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FRENCH APPROACH TO ADMINISTRATIVE ACT

ФРАНЦУЗЬКИЙ ПІДХІД ДО АДМІНІСТРАТИВНОГО АКТУ

The author reviews French legislation: the Code of Relations between the Public and the Administration and the Law" On the Rights of Citizens in their Relations with the Administration " in order to consolidate the provisions on administrative acts in which the result of the administrative procedure is objectified. This Code was adopted in France in 2015 after a period of France's isolation within the EU. Although the Code of Public Relations and Administration (CRPA) is a codification of à droit constant, it introduced some important and innovative principles. In this article we consider the types of administrative acts, among which we highlight: 1) implicit decisions; 2) unilateral administrative acts; 3) administrative acts. The new revolutionary principle of tacit consent implies the introduction of the principle of "silence de l'administration vaut acceptation" –the silence of the administration is considered as consent or as silent acceptance of an administrative decision. This principle is one of the most important novelties of the Code. Thus, the effect achieved by the CRPA was to invert the relationship between rule and exception.

In this regard, it can be partially said that the French legislator heard the requests of supporters of the principle "silence means recognition of demands". It seems quite logical that for any applicant, even with the existing restrictions, it is more favorable to obtain a positive implicit (implicit) decision, because this prevents the applicant from going to court. French legislation also differs in a number of features associated, first of all, with the presence of such a form as implied decisions and unilateral administrative decisions. In French administrative law, administrative contracts are usually governed by special rules.

The current Code does not contain provisions on administrative contracts (and the relevant litigation is usually under the jurisdiction of the administrative courts).

Key words: *administrative act, implicit decisions, unilateral administrative act.*

У даній статті автор проводить огляд французького законодавства: Кодекс відносин між громадськістю та адміністрацією » (CRPA), прийнятий в 2016 роком і Закон« Про права громадян у їх відносинах з адміністрацією »від 12.04.2000 № 2000-321 на предмет закріплення положень про адміністративні актах в яких об'єктивується результат адміністративної процедури. Кодекс адміністративних процедур, був прийнятий у Франції в 2015 році після періоду «ізоляції» Франції всередині ЄС. Хоча «Кодекс відносин між громадськістю та адміністрацією» (CRPA) являє собою кодифікацію à droit constant, він ввів деякі важливі і новаторські принципи. У цій статті розглядаємо види адміністративних актів, серед яких виділяємо: 1) припускаються рішення; 2) односторонні адміністративні акти; 3) адміністративні акти. Новий революційний принцип мовчазної згоди має на увазі впровадження принципу "silence de l'administration vaut acceptation" – мовчання адміністрації розглядається тепер як згоду або як безмовне прийняття адміністративного рішення. Даний принцип є однією з найважливіших новел Кодексу. Таким чином, ефект, досягнутий CRPA, полягав у тому, щоб інвертувати зв'язок між правилом і винятком.

У зв'язку з цим частково можна говорити, що французьким законодавцем були почуті прохання прихильників принципу «мовчання означає визнання вимог». Звісно ж цілком логічним, що для будь-якого заявника навіть при існуючих обмеженнях більш сприятливим є отримання позитивного рішення, адже це запобігає звернення до суду зі сторони заявника. Французьке законодавство теж відрізняється рядом особливостей пов'язаних, в першу чергу, з наявністю такої форми як мовчазні рішення і односторонні адміністративні рішення.

Ключові слова: *адміністративний акт, що маються на увазі рішення, односторонній адміністративний акт.*

Administrative procedure is regulated to the legislative level (law or code), which directly fixes the form result of the activities (actions) of the bodies in the administrative procedure is objectified in all European countries. It is fundamentally important to take into account the approaches to the consideration of this issue in the countries of the European Union. The activity of bodies in the administrative procedure is legally enforceable, as it is aimed at establishing individual legal consequences in relation to individual subjects by adopting an individual administrative act, which is one of the forms of public management – the activity of public administration. Traditionally, the forms of activity of public administration bodies

are divided into legal and non-legal all depending on whether they generate legal consequences (cause the emergence of a legal result) or not. The science of administrative law is limited to the development, first of all, of issues of issuing individual management acts (administrative acts), normative management acts, and recently also the issue of concluding administrative contracts. We are interested in legal forms of management activity, as they cause corresponding legal consequences. The authors of the Law of Ukraine "On Administrative Procedure" in Chapter 5 formulated the provisions regarding the form and content, motivation, rules for adopting an administrative act, its validity and termination, and its nullity. The authors took the Law of the Federal Republic of Germany "On Administrative Procedure" as the basis for the development of the provisions on the administrative act. In this law, the concept of an administrative act is a central category of the administrative-legal doctrine, which means "any order, decision, which is directed by a government body to the settlement of a separate case in the field of public law and has direct external legal consequences". In the legislation of European countries on administrative procedure, the concept of "administrative act" is also used, but its meaning is different. We will turn to the French legislative and doctrinal experience in order to review and analyze the existing forms of objectification of the results of the procedure in the French administrative procedure.

