The Historical Evolution of the Administrative Procedure (Comparative Approach)

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Abstract: The author is engaged in a comprehensive, comparative study of the administrative procedure in Ukraine. In our country, there is no mechanism for the functioning of this institution for a number of objective and subjective reasons, which complicates the study. In this regard, the author refers to the doctrinal legislative and historical experience of such countries as the USA and European countries (Germany, France), since these countries have a fundamental and centuries-old history of the process of formation, development and modernization of the administrative procedure at different historical stages. The history creates law. The purpose of the work is to review the evolution of the administrative procedure and identify key historical and political events that triggered the mechanism of the administrative procedure in the above countries. The result of historical and legal research are the doctrinal concepts of scientists, which influenced the further formation and development of the administrative procedure. During the study, the author received unique knowledge that will be helpful not only in expanding the horizons of scientific knowledge, but also applying them during the writing a doctoral dissertation, which will be the first research work of this level in Ukraine.

Keywords: Evolution, administrative procedure, stages of genesis, historical and political events.

INTRODUCTION

In this article, the author explores the historical evolution path of the formation of administrative procedures in the laws of European countries and the USA, as well as the premises that influenced the emergence of administrative procedures in order to conduct a comparative study, using the historical method. Evolution is a gradual, consistent and continuous process of becoming any legal institution, in particular, an administrative procedure. Historical events directly influenced the formation and further development of the administrative procedure in European countries and in USA (Moldagozhieva *et al.* 2017; Talaspayeva *et al.* 2017).

The administrative procedure – is a congruent institute that came into force within the legal framework of European countries and the countries of the former Soviet Union, including Ukraine, and remained so for a long period in history with an aim to develop further in the legal system and to get its own place in the legislation the evolutionary path of the formation of administrative procedures in European countries with the aim of enriching Ukrainian science and legislation and conducting a comparative legal analysis. Since Ukraine does not have legislation regulating the functioning of the administrative procedure (in other words, the evolutionary process has not yet occurred, only attempts), this study will help to find and answer to the questions asked by both the doctrine and the legislator: 1) What historical and political prerequisites (events) were the basis for the emergence, establishment and development of the administrative procedure in European countries and the USA? 2) How did they effect on the administrative procedure and what were consequences and results? Unfortunately, in our country the evolutionary process of administrative procedure is cyclical and fragmented, which negatively affects its development. Taking into account the rich historical and legal experience of the legislation of European countries and in USA, we will be able to indicate to our legislator the direction in which it is necessary to move (Mansurova *et al.* 2018; Rozhnova 2019).

Scientific discussions about the genesis of the administrative procedure, its stages and generations have a long history and continue to this day. Among European and American scientists, we note: I. Kopric (2005), T. Barkhuysen *et al.* (2012), H. Pünder (2011; 2013), J. Barnes (2008; 2016), M.D. McCubbins *et al*. (1987; 1999), E.J. Eberle (1984), W. Funk (2018), M. Wierzbowski (2019), J. Načisčionis (1998), H.H.C. Hofmann and Jens-Peter Schneider (2011; 2017), M.V. Carausan (2016), J. Ziller (2011), D.J. Galligan (1996), E. Rubin (2003), D. Fontana (2005), G. Marcou (1995), M. Shapiro (1983), J. Schwartz (1993; 1994), J.H. Grey (1979) and others. Their work is valuable from the point of view of the approach used by scientists in the study of the administrative procedure (value, functional) devoid of dogmatism, tradition.

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In European countries and in USA, the doctrine and the process of lawmaking in the field of administrative procedure are developing in a balanced manner, not lagging behind and not ahead of each other. Analysis and generalization of the teachings of the international doctrine, existing foreign legislation on administrative procedure and foreign experience in the functioning of the institution of administrative procedures are necessary conditions for the development of modern teachings on the administrative procedure and the mechanism of legal regulation. Noting the scientific and practical value of the study is aimed to create a unified scientific approach to the study of the formation of the administrative procedure, it is necessary to note the existence of many unresolved issues, both doctrinal and legislative, in relation to the administrative procedure in Ukraine (Barabanshchikov *et al.* 2016).

The purpose of this study is to conduct a comparative study of the evolution of administrative procedures in USA and European countries (Germany, France) in order to determine what prerequisites influenced the emergence, establishment and development of administrative procedures, using a historical and legal approach. We will be able to use the experience of these countries to justify the occurrence of this procedure in the legal system of Ukraine.

MATERIALS AND METHODS

The methodological basis of scientific work is a combination of modern philosophical, general and special methods and techniques of scientific knowledge. Their application is guided by a systematic approach, which allowed to analyse the formation and development of administrative procedures in the unity of their social content and legal form. The work also used some methods of scientific knowledge. Research methods were chosen taking into account the purpose. In the process of writing this work, a certain historical method, a system-structural method, and a comparative legal method were mainly used (Sabirova *et al.* 2018a).

So, historical-legal, comparative-historical methods of cognition were used in the study of historical and legislative genesis, the stages of formation and development of legal and administrative regulation of the administrative procedure. This method allowed the authors to conduct a detailed historical review of the evolution stages of the administrative procedure in different European countries (France, Germany) and the United States in order to clarify the main historical, legal and political prerequisites that influenced the emergence of the administrative procedure and its further formation and development. Using the historical method, the authors were able not only to identify the main stages of the genesis of the administrative procedure, but also to answer the most important question related to the identification of the main historical and political events that influenced the emergence of the administrative procedure. The authors also used this method in the study of such doctrinal concepts as: due process, administrative act, which had an impact on the further formation of the administrative procedure and served as the basis for the doctrinal genesis.

