises her position and inclines to a wide understanding in the work “Administrative procedural aspects of guarantees of the rights of citizens” N.G. Salischeva began to consider the administrative process in the broadest sense of the word, recognizing in its three constituent parts administrative procedures, administrative jurisdiction and administrative proceedings, designed to provide procedural guarantees of the rights of citizens in their relations with public authorities¹⁶.

Yu.N. Starilov, one of the most respected representatives of the “justice” approach to understanding the administrative process, divides the activities of the executive into two types – the administrative process and the administrative process¹⁷.

¹² Сорокин В.Д. Правовое регулирование: предмет, метод, процесс : учебное пособие. Санкт-Петербург, 2000. С. 302.

¹³ Старостин С.А. О соотношении понятий «административный процесс», «административное производство», «административные процедуры» // Вестник университета им. О.Е. Кутафина. 2016. № 5 (21). С. 100–106.

¹⁴ Миколенко О.І. Теорія адміністративного процедурного права : монографія. Харків : Бурун Книга, 2010. 275 с.

¹⁵ Салищева Н.Г. Административный процесс в СССР. Москва : Юрид. лит., 1964. 158 с.

¹⁶ Административно-правовой статус гражданина: Сборник статей / отв. ред. Н.Ю. Хаманева. Москва : Институт государства и права РАН, 2004. С. 64.

¹⁷ Стариков Ю.Н. Административная юстиция. Теория, история, перспективы. Москва : Норма-Инфра-М, 2001. С. 39.

The administrative process does not apply to the administrative process in any of the traditional ways that separate one branch of procedural law from another. It is advisable to associate the management process with numerous administrative procedures that permeate the practical management activities of the modern state. The administrative process is identified with administrative justice – “a system of judicial (or quasi-judicial) bodies that consider administrative cases initiated by claims of citizens who consider that their rights and freedoms have been violated by actions and decisions (administrative acts) of government bodies and public servants”¹⁸.

Thus, Yu.N. Starilov adheres to a narrow understanding of the administrative process, identifying it exclusively with legal proceedings and not including in this concept an extrajudicial (administrative) procedure for appealing against the actions and decisions of executive authorities.

The scientist’s point of view seems to be very promising in terms of the development of administrative-procedural legislation, since currently the institute of administrative justice, which is the most important form of judicial control over the activities of executive authorities, is underdeveloped.

Founder of the doctrine of administrative justice in Ukraine V.S. Stefanchuk noted that modern Ukrainian science of administrative law uses the term administrative process when designating judicial procedures for solving administrative cases. At the same time, it does not show its relationship with the traditional understanding of the administrative process¹⁹.

In this regard, one should agree with the idea that the allocation of the procedural part of administrative law cannot be considered in principle by analogy with the branches of civil and criminal law.

All the controversial issues that exist in the science of administrative law about the nature of the administrative process and its role in the mechanism of legal regulation can be resolved, in our opinion, only by defining a clear place for this type of process in the system of legal processes.

The administrative process, no matter how it is considered – in a narrow or broad sense, in a jurisdictional or managerial plan, is undoubtedly a procedural form of executive power²⁰.

Having considered the presented concepts, we can determine how the administrative procedure can be considered in accordance with them: if we consider the administrative process through the prism of a narrow campaign,

¹⁸ Старилов Ю.Н. От административной юстиции к административному судопроизводству. Воронеж : Изд-во Воронеж. гос. ун-та, 2003. С. 78.

¹⁹ Стефанюк В.С. Судовий контроль за діяльністю органів державної влади. *Право України*. 1998. № 3. С. 3–9.

²⁰ Сорокин В.Д. Административный процесс и административно-процессуальное право. Санкт-Петербург : Издательство Юридического института, 2002. С. 375.

then the concept of administrative procedure must be considered as two independent institutions within public administration.

Proponents of this approach, denying that the extrajudicial activities of administrative-public bodies to resolve administrative cases belong to a legal, namely, administrative process in the form of administrative proceedings, they propose to consider this activity as an administrative procedure.

In other words, the resolution of administrative cases by courts, in their opinion, is an administrative process, and the resolution of administrative cases by administrative public bodies is an administrative-material (organizational, technical) procedure. This approach is directly based on the considered position of a narrow, exclusively judicial understanding of the legal, including administrative, process.

