ADMINISTRATIVE AND PROCEDURAL LEGAL RELATIONS BETWEEN PUBLIC AUTHORITIES AND BUSINESS ENTITIES: INTERNATIONAL LEGAL ASPECT

Mentukh Nataliia, Western Ukrainian National University (Ternopil), Ukraine
Shevchuk Oksana, Western Ukrainian National University (Ternopil), Ukraine

ABSTRACT

In the context of adaptation of Ukrainian legislation to EU law and elaboration of the Draft Law of Ukraine "On Administrative Procedure", it is extremely important to clarify the current scientific approaches to understanding the essence of administrative procedures and their possible classification.

Based on the results of the study, the author has found that today administrative procedure law is a sub-branch of administrative law of Ukraine, and its features are as follows: 1) application in the public sphere and focus on ensuring the realisation of the public interest; 2) regulation of the procedure for law enforcement activities, which, as a rule, has a positive orientation; 3) mandatory presence of at least one public administration entity as a party to legal relations; 4) consolidation of the procedure for certain actions with a view to streamlining the activities of public administration bodies and individuals; 5) adoption of an administrative act based on the results of the procedure.

***The purpose of the study** is to determine the essence and peculiarities of administrative procedures in the economic sphere, and also to provide proposals and recommendations for their improvement based on a systematic analysis of the provisions of administrative law theory, domestic and foreign legislation and its application practice.*

***The object of the study** is social relations arising in the field of administrative procedures.*

***The subject of the study** is administrative and procedural legal relations between public authorities and business entities.*

***The author comes to the conclusion** that it is necessary to amend the Law of Ukraine "On Administrative Procedure" to regulate the mechanism for introducing the principle of "tacit consent" into legal relations between public authorities and business entities.*

The introduction of the principle of tacit consent in practice should solve a number of problems in the area of issuing permits, the main ones being

1. reduction of the real time spent by business entities on obtaining permits;

2. limiting opportunities for abuse by public authorities related to delays in issuing pre-trial documents established by the current legislation;

3. avoidance by business entities of unjustified termination or suspension of business activities, as well as unjustified financial expenses of business entities, in particular, lost profits due to the inability to start their business activities in a timely manner, or unjustified downtime due to the lack of a relevant permit.

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INTRODUCTION

The concept of administrative procedures has long been firmly established in the theory and practice of European countries, and the activities related to their implementation have been enshrined in law. Special laws have been adopted in most Central European countries and Sweden. European states seek to harmonise relations in this area by adopting uniform laws or a series of laws (as, for example, in France) containing important provisions on the procedure for public administration in order to solve the following tasks: bringing into the framework of the law the existing in various forms of public administration, reducing administrative formalism, expanding the accessibility of public activities to citizens.

Administrative procedures are a type of heterogeneous procedural activity of public authorities. It may be associated, for example, with the issuance of certificates, permits, decisions, registration, preparation of legal acts, implementation of administrative actions of a law enforcement nature, and implementation of other decisions of a "positive" nature. In practice, in such cases, we are talking about various administrative procedures and the corresponding administrative and procedural rules. Also, the activities of public administration bodies may be related to administrative jurisdiction (bringing to legal liability on the basis of administrative law or resolving a dispute over the law in the field of activities of public administration bodies).

The topic of interaction between public authorities and business entities is increasingly being analysed in all spheres of public life. The idea of establishing a free trade area and a single market of the European Union (hereinafter - the EU) between Ukraine and the EU countries in accordance with the Association Agreement with the EU and its Member States, as well as the strict fulfilment of obligations to ensure a zone of economic competition, is aimed at creating a competitive environment in which business entities enjoy equal competitive conditions and operate in accordance with the same generally accepted norms (Support Group for Ukraine, 2024).

In addition to Ukraine's obligations under the Agreement, in 2014, the Law of Ukraine of 2019 No. 3 (36) No. 1187 "On State Aid to Business Entities" was adopted, based on transparency, establishing the basic principles of the nature of state aid, the basis for its provision, as well as supervision and control over the aid provided by legal entities, and establishing a completely different approach to reform to meet the needs of citizens.Наступним важливим етапом нормативно-правового регулювання взаємодії органів державної влади та господарюючих суб’єктів стало ухвалення 17 лютого 2022 р. Закону України «Про адміністративну процедуру» який, без перебільшення, вважається найбільш довгоочікуваним нормативно-правовим актом, адже його намагалися ухвалити протягом більш ніж 20 років (THE LAW OF UKRAINE, 2022).

This legal act envisages a new stage in the interaction of public administration and local self-government bodies with citizens and legal entities.