The application of the methods of the structural-functional method, along with the systemic method, was due to the necessity to identify and theoretically substantiate the historical and legal aspect of the evolutionary path of the administrative procedure. The use of the systemic method was in demand in order to solve the problem in this study, namely: to conduct a comprehensive historical and legal review of the evolutionary path of the administrative procedure on the example of some European countries and the USA. This method allowed the authors to structure this study by logical ordering of the information presented and further analysis. The comparative legal method made it possible to identify the peculiarities of the genesis of the administrative procedure in the legislation and doctrine of European countries such as Germany, France and the USA, and compare it with the state of the genesis of the administrative procedure in Ukrainian legislation. The comparative method is an indispensable method in studying the experience of foreign countries, as it helps to: expand and enrich the domestic administrative doctrine and design legislation on the administrative procedure; to analyse and research specific aspects of the legal regulation of administrative procedures; to recipe the best experience in the rule-making process of the institute of administrative procedure, taking into account Ukrainian legal system, the legal consciousness of our citizens and public authorities represented by officials, as well as the legal ideology of society (Akbarov *et al.* 2018; Muza 2019; Sabirova *et al.* 2018b; Tashpulatov *et al.* 2018a).

The application of these methods, together with comparative historical and comparative legal, made it possible to study and compare historical experience in the genesis of the administrative procedure in France,

Germany and the United States, to identify features and take them into account in further development. In addition, this allowed to reveal a number of patterns in the historical development of the administrative procedure in these countries, which allowed to form not only a clear understanding of the main reasons for the appearance of the administrative procedure, but also to predetermine the main trends of its further development through new management models: New Public Management and Good Governance.

The formation of certain historical models of the administrative procedure and their structural and functional interconnections made it possible to prepare, on the basis of the results obtained, a set of substantiated theoretical conclusions that are not only important for Ukrainian administrative science, but are also a necessary condition for the further development of legislation, since without using the above methods it is impossible to create a high-quality mechanism of legal regulation of the administrative procedure in Ukraine. The authors approached the issue of methodology quite responsibly and extensively, given the important fact – the absence in Ukraine of a comprehensive and unified regulation of this institution.

RESULTS AND DISCUSSION

The First Stage: The Seventeenth Century – The First Half of Twentieth Century

The majority of European countries were always determined to execute appropriate juridical regulation of issues connected to administrative procedure. The presence of such institute in a state indicates: firstly, the democratic legitimization concerning relations between the state and its citizens; secondly, the main criterion for determining the level of governance's development and the level of implementing the rule of law; thirdly, makes it possible to access whether the decision was made according to the procedure and whether it is legitimate; and lastly, forms an understanding in a legal awareness of the authorities, that the procedure can limit their discretionary power preventing arbitrary acts concerning citizens (Barnes 2016). The emergence and the further conceptualization of administrative procedure has been an important step in the consolidation of the rule of law in modern European countries and in the fundamental review of the existing model of relations between the state and its entities. The administrative procedure has been simultaneously a test for authorities and an assurance for citizens in the process of the realization of their rights in the relationship with bodies. The perception that implementation of State power should be restricted by the formal proceeding, as means of verification and security, is characteristic for postulating of the principle of power-sharing according to Montesquieu. Based on the Montesquieu's concept, the procedure should be legislative, juridical and administrative (Baillyn *et al.* 1985; Starikov *et al.* 2011).

When analyzing the international doctrine, it must be noted that it was the historical conflict between the interests of the state and citizens that served as the main premise that led to the evolving process of protecting human rights both in law and in practice. The issue of protecting human rights has always been a key one in relations with authorities in case of violation or misuse of their powers, which leads to negative consequences, such as an illegally made decision. Along with court protection, administrative procedure was widely used and disseminated, through which citizens could not only exercise their basic rights in relations with authorities, but also protect them. The mutual influence of the legal orders of various national systems is evident throughout history, which leaves its "imprints" on the development of administrative procedures. While researching the formation of the administrative procedure in European countries and in the USA, it is important to note that the evolution of the administrative procedure goes through several stages: the first stage is the emergence, the second one is the establishment, and the third one is the further development and modernization. Each stage is associated with a different historical era, the political constellation of forces, economic factors that influenced the genesis of the administrative procedure. We have distinguished three stages in the process of evolution (Figure **1**).

A primary example of this period is France. Assumptions about the emergence of the French administrative procedure and the administrative judicial system were found during the time of the absolute monarchy in the system and politics, the period known as the "Ancien Régime" in the 17th century. The authorities performed their powers "ex imperio" (from government) without recognizing individual human rights, as they were unilaterally subordinated to the state. Existing rules were intended to support the state apparatus and exercise its powers. Everything changed after the French Revolution, when a new state administration emerged that was radically different from the one under the former regime, and many acts adopted during the Ancien Régime were not subject to

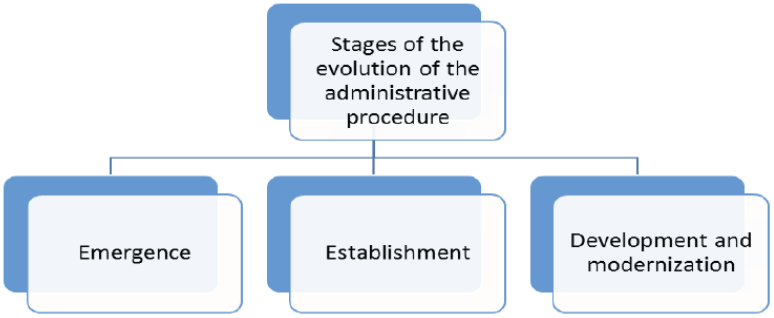

Figure 1: The genesis of the administrative procedure.

verification by the judiciary, as they were considered political acts or "high-policy acts". The French Revolution (1789-1799) was a very important event for the development of administrative law and human rights. It not only transformed the social and political system in the country, but also preserved the tradition of strict separation of the judiciary from the executive power, carried out by the state administration. One of the results of the French Revolution was the codification of human rights in the Declaration, which enshrined the basic principles that establish new approaches in relations between the state and the citizen, namely the prohibition of bodies to carry out actions that are harmful to citizens and society as a whole. In accordance with the Napoleonic concept of the sovereignty of the executive branch, when making decisions, the emphasis was made on the free decision of bodies taking into account public interests. The lack of proper attention to the procedures at this stage is explained by the fact that the administrative procedure was deprived of external validity and was considered as the rules that guided the authorities when making a decision. European doctrine has long been dominated by the idea that only parliament should abide in enacting laws. However, there was no understanding that the rest of the government authorities should follow the procedure in the performance of their managerial functions (Hoffmann-Riem and Schmidt-Aßmann 2003). European doctrine has long been dominated by the idea that only parliament should abide in enacting laws. However, there was no understanding that the rest of the government authorities should follow the procedure in the performance of their managerial functions (Hofmann *et al.* 2011; Naumenkova *et al.* 2020; Tashpulatov *et al.* 2018b).