If we consider and adhere to the management concept in the definition of the administrative process, then the administrative procedure will be correlated with the administrative process as part of the whole, that is, the administrative procedure will be an integral part of the administrative process. In accordance with the third concept, the administrative procedure will be considered as absolutely two different institutions.

2. Author's approach to the correlation of concepts “administrative process and administrative procedure”

Having examined the conceptual and doctrinal diversity of the formed approaches in the science of administrative law, we consider it appropriate to look at this issue from a different perspective. First, we propose, in the question of the correlation of concepts, to use specific criteria that will really allow them to be compared and distinguished.

The following criteria should be taken as a basis: 1) scope, 2) functional purpose, 3) target purpose; secondly, we propose to consider these two concepts as follows: “process as an abstract doctrinal process and as a normative concept”.

Thanks to the legislative consolidation of the concept of “administrative procedure”, many controversial both theoretical and practical issues are resolved. Formulating and consolidating the normative definition of the concept of “administrative procedure”, it is necessary to take into account the above proposed criteria. Using these criteria, we can not only correlate these concepts, but also see the distinguishing features.

As a rule, such a criterion as “scope” is mainly used in normative legal acts according to the rule of “norm-project technique”, which includes a set of relations (array) to which the normative act applies. This criterion is basic, not only because the normative act begins with it, but also because of the reason it

establishes a specific framework for legal relations, forming the boundaries of this Law.

We turn to the Code of Administrative Procedure of the Draft Law on Administrative Procedure and the Draft Administrative Procedure Code of Ukraine and see how they establish the criterion for the concepts under study.

In the draft Law “On Administrative Procedure”, the legislator defines the scope through the relations of executive authorities, local authorities, their officials, other entities that are authorized by the law to carry out managerial administrative functions, with individuals and legal entities on the adoption of an administrative act and its performance, while the draft Administrative Procedural Code through the procedures for consideration by the executive authorities and local authorities, their officials issues related to the implementation and protection of the rights, freedoms and legitimate interests of individuals and legal entities, including the provision of administrative (managerial) services.

Comparing the presented approaches to the scope of the Law, we note that they are different not only in terms of wording, but also in volume and content. It is necessary to unify the approach to this issue, since the practical aspect of applying and extending the Law to the circle of relations that are enshrined in it depends on it.

So, we propose to formulate the “Scope” as follows: “<...> is aimed at regulating relations between executive authorities and local self-government bodies, their officials, who carry out managerial administrative functions with individuals and legal entities, in particular: <...>”.

In the absence of a unified approach to understanding the essence and structure of the administrative procedure, scientific administrators also do not agree on the boundaries of its scope.

Some scientists limit the scope of administrative procedures to the sphere of externally dominant positive activity of executive bodies²¹. Others believe that administrative procedures should regulate both the positive external power activity of executive bodies and the activities of these bodies in the security sphere²². There is also an opinion that the administrative procedure covers administrative actions of an external and internal direction of a positive and protective nature²³.

²¹ Лазарев И.М. Административные процедуры в сфере взаимоотношений граждан и их организаций с органами исполнительной власти в Российской Федерации : автореф. дис. ... к.ю.н. Москва, 2002. С. 7.

²² Никольская А.А. Административные процедуры в системе публичного управления (проблемы административно-правового регулирования) : дис. ... канд. юрид. наук : 12.00.14. Воронеж, 2007. С. 173.

²³ Давыдов К.В. Административные регламенты федеральных органов исполнительной власти Российской Федерации: вопросы теории / под ред. Ю.Н. Старилова. Монография. Москва, 2010. С. 29.

From our point of view, in determining the boundaries of the subject area of the administrative procedure, it is necessary to proceed from the role that administrative procedures are called upon to fulfill in the sphere of the executive branch.

In this regard, we share the opinion of Yu.N. Starilova that the administrative procedures are included by the legislator in the legal system and in the structure of the modern legal state in general, and in the system of executive power in particular because of the need to introduce the proper order into the organization and functioning of public authority, ensure compliance with the principle of legality, establish utility guarantees, efficiency and transparency of administrative actions²⁴ [24, 485].

Accordingly, in our opinion, administrative procedures should govern all the main areas of legislative and law enforcement activities of administrative bodies directly or indirectly related to the restriction of the rights and legitimate interests of citizens and organizations, namely: the publication of by-laws and regulations, all the main areas of external law enforcement activities of administrative bodies (including those regulated by the norms of administrative law: positive activities related to the lawful activities of citizens and organizations, administrative-tort activities related to administrative legal disputes and administrative offenses, administrative and casual activities related to technological, natural and other incidents), intraorganizational and intra-systemic activities (interaction of structural units, interaction with other public authorities).