As noted by (Mentukh and Shevchuk, 2023), the Law of Ukraine "On Administrative Procedure" establishes guidelines for consideration of administrative cases, creates clear standards for interaction between business and public authorities, in particular

- representatives of business entities can participate in administrative proceedings, get acquainted with the case file, have the right to be heard by the administrative body, and make comments and suggestions before the adoption of an administrative act;

- introduction of the concept of "interested persons" - persons whose interests and rights may be affected by decisions of administrative bodies;

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- administrative bodies are obliged to provide justification for administrative acts, motivation for negative decisions, and detail the procedure for administrative and judicial appeal of administrative acts;

- service delivery procedures will become transparent and understandable, which will reduce the risk of corruption;

- in order to objectively establish the circumstances of the case, the administrative body, in accordance with the principle of formality, is obliged to collect documents and other evidence, as well as to test the said data, if necessary;

- there is a simple and effective method of resolving a case that requires minimal time, money and resources (Mentukh and Shevchuk, 2023).

Under the Law of Ukraine "On Administrative Procedure", business entities have the right to appeal if a decision of an administrative body may violate their rights or legitimate interests. Thus, in court, the complainant may demand the recognition of an unlawful administrative act and the amendment or cancellation of this act or its individual provisions.

Thus, with the emergence of new legal relations between business entities and public authorities in the area of State aid, it is important to formulate and streamline certain administrative procedures to regulate managerial, organisational and control relations related to the interaction of business entities and public authorities.

The purpose of the study is to determine the essence and peculiarities of administrative procedures in the field of economic activity, and also to provide proposals and recommendations for their improvement based on a systematic analysis of the provisions of administrative law theory, domestic and foreign legislation and its application practice.Для досягнення поставленої мети наукового дослідження необхідно вирішити такі основні задачі:

1. - formulate the concept and define the principles of administrative procedures in the field of business;
2. - identify the types of administrative procedures carried out in the field of business;
3. - to characterise the state of legal regulation of administrative procedures in the field of business;
4. - to identify areas for improvement of the national legislation regulating administrative procedures in the field of business;
5. - to summarise the foreign experience of administrative procedures of business entities and to determine the possibilities of its use in Ukraine;
6. - to outline the main shortcomings of the organisational framework for administrative procedures in the field of business and to propose ways to eliminate them.
7. The object of the study is social relations arising in the field of administrative procedures.
8. The subject of the study is administrative and procedural legal relations between public authorities and business entities.

LITERATURE REVIEW

The application of the etymological method makes it possible to explore the original meaning of the term "administrative procedure". The etymology of the word "procedure" comes from the Latin "procedo", which means "passing or moving" (Nataliya etal., 2023), and in the Ukrainian language the concept of "procedure" appeared by borrowing its French-language transformation - "procedure", which has a similar meaning (Olechowski, 2018). In the reference literature, in particular (Skulová et al., 2017), the procedure is understood as an established, accepted sequence of actions for the implementation or execution of any business

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an officially established or customary procedure for the implementation, execution or execution of something; an official procedure for the implementation, execution, discussion of something(Skulová et al., 2017).

Thus, the following features of the procedure can be identified (Figure 1): 1) it is a sequence of actions that take place directly one after another or in several stages and are structured by appropriate social relations; 2) it is a sequence of actions that takes place according to the current (established) rules of conduct; 3) it is a sequence of actions united by a common goal; 4) it is hierarchical; 5) it has a service character.