The importance of the administrative procedure was underestimated not only in France but also in Germany. Even since the beginning of the formation of the concept of administrative procedure in European countries, during the 19th century the idea prevailed that the administrative procedure was nothing more than a formal sequence of actions aimed at making the final decision by the authorities. In Germany, the administrative procedure was considered simply an official function of bodies that used the procedure to make a legally correct decision. Initially, authorities (agencies) in both Germany and the United States had full discretion regarding the choice of decision-making procedures. At this stage, issues of procedural legal protection and democratic legitimization were not recognized as important. In the 19th century, in Germany, the legal methodology was just beginning to develop in public law, so the administrative procedure was still in the shadow of the material (materielles Recht) norms when developing general rules of administrative law (Pünder 2013). For a long time in the European doctrine (France, Italy, Germany), the central concept was the "administrative act". Even after the administrative activities of the authorities were recognized as procedural, the procedure was still not significant, since from the point of view of justice, this meant an opportunity to contradict only the administrative act, but not the procedural actions of the authorities (Barabash 2019).

At this stage, the concept of an administrative act was fundamental in the legal characterization of public administration, since the administrative activity, as one of the three functions of bodies, is objectified and materialized in acts, which are a form of its implementation. Mainly, scientists of this period pay attention to acts of government, their types, classification, not taking into account the procedural aspect in their adoption. In Germany, the idea of the development of procedural requirements for the administration encountered difficulties not only during the Kaiserreich (1871-1919), but also during the Weimar Republic (1919-1933). Unlike the USA Constitution of 1787, which already enshrined the "due process" (Amendments V and XIV), Grundgesetz (GG), adopted in 1949, did not contain provisions on the

administrative procedure, although the Constitution of the Federal Republic of Germany of that time was heavily dependent on the American military occupiers after World War II.

But it was precisely the concept of an "administrative act" that became the main prerequisite for the emergence of an administrative procedure in European law. Meanwhile, the first codifications of the administrative procedure at this stage appeared in some European countries. The first general Administrative Procedure Act in Europe was the Spanish Act (1889). The purpose of this act was to establish a framework in accordance with which ministerial, special rules will be adopted (González Navarro 2008). It was a framework law, the provisions of which for the first time enshrined the right of a person to be heard. The essence of the law was to regulate the main aspects in making a legally valid decision. For Europe, this law was innovative, although it had disadvantages, as it created a situation where each department and ministry had their own procedural mechanisms, thereby harming both citizens and the effectiveness of public administration due to the lack of uniformity in regulation. The Act of 1889 was the first example of the early codification of an administrative procedure, but nevertheless it did not avoid fragmentation and was unable to formulate effectively the general principles of the administrative procedure. It should be noted that the Austrian Law on General Administrative Procedure (1991) is considered by many scholars to be the first valid law in Europe.

Even though the law secured the internal functioning of administrative authorities within the framework of an authoritarian regime, the legal formalism of the law was valuable in terms of the procedural guarantees that it provided to citizens. Poland also had a long tradition of administrative codification; it not only adopted one of the earliest codes of administrative procedure in 1928, but the Polish Constitution of 1921 was also the avant-guard in enshrining certain principles of administrative procedure (Wyrozumska 2005). In Poland, a codified administrative procedure was introduced in 1928. To some extent, this was done according to the Austrian model; Austria codified its administrative procedure in 1925. Several countries (Czechoslovakia, Yugoslavia), influenced by the Austrian legal heritage, have also passed the Administrative Procedure Laws following the Austrian model (Baymuratov *et al.* 2018).

The United States merits speculate nation in the study of the emergence of administrative procedures. The starting point of the Administrative Procedure Act was the due process clause, which was enshrined in the Constitution of 1787. "Due process", as interpreted by the USA Supreme Court, is an instrument for protecting citizens' rights. The dominant factor in the development of administrative procedural law was the constitutional provision, according to which: no one shall be "deprived of life, liberty or property without due process of law. The concept of due process lays down certain procedural requirements that agencies (bodies) must follow, regardless of whether they are mandatory in accordance with any legislative or regulatory provisions. Thus, the due process clause on which the Administrative Procedures Act in that country is based is a constitutional statement of a "sense of justice" and a guarantee of respect for those personal immunities that are "so rooted in the traditions and consciences of the American people that they are considered fundamental to the emergence of an administrative procedure" (Elias 2015). Thus, the administrative-procedural law in the USA is based on the concept of natural law, natural justice, which is the basis of the legal system created by American courts in the field of administrative procedure (McCubbins and Weingast 1999; Timkina *et al.* 2019; Vavzhenchuk 2019).