In France, due to the long-term lack of codification of administrative procedure, procedural norms were formed under the influence of precedent law of administrative courts and were based on their procedural provisions. In recent decades, the legislation of the European Union has influenced the development of administrative law in the legal system of European EU member states, in particular France. One of the most important legislative acts is the Law of April 12, 2000 on the rights of citizens in relations with state bodies. This law establishes provisions on the transparency of the administrative procedure. However, some of its provisions became invalid as a result of the adoption in 2016 of the Code of Relations between the Public and the Administration.

In general, approaches to understanding the concept of "administrative act" in Europe are dominated by the German doctrine. In particular, in the documents of the Council of Europe, the European Commission and the European Court of Human Rights, the term "administrative act" means any individual decision that: a) is adopted in the exercise of public authority; b) has the nature of direct action and concerns the rights, freedoms and interests of private individuals; c) is not an act performed in the exercise of judicial functions. Therefore, an administrative act is an individual act aimed at creating, changing or terminating the rights and obligations of a person or persons. We are of scientific interest in individual decisions that are made and in which the results of the administrative procedure are reflected.

In France, practically everything that comes from the administration are considered administrative acts, which can be unilateral, bilateral or multilateral, individual and normative. In France, administrative agreements are also referred to as administrative acts – "acte administratif". Although, it is possible that in this case the differences in approaches may also be due to the difficulties of translation, because in French language, the construction is close to the term "administrative act" – "act of administration" (acte de l'administration).

In France, the main act that regulates the main issues related to the indisputable administrative procedure, including acts that reflect the result of the procedure, is the Code of Relations between the Public and the Administration (CRPA), was adopted in 2016 and the Law on the Rights of Citizens in their relations with the administration" was adopted April 12, 2000 No. 2000-321 [1; 2].

Analyzing the provisions of the Code and the Law in order to consolidate the forms in which the result of the administrative procedure is objectified, we note the following:

1) in the Law in Section 2 of the provisions concerning relations between citizens and administrations Chapter 1, 2 – was repealed by Decree No. 2015-1341 of October 23, 2015 in connection with the adoption of the Code on relations between the public and the administration. Thus, the procedural mechanism was excluded from this Law and imported into the Code with changes, which will be discussed later.

2) Books 2, 3 of the Code are contain provisions about unilateral acts were adopted by the administration and implied decisions, as well as issues related to the procedure for the adoption, cancellation, revocation, entry into force and other procedural issues of penitent acts.

In French law and doctrine, the concept of "administrative act" is used in a broad sense, which means as a decision expressed in a written document, which is issued by the competent administrative authority in the manner prescribed by the laws and regulations in force, in order to create, modify or terminate the relevant rights and responsibilities. We consider an administrative act in the plane of the administrative procedure, which is its procedural

form. Individual decisions are of scientific interest for our scientific research, because these decisions display the results of an administrative procedure.

After analyzing the legislation on administrative procedure, in particular the Code and the French doctrine, we distinguish three types of forms of administrative acts depending on the actions of public administration bodies within the framework of the administrative procedure: *1) implied decisions, 2) unilateral administrative acts, 3) administrative contract.*

The implied decisions are the result of administrative and judicial practice. The Law of April 12, 2000 is established a general rule: silence means refusal to meet the requirements, except in cases where the legislator has established a regime of tacit consent. Everything changed radically after the adoption of the Code, the provisions of which in relation to the implied decisions are absolutely opposite. In this case, we can talk about the inversion of the general rule, when silence was regarded as a refusal – "silence vaut rejet", but with the adoption of the Code, silence began to be considered as consent.

The new principle of tacit consent implies the introduction of the principle of "silence de l'administration vaut acceptance" – the silence of the administration is considered as consent or as a silent acceptance of an administrative decision. This principle is one of the most important novelties of the Code. Thus, the effect achieved by CRPA was to invert the relationship between the rule and the exception.

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The rule is that "the silence that is maintained for two months by the administration in relation to the application is considered a decision on acceptance". However, the two-month period that starts from the moment the application is received by the public administration may be canceled due to the urgency or complexity of the procedure (art. L. 231-6). The list of procedures, for which the principle of tacit consent may apply, is published on the government's website – "legifrance.gouv.fr". The procedure for making the proposed decision is regulated by the current code. Article L. 232-3 indicates the right of the interested party to receive written confirmation of tacit consent upon request.