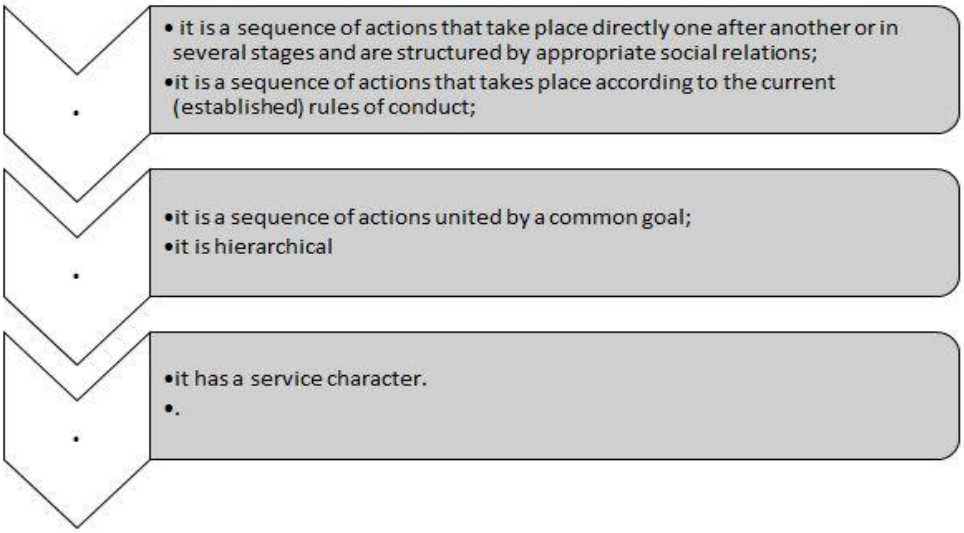

Figure 1
SEQUENCE OF ACTIONS

A legal procedure is a procedure regulated by a legal norm for acting or regulating relevant social relations in the field of law enforcement, which is characterised by (Figure 2): 1) legal force, i.e., the rules defining the procedural activity are enshrined in the law, as well as the main ones; 2) service character in relation to the legal relationship for the implementation of which it is provided; 3) a pre-determined model of its application in real life, through which the required result is achieved; 4) legality - compliance of the procedure with the normative model enshrined in a legal act; 5) synchronicity, i.e., with the emergence of a substantive rule, a procedural rule is immediately adopted, which ensures the continuity of lawmaking and law implementation, theory and practice; 6) limits of regulatory "influence" of procedural rules that do not affect the substantive (internal) side of the implementation of substantive rules, but only provide for the external process of their implementation.

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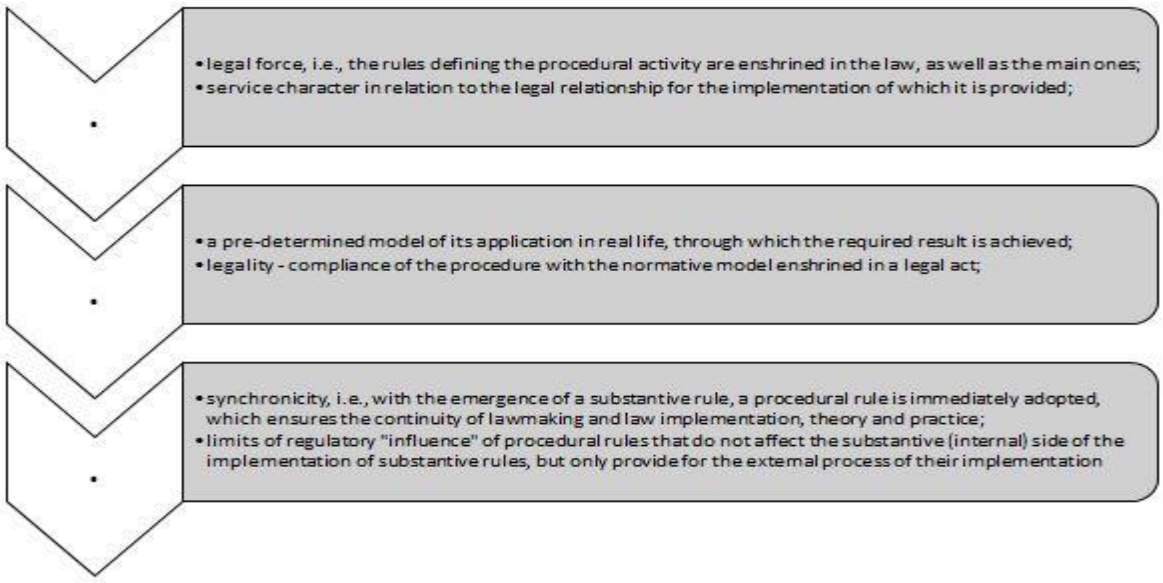

Figure 2
REGULATING RELEVANT SOCIAL RELATIONS

The concept of "administrative procedure" in the administrative law doctrine is characterised by a multivariate of definitions. For example, (Tollenaar, 2018) understands administrative procedure as the procedure for performing actions by public administration bodies enshrined in the rules of administrative law, (Turetskov et al., 2024) is the (official) procedure established by law for consideration and resolution of individual cases by administrative authorities aimed at adopting an administrative act or concluding an administrative agreement, (Shevchuk and Mentukh 2022) is the procedure established by law for resolution of individual administrative cases by administrative authorities, which is characterised by publicity and individual character, and (Kovbas & Krainii, 2023) is a statutory procedure for resolving individual administrative cases by public administration bodies, which is carried out in order to facilitate the exercise of the rights, freedoms and legitimate interests of individuals and legal entities.