Until the 20th century, the United States did not have a single body of administrative law. Many Americans opposed the creation of a unified administrative law because they believed that such a set of laws would increase the ability of authorities to exercise control over citizens and that, regardless of any procedural safeguards, this would limit and narrow individual citizens' rights (Hall 2011). Throughout the 19th and 20th centuries, Congress delegated authority to an administrative agency and the necessary procedural rules were incorporated into permitting legislation. Despite the fact that the powers of administrative agencies increased during the New Deal, there was no law that reasonably limited their actions. But after the decision of the Supreme Court in the West Coast v. Parrish case, Roosevelt's Republican opponents proposed a bill aimed at restricting the powers of regulatory authorities by imposing a number of strict procedural and judicial restrictions on their actions, including strict restrictions on the discretion of agencies in matters related to the ability to amend laws. One of the tools to advance these legislative proposals was the American Bar Association Special Administrative Law Committee (APA), which was created in 1933 and was led by Roscoe Pound. The Committee concluded that the

New Deal agencies operate without proper procedures, without sufficient consideration of issues and without giving the parties an opportunity to be heard. In addition, the Special Committee was concerned that the departments misused different procedures, namely, rule-making, actual investigation and adjudication. In 1938, the Ad Hoc Committee drafted the United States Dispute Resolution Act, later known as the Walter-Logan Bill (McCubbins *et al.* 1987). Given the support of the ABA and prominent scholars such as Pound, the Walter-Logan bill won the majority in both houses of Congress, but it was vetoed by President Roosevelt (Tashpulatov *et al.* 2020; Varych 2019; Yuilin *et al.* 2019).

The Roosevelt Administration made its own efforts to develop procedural legislation. In 1939, President Roosevelt created a committee led by the attorney general to conduct procedural reform in the country. Roosevelt expected that the committee would carry out a "flexible" procedural reform and help isolate those in Congress who want more radical reforms. But two historical factors served as a real impetus for the further development of the administrative procedure: firstly, the continued popularity of President Roosevelt and his programs reduced democratic support for alternatives to Walter-Logan. Democrats in Congress could vote to reform the administrative process, but chose not to do so; secondly, the imminent threat of World War II and the war itself were an inappropriate moment for a procedural reform. Despite the proliferation of independent agencies in the 1930 as part of the New Deal policy, few aspects of the administrative actions of the agencies were procedurally homogeneous, which led to potential risks regarding the exercise by citizens of their rights. Unlike Europe, United States agencies are unique in the sense that they have authority over all three branches of the federal government: the judiciary, the legislature, and the executive, which created major problems. As a result of the creation of new agencies and the expansion of their executive powers, as well as the fact that some of the agencies had both judicial and quasi-judicial powers, there was an urgent need for the adoption of the APA 1946. Therefore, there is much in common between administrative procedure and litigation in the United States.

European scholars emphasize that the APA, the foundation of which were due process and case law, was based on litigation. This was the closest pattern that the legislative and judicial authorities had as a model and guarantee system for resolving disputes between citizens and the administration. This explains why the legislative provisions on administrative procedure had similarities with the judicial procedure: proceedings initiated ex officio or by interested parties, stages of investigation and probation, hearings, decision and execution of the decision. In the USA, the concept due process was the main prerequisite for the emergence of an administrative procedure (Figure **2**).

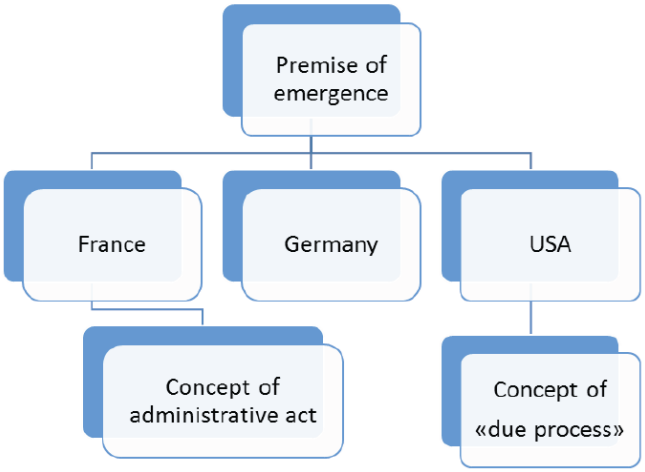

Figure 2: Administrative procedure concepts.

Convergence is observed already at the first stage – the rapprochement of common law countries and civil law countries in terms of the administrative procedures; but only in the middle of the 20th century the administrative procedure began to be seen as something more than a simple sequence of formalities for decision-making by the competent authority. At the first stage, we will single out two fundamental concepts that influenced the development of the administrative procedure at the second stage: for European countries – the concept of "administrative act", for USA – a concept of "due process". The sum and substance of this short oversight is that the notion that administrative procedures should be regulated or, what is more, that individual procedural rights could be breached, was not self-evident and came relatively late to some European countries with long administrative law traditions. And even then, the focus was primarily on the final decision. Thus, an evolution in the importance attached to administrative procedures and, in particular, the judicial reviewability of the different steps leading to the final decision (Barnes 2008).

Second Stage – in the Middle of the 20th Century

There is a smooth, but visible paradigm shifts from the concept of a clear dichotomy between the creation of laws and their application, in which the discretion of

the authorities was as limited as possible. The first clear distinction between legislative and enforcement powers was disappearing. The government bodies had to not only make decisions, but also to develop them legally. It began to acquire significance not only what is accepted, but also how it is done, that is, we are talking about the procedure. This is a second stage – the establishment of an administrative procedure (Bespalko 2019; Zykova *et al.* 2021; Kapitonov *et al.* 2016).

Since the 1950, the competence of government bodies has expanded so much that it was necessary to procedurally regulate these powers in order to respect and take into account the legitimate interests and rights of participants in the procedure at all stages of the procedure. Rules of the legislative procedure were inappropriate for the state administration, so it was advisable to develop and adopt new autonomous rules that governed the decision-making procedure. At this stage, there is a pan-European desire to develop legal regulation of administrative procedures, but the United States is especially noteworthy. The 1946 administrative procedure act was the first to create a common legal framework for administrative rule-making procedures. In the well-known solution NLRB v. Wyman Gordon Co., when it came to rulemaking procedures, the Supreme Court concluded that the administrative procedure was not just a formality; it was a guarantee of a fair trial and the proper application of the rule of law. Based on this, the American courts recognized that in decision-making processes in individual cases, all state bodies must adhere to the established administrative procedure, even if it is provided for by internal rules (Bieliatynskyi *et al.* 2018; Prentkovskis *et al.* 2010).