At KASU, the “scope” is represented through the category of public law dispute, jurisdiction and authority of administrative courts. The criterion of “functional purpose” – indicates what functions the procedure and process performs.

Administrative procedure is a dual security function both in relation to the realization of the rights and legitimate interests of individuals, legal entities in relations with executive authorities, local self-government, and the opposite – compliance by the bodies performing executive management functions with the legal rights and freedoms of individuals and legal entities persons. It also ensures the effectiveness of public administration by issuing high-quality administrative acts.

Regarding the “functional purpose” of the administrative process, we note that this criterion will depend on the concepts: “broad concept” – a regulatory and protective function, “jurisdictional” – protective, “justice” – function of administering justice and normative control (administrative legal

²⁴ Стариков Ю.Н. Административное право : учебник / Б.В. Россинский, Ю.Н. Стариков. Москва, 2009. С. 485.

proceedings are procedural and legal a form of judicial activity aimed at identifying illegal acts).

The third criterion “target destination” – the goal – is what to strive for, what must be achieved in the process of introducing a specific legal institution.

The purpose of the administrative procedure is: to establish a clear framework for the lawful behavior of the participants in the legal relationship under consideration, to limit the degree of discretion of public authorities in making administrative decisions, to ensure maximum consideration of the interests of citizens and legal entities in making decisions, and also to eliminate the manifestation of red tape and corruption, to eliminate excessive administrative barriers.

Scientists believe that the purpose of the administrative process should be viewed through the prism of the specifics of administrative and procedural activities, therefore, ensuring the observance by lawful entities of administrative and procedural activities of the legal rights and freedoms of citizens, as well as the interests of other participants in administrative and procedural relations.

Protection and protection by power entities of the administrative procedural activity of those public interests of the individual, society and the state, about which the law speaks and suggests the practice of its application. This goal takes place in all parts of the administrative process.

The need to turn to the European experience is caused not only by the desire to find reference models for overcoming conceptual contradictions, but also by the fact that, by joining the Council of Europe, Ukraine has undertaken to bring its legislation, including administrative procedural, into line with European standards. This implies the harmonization of not only administrative legal norms and institutions, but also conceptual schemes and legal structures.

As world practice in Western countries shows, each individual country follows different models of legislative regulation of administrative procedures, lawmakers have already made a choice in understanding and significance of administrative procedures.

In many countries, laws on administrative procedure have been adopted long ago, some even countries such as (Poland, France) have codified approaches to the issue of procedures and the relevant codes have been adopted.

Turning to the German experience, we find that the concepts of administrative procedure and administrative process are clearly divided both at the doctoral and legislative levels.

The administrative process is considered – the judicial procedure for the resolution of administrative disputes. Administrative procedural rules govern the resolution of public law disputes by administrative courts. Speaking about the administrative process in this vein, we assume that we are talking about

administrative justice. As rightly pointed out O.V. Krivell, administrative justice in the Federal Republic of Germany is a multi-faceted phenomenon²⁵.

The administrative procedure and administrative process are independent guarantees of the protection of the rights and legitimate interests of individuals (58–59). When establishing a guarantee of effective legal protection (Article 19, Paragraph 4 of the Basic Law), the German constitutional legislator takes into account that subjectively public rights can be effective only when their implementation is ensured in case of conflict²⁶.

Therefore, the guarantee of legal protection is a crucial tool that allows you to eliminate the will of public authorities in relation to the citizen and realize the “substantial right to a truly effective judicial control”.

From this point of view, it represents “the key basis of the order based on the principles of the rule of law”. Violation of subjective-objective law enforces a reservation in the law, justifies the requirements for administrative procedures (§ 28 of the Administrative Procedures Act [VwVfG]) and also has consequences for the legality of administrative decisions, as well as for their judicial control²⁷.

From the foregoing, we can conclude that the concept of “administrative procedure” is fixed, and therefore is normative, as regards the concept of administrative process, then, having analyzed the work of German scientists, we came to the conclusion that the administrative process in Germany is nothing more than administrative justice.