According to (Boiko et al., 2019), administrative procedure is a structured, normatively fixed procedure for adopting administrative acts or concluding administrative and legal agreements aimed at resolving specific cases in the field of public administration;

(Oleksandr et al., (2020) administrative procedure means the procedure established by law (in this case, administrative law) for resolving individual administrative cases by public administration entities, which is not carried out by all public administration entities and not in relation to the entire subject of administrative and legal regulation.

(Rozsnyai et al., 2020) defines administrative procedure as consistent, purposeful actions of public authorities (public administration entities) provided for by a special regulatory legal act (code, law, regulation, instruction) to satisfy subjective rights, freedoms, fulfilment of legal obligations imposed on public authorities, local self-government bodies, or state tasks.

- as the procedure established by the norms of administrative law for the activities of public administration bodies to adopt regulatory legal acts of management and resolve administrative cases; (Gamidullaeva et al., 2023) .

– as the rules, procedure and conditions established by law for the exercise of procedural actions by an authority to consider, resolve and settle a specific individual case in

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the field of public administration; (Anders, 2011; Dörig, 2015) - as an activity of public authorities that has external consequences, aimed at checking the prerequisites, preparing and adopting an administrative act or concluding a public law contract; (Kovač, 2018) - as a procedure established by law for consideration and resolution of individual cases by executive authorities and local self-government bodies, which ends with the adoption of an administrative act or conclusion of an administrative contract; (Hoffman et al., 2020) - as a consistent procedure established by administrative and legal norms for the law enforcement activities of public administration to resolve individual administrative cases, which results in the adoption of an administrative act or the conclusion of an administrative agreement.

У широкому розумінні до адміністративної процедури відносяться всі закріплені у відповідних джерелах права норми, що встановлюють порядок прийняття буд-яких рішень і вчинення інших дій суб'єктами публічного управління. У вузькому розумінні до адміністративної процедури відносяться правові норми лише щодо прийняття суб'єктами публічного управління індивідуальних рішень, що мають зовнішнє спрямування, пов'язаних із наданням прав приватним особам або покладенням на них обов'язків.

The features of administrative procedure include: 1) legal nature, the presence of rules regulating both the activities of a public administration entity and the behaviour of individuals; 2) focus on the adoption of an administrative act by a subject of administrative authority; 3) application to resolve a specific administrative case; 4) the main purpose is to ensure the effective exercise of the rights of individuals and prevent their violation; 5) entails external consequences, i.e. the application of procedural rules gives rise to the rights and obligations of persons who are in a lawsuit (Boyko, 2017).

Identifies 7 main features of administrative procedure:

1) It has a legal nature, since the principles and rules that determine the administrative procedure are contained in the provisions of regulatory legal acts;

2) It contains rules that regulate both the activities of a public administration entity and the behaviour of private individuals;

3) Is aimed at the adoption of an administrative act by a public administration body;

4) Is used to resolve a specific administrative case;

5) Has the main purpose of ensuring the effective exercise of the rights of individuals and preventing their violation;

6) Entails the occurrence of external consequences, i.e., the adoption of an administrative act gives rise to rights and obligations for persons outside the public administration system;

7) Is usually indisputable, i.e., positive administrative cases are resolved through the administrative procedure. The exception is the complaint procedure, since when appealing against decisions, actions or inaction of public administration entities, the parties to legal relations governed by procedural rules have different ideas about how to act in a particular administrative case (Arendsen et al., 2014).

Thus, despite the absence of a generally accepted understanding of administrative procedure in administrative law doctrine, there is no doubt that administrative procedure

1) Is directly related to the activities of public administration entities;

2) Is a certain procedure of actions of executive authorities, local self-government bodies, their officials and employees;

3) Has a legal nature, enshrined in the provisions of regulatory legal acts.

In our opinion, administrative procedures have the following features (Figure 3):

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1) They are applied in the public sphere, it is with the help of administrative procedures that the management activities of public administration are given a legal form that ensures the clear functioning of management subjects;

2) Regulate the procedure for law enforcement activities and establish the procedure for actions and decision-making by competent authorities and officials in connection with their application of legal requirements to a particular life event;

3) Cover positive management activities, i.e. activities aimed at creating conditions for the effective exercise of the rights and legitimate interests of citizens and organisations provided for by the relevant substantive rules of law;

4) Establish a certain procedure for performing certain actions, since the task of administrative procedures is to streamline the activities of authorised public authorities and all interested parties, and the ultimate goal is to improve the efficiency and quality of work of public administration entities;

5) Special subject composition - one of the parties is always a public administration entity;

6) They are enshrined in administrative procedural rules, which, in turn, regulate the application of substantive rules of administrative and other branches of law (civil, commercial, labour, etc.) and at the same time regulate the activities of authorised bodies and officials, i.e. have a service character.