In the 20th century, one of the most important events in American government and politics was the expansion of the powers of administrative agencies (bodies). Indeed, this expansion was the most important event. During the New Deal and after World War II, administrative authorities performed a wider range of government functions and introduced more rules than ever. By 1946, the majority of the factors holding back the development of administrative procedures had completely disappeared. The shooting in Europe and Asia had ended – although the Cold War had only just begun. President Roosevelt passed away, Democrats lost their command majority in the House and Senate. Given all these significant changes, the Democrats had new political motives to reform the administrative process. They feared that they might lose control of Congress in the mid-term elections of 1946, as well as the White House in the presidential election. Democrats expected that the Republican party's leading position could lead to liquidation of many New Deal programs. Thus, immediately after the war, the Democrats began to reflect about how to maintain the New Course without control from the White House and Congress. Democrats supported procedural restrictions on the actions of agencies for two main reasons: firstly, they recognized that the absence of formal procedural requirements in with respect to the actions of the agencies, they will give the Republican President exclusive freedom of action in decision-making. Subject to procedural restrictions, Republicans may cancel the regulatory policy of the New Deal only if they gain control of both houses of Congress and the president; secondly, the Democrats began to realize that strengthening judicial control over the actions of the agency would help maintain the status quo of the New Deal (Rubin 2003; Bogaevskaya *et al.* 2020; Kapitonov *et al.* 2018).

The Republicans had their own reasons for reforming the administrative process, despite the fact that the reforms gave the Democrats some advantages in maintaining New Deal policies. They concluded that if they won the elections to the White House and Congress, they could achieve their political goals more efficiently through administrative procedures rather than if they tried to achieve this by controlling appointments in the authorities and relying on agency freedom of action. Congress adopted the APA in early 1946, which not only consolidated the general administrative procedure, but also created a legal framework with inspections, balances and citizen participation in the work of agencies, as well as set uniform standards for formal rule-making and adjudication. The law not only regulates the decision-making process of the administration, but also covers the powers of rule-making. Administrative procedure act was the culmination of many years of effort to regulate administrative decision-making procedures. This act requires political opposition to the opposing forces (Schapiro 1983). Two political forces took part in this compromise: The Republican and the Democratic Party. Those oriented toward the Republican Party were concerned that the growth of an administrative state would threaten individual rights and the effectiveness of the free market. With the growth of the administrative state, diversification and evolution of administrative procedures occurred.

Democrats and their allies, especially supporters of President Franklin Roosevelt and the New Deal, saw

the benefits of using administrative procedures by administrative agencies as a tool through which effective policies could be implemented that would respond to specific governance problems and needs. The structure of the administrative procedure act reflects the main objectives of these two forces in important aspects, and this is reflected both in the text of the law itself and in its legislative history. Until today, the administrative procedure act continues to provide the basis for most federal administrative procedures. Most states have similar laws governing state and local administrative procedures. Two key features of the administrative procedure act contributed to the subsequent development of administrative procedures.

First, the administrative procedure act has established standard-setting as an alternative to a court decision for many administrative decisions, especially those related to important political issues. Secondly, within the framework of both the judicial and normative models, the administrative procedure act provided various degrees of procedural formality. The flexibility of the administrative procedure act allowed the authorities to develop and use various procedural forms adapted to specific issues to be addressed. According to McCubbins's political and economic analysis, the USA Congress adopted the administrative procedure act to ensure a permanent influence on administration policy (McCubbins *et al.* 1987). The administrative procedure was considered as a mean by which Congress strengthens its supervision and influence on political decisions of bureaucratic agencies (Kapitonov 2019).

The approach of the French system to the question of administrative procedure at this stage was not the same as the American one. In the French system, the administration was obliged to comply only with the procedural requirements established by the legislature and enshrined in specific legal provisions. "A procedural defect in administrative law is a defect that arises from non-compliance with procedures prescribed by laws and regulations". The fundamental principle in the legal system of most continental countries is the principle of the superiority of the written law. "The French-German doctrine is based on the written law". The role of a court is limited to the interpretation of law. The reference point in administrative and procedural law of France was the regulation that the actions of administrative authority could not be invalidated due to non-compliance with procedural requirements, unless this requirement was directly established by law or regulation. The administration adhered only to those procedural requirements that were enshrined in a legal document. American administrative law was based on a completely different concept – the constitutional doctrine of due process (Bulychev *et al.* 2018).

The Constitution of France (1958) also enshrined the substantive legislative powers of the government without delegating it to the legislative body, which still remains one of the bodies that is endowed with broad standard-setting powers in Europe. In the field of standard-setting, it soon became apparent that the procedure could not be considered as just formality, since they more and more often include the right of citizens to participate (Chevalier 1983). At this stage, Conseil d' État considered the administrative procedure as an important guarantee of implementation by citizens their rights and interests in relations with authorities. A fundamental case in this evolution was Dame veuve Trompier-Gravie, when Conseil d'État stated that it was possible to verify the stages of adoption of acts using procedures. This revolutionary statement was made in 1944. The idea of codification of the procedure, was the subject of doctrinal research in the middle of the 20th century, but did not have a lot of supporters among scholars. It is believed that the reasons for the lack of codification of administrative procedures in France are: 1) "immaturité procédurale – procedural immaturity'', which had persisted to this day; 2) the historical primacy in the genesis of the administrative procedure was given to the United States. The lack of legislative codification of administrative and procedural norms in France did not mean that there was full freedom in bodies related to the adoption of administrative acts, and absence of general basic legal norms that would govern this procedure.