Thus, the implied decision is a special form of an administrative act since the expression of will is carried out through conclusive actions. In other words, the Code "entitles interested persons to obtain an administrative decision even in cases where this decision does not materially exist".

The next form that we will consider will be a unilateral administrative act. The ability of public administration bodies to make unilateral decisions is a manifestation of their prerogative powers, which are vested in them by the legislator [4]. In the 1982 case (July 2, 1982, Huglo), Conseil d'Etat opined that the most fundamental rule of French public law is that which allows administrative authorities to make unilateral decisions that impose obligations on citizens: in other words, the right to make changes in the legal order with the help of acts that can be issued without the consent of their addressees [5].

The subject range of issues of unilateral decisions is very diverse. The ability of an administrative body to make such decisions is determined by its powers, which are enshrined in law, regulations, instructions. While the ability to make unilateral decisions is certainly a special prerogative vested in the administration, it is not the only one. There are many other special powers (prerogatives of public authority) that the administration has (for example, the authority of the administration to change the terms of administrative contracts when such a change is justified by the public interest).

The chapter 2 of Code of Relations between the Public and the Administration regulates the provisions on unilateral acts that are adopted by the administration of art. L. 200-1. The administration make these decisions in relation to individuals, legal entities, as well as in relation to other bodies. Unilateral acts are a type of individual decision, therefore, general provisions and requirements apply to it, which an administrative act must comply with.

Individual decisions must be justified by L. 211-3. In cases, where an unfavorable individual decision was made in relation to a natural or legal person, the body made decision must notify the addressee of the reasons for such a decision in accordance with Art. L. 211-2. The reasons must be set out in writing and include the legal and factual aspects that form the basis of the Art. L. 211-5.

The Code provides for new provisions regarding the revision and repeal of unilateral administrative acts – retrait and abrogation of unilateral administrative acts. The administration may cancel or revoke the decision on its own initiative or at the request of a third party, if it is illegal – within four months after the adoption of this decision Art. L. 242-1. The decision come into force in relation to the person concerned at the time of notification of art, according to L. 221-8. The next form, which displays the actions of the administration in relation to legal entities, bodies, is an administrative contract.

The administration can conclude such contracts only if it is endowed with such powers.

According to case law, when an administrative body is vested with the power to make unilateral decisions in a particular case, it cannot enter into contracts instead of unilateral decisions, and it cannot limit its decision-making power in the future by contractual provisions.

The subject of administrative contracts is a broad and constantly expanding (for example: public procurement contracts, as well as public concessions or public-private partnerships, contracts between public legal entities: contracts establishing their cooperation, determining the distribution of funds, concluded either between the state and local entities, or between local entities).

In French administrative law, administrative contracts are usually governed by special rules. The current Code does not provide for provisions on administrative contracts (and the relevant litigation is usually under the jurisdiction of administrative courts). The peculiarity of administrative contracts is related to the ability of the administration to unilaterally change the terms of the contract to which it is a party, in cases where this is required by public interests. Such prerogative powers is provided for compensating additional costs from the second counterparty in this case (for example, contract of hiring work).

In addition to these general rules that apply to contracts, different types of administrative contracts have their own special regulatory mechanism arising from legislation and case law. The main (that is, the most theoretically significant and practically the most frequent) species are the following four.

The first type is procurement contracts (marches publics), which are regulated by a special code (code des marches publics).

The second type concerns the concession, public-private partnership, this type is privately called: delegations de service public contracts, which are regulated by the Law of January 29, 1993 (called loi Sapin, after the then finance minister).

The third category is contracts that are subject to public assets placed at the disposal of private individuals (Contras d'occupation domaniale): most of the rules applicable to this category come from case law.

And the last type is employment contracts. Most of the administrative staff are civil servants who do not have a contractual relationship with the administration, but there is a category of civil servants who are in contractual positions, so their relationship is regulated only by the contact form.

But after analyzing the provisions of the Code for fixing in it such a form as an administrative contract, we note that it does not contain general provisions about it. We can assume that this may be due to the existence of special laws that regulate this form in detail, based on the subject of the contract.

Having carried out a comparative analysis of French legislation in order to consolidate and regulate the forms of objectification of the results of the administrative procedure, we consider it necessary to note the following features:

1) firstly, the French legislation presents a procedural variety of forms, among which we can distinguish: 1) a unilateral administrative act, 2) implied decisions; 2) administrative contracts. French law is distinguished by the presence of such a form of decision objectification as implied decisions and unilateral administrative decisions.

2) we note that not all laws regulating the administrative procedure have requirements for the design, details and content of the forms, for example, the peculiarity of the French concept of "administrative act is the following: the requirements relating to administrative acts (decisions) are not contained in only one Code, they are enshrined in various regulations, as well as from the general principles set out in case law.

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