In the USA, the concepts of “administrative process” and “administrative procedure” are not fixed at both the doctrinal and legislative levels.

For the first time, the institute of administrative procedures received its legislative consolidation in the USA in 1946 with the adoption of the Law on Administrative Procedure²⁸. Analyzing the provisions of this normative act, we came to the conclusion that these concepts are mixed in it to such a level that it is simply impossible to distinguish between them.

We can only assume that this situation is related to the activities of quasi-judicial bodies – administrative agencies. A feature of US administrative agencies is that they have broad powers, including the enforcement of extrajudicial coercion and quasi-judicial review of legal disputes delegated to them by the US Congress.

²⁵ Кривельская О.В. Административная юстиция в Федеративной Республике Германия : дис. ... канд. юрид. наук. Москва, 2004. С. 10–11.

²⁶ Сухарева Н.В., Кузнецов В.И. Концепция развития административно-процессуального законодательства. *Концепция развития российского законодательства* / Под ред. Т.Я. Хабриевой, Ю.А. Тихомирова. С. 637–646.

²⁷ *Verwaltungsverfahrensgesetz 1976*. URL: <https://germanlawarchive.iuscomp.org/>

²⁸ *Administrative Procedure Act (United States) 1946*. URL: <https://www.britannica.com/topic/Administrative-Procedures-Act>

Thus, it seems fair opinion N.Yu. Khamaneva on the broad regulation of procedural issues by the American legislator.

It should be concluded that the administrative and procedural legislation of the United States is filled with procedural rules that describe in detail the relationship between citizens and executive authorities.

The created administrative-procedural mechanism makes the administration dependent on the citizen, obliges it to work efficiently and not violate the rights of citizens. The US Administrative Procedure Act reflects the broad approach of US administrators to determining the scope of this regulatory act, that is, in essence, being the Administrative Procedure Act, not the procedure.

American law enshrines a broad approach to both the administrative procedure and the administrative process in connection with the specifics of the powers of administrative agencies: quasi-judicial and rule-making.

After the advent of the Administrative Procedure Act in the United States, an active process begins to develop and consolidate legislation on administrative procedures and, since the 1960s, laws on administrative procedures have been adopted in Western European countries and in many countries of Eastern Europe.

After analyzing the fragmented American and German approach to distinguishing between these concepts, we can talk about completely different approaches of the American and German legislators. In Germany, these concepts are delineated, while the United States are mixed on the contrary.

CONCLUSIONS

As we see the problem in the countries that we have analyzed, lies in the fact that administrative-legal relations depend on the particularities of the national legal system of each state, existing sources of law, the level of development of administrative law and its institutions. As notes S.Z. Zhentel, at the international level, the administrative process has no special legal regulation.

After analyzing foreign experience, we came to the conclusion that at the doctrinal level, the administrative process is viewed through the prism of administrative justice, at the legislative level, these concepts are normative, enshrined at the level of the law (Germany), in others (Poland) – expressed through a list of industries that are regulated by the Code (Kodeks postępowania administracyjnego normuje), in the US the legislator has demonstrated a broad approach to the procedure through the status of quasi-judicial administrative bodies and a lot of vector activity

Taking into account the analysis and the above, we propose to relate these two concepts as follows: *“abstract-doctrinal in relation to the administrative process and specific normative in relation to the administrative procedure”*.

SUMMARY

In scientific doctrine, the question of the “correlation” of the administrative process and the administrative procedure is quite controversial. This is due to the fact that scientists have developed various copyright approaches and concepts regarding the issue under consideration, which have taken their rightful place in administrative law.

With the actualization of the research of the institute of administrative procedure, scientist’s efforts to find criteria for distinguishing between these scientific concepts have intensified, nevertheless uncertainty and inconsistency in the formulation of general legal and special legal terms does not contribute to the practice of law enforcement, impedes the implementation of the principle of legal certainty, and also violates the fundamental principle of building a legal system. Indeed, the ambiguity in understanding and interpretation of these concepts gives rise to confusion in understanding, a dualistic approach. The author conducted an analytical review of existing approaches and concepts and suggested in his work to use specific criteria for comparing these concepts. The following criteria should be taken as a basis: 1) scope, 2) functional purpose, 3) target purpose. Also, the author, after the results of his research, suggests considering the concept of “administrative process is as abstract-doctrinal”, and the administrative procedure is a normative concept, which will find its fixation on the legislative level.

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