In France, regulation of administrative procedures is found in two sources. On the one hand, the case law of Conseil d'État evolved and was also a special milestone in the evolution of administrative law in Europe. On the other hand, several legislative acts were adopted at different times. The most important of these are the Law of 17 July 1978 "On Certain Measures to Improve Relations between the Administrative Authority and the Public"; Act of 11 July 1979 "On the Motivation of Administrative Decisions"; and Law of 12 April 2000 "On the Rights of Citizens in their Relations with Administrative Bodies" (Kmieciaka 2010). The law of 17 July 1978 has consolidated the following procedural rights: access to documents and information, the right to appeal to a committee specially created in case of refusal of authorities in access to

administrative documents. The law of 11 July 1979 regulates the rules for substantiating decisions of administrative bodies (and in the circulars are listed the decisions of the ministries to be substantiated) and introduces regulation aimed to improve relations between government and the unit. A number of important general regulations have been introduced by the Law of 12 April 2000. The decentralization reform was an important turning point in the implementation of public administration, as well as in the adoption of individual administrative decisions.

For a long time in France, more attention was paid to administrative acts, and therefore the procedure was considered only in the context of decision-making. The method of formulation and adoption of administrative acts had to meet various requirements regarding procedural actions. These requirements were scattered across various acts, circulars, it has hampered not only their search, but also their implementation. As in France, the German Basic Law also had enshrined the standard-setting powers of the administration, but only within the framework of delegation of legislative powers. In Germany, the idea of codifying administrative procedures at the federal level appeared relatively late, only in the 1950, while laws were already developed and adopted in many other European countries. For example, the United States (the administrative procedure act) entered into force in 1946, while the administrative process in post-war Germany was long regulated by unwritten legal principles. In 1959, even the concept of the famous "Deutsche Staatsrechtslehrervereinigung" – the German association of public law professors – still retained skepticism about codifying (Dunets *et al.* 2019).

But in 1960, the traditional "Deutscher Juristentag" – a meeting of practicing German lawyers voted to codify the administrative procedure. However, it took another 17 years to complete the project. In 1977, more than 30 years behind the United States, the German Administrative Procedure Act (1977) entered into force. It partly unified the administrative procedure rules contained so far in the regulations of individual acts (including construction law, water law, road law). The guiding principle of the Law was to ensure a higher level of transparency and clarity of legislation and legal security. Thus, the Law was aimed at facilitating the understanding and enforcement of these regulations equally by authorities and citizens, and, in particular, guaranteeing it`s citizens reliable information about their rights in relations with authorities. The initial aim of codifying measures was also to simplify the administrative procedure by incorporation into one act and unify all administrative procedures. This goal was not achieved. During the discussion held in the framework of legislative work, votes were prevalent for the need of maintaining the identity of the sphere of social and tax administration, which led to a partial unification of the administrative procedure (Egorova *et al.* 2019; Pukhkal *et al.* 2016).

As a result, these two special laws, which have been adapted to the general regulation, are now fully consistent with it. Proceedings on matters related to social insurance are regulated by the Social Code I-XII (Sozialgesetzbuch I-XII), tax proceedings are regulated by Law 16 April 1976 – Tax order (Abgabenordnung). The partial character of the German codifying of the administrative procedure was due not only to the exclusion from the scope of application of VwVfG, the above-mentioned administrative areas (§ 2 VwVfG). However, all other forms of administrative activity were left outside the scope of the Law, for example, the activities of bodies in the field of private law relations or actions aimed at developing procedural regulations.

Unlike the USA Administrative Procedures Act, all other forms of enforcement, namely, the adoption of executive rules (Rechtsverordnungen) and charters (Satzungen), the decision-making process for non-legally binding so-called informal actions (informelles Verwaltungshandeln), as well as the procedure leading to strictly internal decisions (Verwaltungsvorschriften) were not included in the Administrative Procedures Act. In addition, the Law applies only to administrative activities in the field of public law (§ 1 VwVfG), excluding the fact that administrative authorities may also carry out activities in the civil affairs (Pünder 2011). Despite its name, the German Administrative Procedure Act considers only "the activities of authorities with an external influence and aimed at the adoption of an administrative act or the conclusion of an administrative contract under public law" (§ 9 VwVfG). The administrative procedure in Germany did not concern administrative standard-setting procedures. The case law of the German administrative courts has been developed to the point that procedural violations in the standard-setting process are often influenced by the permissibility of the adopted rules (Karagussov and Kostruba 2019; Knieper and Biryukov 2019).

In Germany, the decisions taken by the Federal Constitutional Court (Bundesverfassungsgericht) had

more power than the codification of an administrative procedure. One of the decisions of the FCC determined that "the protection of fundamental constitutional rights should also be the subject of an administrative procedure". The German Constitutional Court stated that fundamental rights should be protected by a procedure which is of importance for its defense. Similar to the U.S. law, the administrative procedure has gained relevance on its own, in isolation from the judicial process and substantive law. At the congress of the German Association of Public Law Professors in 1971, Peter Heberle developed the concept of status activus processualis – status process. One of the main sources of this assessment was the study of the constitutional basis of administrative procedure by Ferdinand Kopp (Kosinova 2019; Prentkovskis *et al.* 2012).

The analysis was based on comparative assessment of the US administrative law stressing protective and legalizing functions of an administrative procedure. The administrative procedure was perceived as "a concept of joint public welfare". In its judgment on the case of Mülheim-Karlich the Federal Constitutional Court of Germany stated that basic rights are an integral element of not only the German Constitution, but also the lawfulness of Germany. Procedures are created so that citizens could exercise and protect their rights (Isensee 1988). The peculiar feature of German law is a principle of its auxiliary application. This principle is the result of a compromise reached in a dispute over the scope of federal law regarding the constitutional division of legislative powers between federal states and federations.

As for other European countries, it should be noted that an important moment in the establishment and development of administrative procedures was the consolidation of the procedural rights of citizens in the Constitutions of some European states. Constitutions adopted in the 1970 after authoritarian regimes expanded the procedural rights of citizens. In Spain, the 1978 Constitution contains specific provisions regarding individual rights of citizens in an administrative procedure, such as the right to have access to files and a preliminary hearing. In Portugal, the 1974 Constitution obliges authorities to ensure the participation of interested citizens in the procedure. Greek Constitution of 1975 also provided individual procedural rights, in particular the right to a preliminary hearing – the right to information. The new constitutions in Eastern Europe also included individual rights, which contributed to the constitutional consolidation of the foundations of administrative procedures. It should be noted that a peculiar feature of the second stage of the administrative procedure's evolution in European countries in the second half of the 20th century was the central position acquired by the administrative procedure. This happens not only due to the expansion of procedural rights and their establishment at the level of laws and constitutions, but also because state bodies are increasingly in need of cooperation with citizens. This is the end of the one-sided relationship between citizens and the government. The participation of citizens in administrative procedures, particularly in the context of rule-making procedures, leads to further improvement of the administrative procedure. Participation, transparency and accountability have become the main elements of public administration activity through administrative procedures (Kaimbayeva *et al.* 2020; Kostruba and Schramm 2019).

Even the concept of administrative procedure has undergone changes and development – from the formal sequence of actions of bodies, to the decision-making mechanism and control over the actions of bodies in relation to citizens. We believe that the crucial factor determining the transition from the second stage to the next is the modernization processes in administrative law. Having considered the first two stages in the evolutionary process of the administrative procedure, we can conclude that the central role in the first-generation procedure is assigned is an individual decision that affect individual rights. The product of second-generation procedures is an executive rule or regulation, made by administration or government in a hierarchical way. In both cases administrative procedures are conducted by administration according to a traditional method of governance. It consists of binding laws that take everything into account, programming and steering all administrative action down to the smallest detail. It is a pyramidal administrative hierarchy, whose procedures are merely tools to apply the law, as part of a centralized top-down regulatory process (Hryshchuk 2019; Kryvonos *et al.* 2017).

In Ukraine today, as it is known, in the current administrative legislation the procedural part is the least developed since there is still no general law on administrative procedure, and the existing legal regulation is fragmentary, contradictory, and as a rule by-law and aimed at protecting mainly interests. the state and its bodies, not citizens. Despite the fact that the country has developed a bill "On Administrative

Procedures", which establishes uniform principles and rules for conducting administrative cases, providing for the possibility of special regulation in some cases for certain areas of administration and types of procedures, the bill has not yet been adopted.

The Third Stage is the End of the Twentieth Century – Twenty First Century

There is a tendency in a qualitative change in the legal regulation of administrative procedures in most European countries at the end of the 20th century: by this time national laws had been adopted, and in some countries – codes. There is also a tendency to expand the range of procedural rights of citizens. A convergent trend does not necessarily entail uniformity in the regulation of administrative procedures and in the availability of procedural rights for citizens.

Many of the previously mentioned countries that were the first to codify administrative procedures currently use comprehensive administrative and procedural laws. For instance, in Spain, the codification of administrative procedures has a long history. The 1992 Act contains general rules for all administrative procedures; however, it does not include provisions on the exercise of rule-making powers. Similarly, in Austria, the original 1925 Act was repealed by the 1950 Code, and the last by the 1991 General Administrative Procedure Act. This is one of most comprehensive codifications of administrative procedures, which contains a clear concept of administrative procedure, details the procedural rules and rights of citizens. The Austrian Code has become a model for the legislation of Hungary, Poland, Czechoslovakia and other European countries (Makushkin 2019).

There was established a different approach to administrative procedure in Germany, the adopted Law on Administrative Offenses in 1976 which is much more detailed and is not limited to general principle. Nevertheless, it is criticized for its insufficient completeness, especially because rulemaking procedures were excluded, and the German federal structure excludes the obligatory nature of its provisions at the ground level. According to German tradition, the protection of fundamental rights plays an important role, and the procedure was mainly considered as a means of such protection, which ensures the protection of citizens' rights in relation to state bodies. In the Netherlands, the General Administrative Law Act 1994 was aimed at increasing the uniformity and systematization of administrative procedures by means of additional rules that apply, provided that specific legislation does not contain any exceptions. Like other laws of his generation, it has an individual approach to the rights of citizens.

Most other EU member states also participated in the codification of the general principles of administrative procedures, since the existence of a procedure was an indicator of the proper functioning of the authorities in the country. An exception to the general codification process of administrative procedures was four countries that decided not to impose general rules applicable to administrative procedures: France, Belgium, England and Ireland. The French system was still concentrated on the administration, and, therefore, everything related to providing legal protection of citizens from the actions of the administration, ensuring that the administration respects the law, was dependent on the policy of Conseil d'Etat. With regard to codification, various approaches have been adopted that reflect the national legal and administrative culture of each country, but in all cases, there is an evolution of administrative procedures, an expansion of the procedural rights of citizens. All European legal cultures can accept Professor Schwartz's claim that the administration is given discretion, which is justified only if discretion is exercised with strict observance of procedural guarantees. Codification provides a simpler legal framework and, more importantly, legal certainty (Schwarz 1993; Curtin 1994).

The end of the 20th century is characterized by a cardinal conceptual change in the paradigm of public administration, which was aimed at moving from a command-administrative method of regulating relations in public administration to a partnership one, which is based on cooperation between the public and private sectors, which was focused on strengthening interaction between bodies and citizens, as well as legal and fair decisions regarding citizens. Public-private and inter-agency, decentralized cooperation based on participation required new tools and procedures aimed not only at control, but also at interaction in relations between public and private entities.

Despite the tendency toward more partnerships between the state and citizens, the main, distinguishing feature of state-civil relations is still the superiority of public interests over private ones. For a democratic state, public interests should be based on the universally recognized values and needs of the society

in question. The protection of human rights should be part of this interest. It was the administrative procedure that was both an instrument of control, and protection, and guarantees in the field of public administration. The impetus for further development and subsequent modernization of the existing and ongoing for a long historical period legal regulation of administrative procedures was the following events in the field of public administration:

1. the crisis of the administrative state, which was manifested in the expansion of state intervention in the socio-economic sphere, in the decline in the quality of services provided to the population, in a sharp drop in confidence in public authorities and the public service, in the overload of the state from a large number of tasks and functions assigned to it. All this in a complex has become the main reasons for the administrative reform in public administration. It was necessary to transform the traditional bureaucratic model of governance in Western countries, based on the Weber model of rational bureaucracy, because it did not meet the information, technological and social challenges of the time, new public expectations, and state institutions;

2. the active legislative work of the European Parliament, the adoption of Directives and Recommendations, which contributed to the popularization and further development of administrative procedures both in the European Union and abroad, namely: Recommendation (80) on the exercise of discretion by administrative authorities; Recommendation (87) on administrative procedures involving a large number of people; and Recommendation (91) on administrative sanctions (Recommendation No. R(87)… 1987). European legal science gradually developed a common opinion on the central role of administrative procedure. This trend did not lead to codification of administrative procedures in all European countries, but laws on administrative procedures began to improve the quality of administrative decisions and also protect the rights of participants in administrative procedures;

3. the search for new models of government within the framework of the general administrative reform indicated by us above is explained not so much by local causes of a socio-economic nature as by deep social shifts in the modern world: the formation of structures of post-industrial society, the development of globalization processes and global economic competition, the emergence of supranational institutions and the development of civil society.

There are many ways leading to an effective state, and they vary in different regions of the world. In Western countries, their own programs were proposed for reforming the state in its essential dimension, claiming universality and universality of application. We are talking about two managerial concepts – New Public Management and Good Governance – which underlie modern Western administrative reforms and are borrowed by countries, including Ukraine, that are not related to American or European civilization (Barzelay 2002).

New Public Management was the dominant ideology of administrative reforms during the 1980-1990. A new concept of the "managerial type" model of public administration arose as a result of the introduction of market mechanisms and methods of management in the public sector in the field of public administration in the late 1980. The key message of New Public Management was to model market processes within the public sector and to borrow management technologies developed for private companies. Scientists believe that NPM in particular was a key source for the subsequent concept of good governance. The transition from the concept of "new public management" to the concept of "Good governance" testified to serious changes in the methodological foundations of administrative reforms and serious shortcomings of the previous concept. The orientation toward universality and a unified methodology has been replaced by attitudes toward cultural heterogeneity and particularism. As G. Brebant emphasizes, "public administration is not carried out in the same way in Spain and England or in Germany and Italy. Even among neighboring European countries, whose traditions and cultures are close, significant differences can be found. In a centralized and unified country like France, there are regional particularities of administrative practices and rules" (Braibant 2002).

Good Governance has become a new paradigm in practice of administrative reform in the late 1990 and 2000. There was an emergence of a new concept of public administration as an alternative and counterbalance to NPM managerialism, which was based on respect for the law and accountability. Unlike the new public management, in the model of "good

governance" the state has a greater degree of presence. And if the managerial paradigm considers the state only as a "steering" political process, then Good Governance assigns it the role of a full partner and participant in the adoption and implementation of managerial decisions. Proponents of this concept believe that in any case, under any interactions, the state cannot be excluded from participation.

According to this doctrine, the state should only provide power and protect the common social good, but the state itself is not the only holder of this power (development from authoritative and centralized management to the decentralized function of the state, to partnership). The main idea is to move away from the one-sided customer-oriented approach of the previous concept in favor of ensuring the development of all spheres of society by the state. With the transition from a "market ideology" to an ideology of "good governance" public administration in developed countries has consolidated the values of political openness, efficiency and effectiveness, as well as the responsibility of all state institutions in making decisions that concern citizens. The American scientist B.G. Peters points out that the "new public administration" is not an ideology for the development of public administration, but only a set of specific technologies and institutions, among which the administrative procedure occupies a special place (Peters and Pierre 1998). Administrative procedures are a means of ensuring the principles of good governance and, as such, they form an important part of the quality of public administration. In addition, the administrative procedure is currently the fundamental business project of public administration and is aimed at improving the rationality of its functioning by amending the legislative acts regulating the administrative procedure, including the removal of administrative barriers in order to increase the effectiveness of public policy.

Within new management models, the development and implementation of policies rely on new procedural mechanisms to a much greater extent than on traditional rules of management and control. Given that these regulatory processes are aimed at establishing basic standards for the joint work of bodies and citizens. Regulatory cooperation has given a significant impetus to subsequent proceduralization. Modern models of interaction between bodies are moving away from standard administrative procedures in search of new, hybrid procedures that meet the changing needs of public administration. Third-generation procedures are becoming increasingly popular, although in many countries most administrative procedures relate to the first and second generation.

CONCLUSIONS

After analyzing the stages of the evolution of the administrative procedure and their features, we were able to understand the basic prerequisites for the emergence, establishment and development of the administrative procedure in European countries. So, at the first stage, the key prerequisite for the emergence of an administrative procedure was the concept of an "administrative act", in the USA there was a concept "due process"; at the second stage of formation, the event was significantly influenced by the expansion of powers in government bodies, and in the USA – the number of administrative agencies and their power has been increased, authority has been expanded, because Congress delegated authority to an administrative agency and any relevant or necessary procedural rules were included in the enabling legislation; as well as political events such as the political struggle of two opposing forces: the Democrats and the Republican, for them the procedure became a political compromise; at the third stage of development and modernization, we can state the consolidation of the provisions on the administrative procedure at the level of laws, codes and further modernization in connection with the European concept in the field of public administration "good administration", which has become a guide for European countries towards the introduction of appropriate changes.

It is important to understand what political and historical background has influenced the evolution of administrative procedures in the above countries. This work will become the fundamental basis for subsequent research on the administrative procedure, namely: its axiology, role, purpose and place in the legal system. Knowing the whole path that the administrative procedure has gone through, we can make a comparison for the progress in today's Ukraine legislation on the administrative procedure, see what changes have occurred, and find out whether the quality of the legal norms governing the administrative procedure and its mechanism has improved.

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