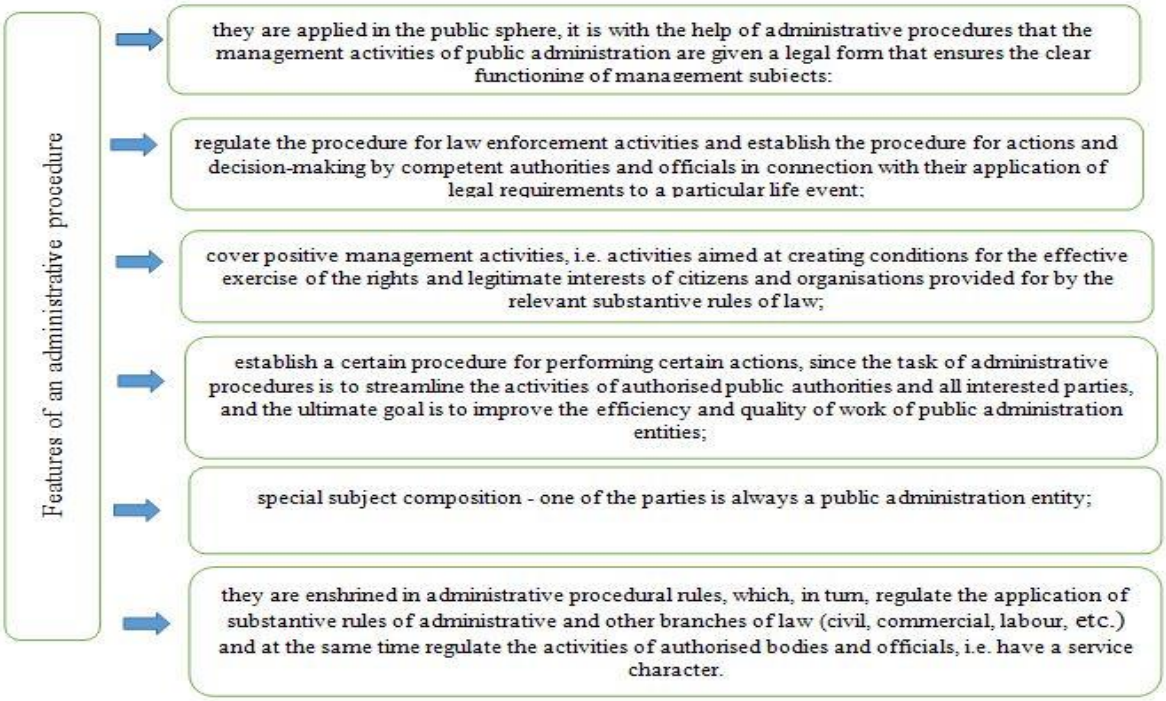

FIGURE 3
FEATURES OF AN ADMINISTRATIVE PROCEDURE

The hypothesis of the research is that the introduction of the principles of tacit consent into the administrative procedure involving public authorities and business entities will significantly improve the quality of administrative services provided.

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METHODS AND MATERIALS

The methodological basis of the article is a set of methods and techniques of scientific knowledge, both general scientific (logical, historical and legal, system analysis, etc.) and special (documentary analysis, comparative legal methods, etc.), which contributes to the achievement of the goals set, ensures a complete and comprehensive understanding of the research topic, scientific reliability and convincing results.

In particular, using the historical and legal method, the article traces the process of formation of Ukrainian legislation on administrative procedure. The author uses the logical and semantic approach to develop the key definitions of administrative and procedural relations of business entities.

The structural and functional method is used to establish the essence of administrative procedure, its correlation with related legal concepts, and also to determine the scope of legal regulation of general acts on administrative procedure. With the help of the logical and semantic method, the author identifies the defining ideas, standards, principles and rules of administrative procedure legislation.

RESULTS

Adoption of the new Law of Ukraine "On Administrative Procedure" requires radical legislative changes and new solutions, development and implementation of best practices for administrative cases for legal entities with the help of scientific developments and practical recommendations.

Розглядає адміністративну процедуру як нормативно впорядковані дії органів державного управління, що спрямовані на прийняття урядових управлінських рішень та виконання повноважень, не пов'язаних із розглядом спорів чи застосуванням заходів примусу. Змістом адміністративних процедур є порядок розгляду та вирішення індивідуальних адміністративних справ адміністративними органами та органами місцевого самоврядування адміністративних справ з метою захисту прав і законних інтересів, а також виконання передбачених законодавством обов'язків усіх суб'єктів правовідносин (Broker, 2018).

According to (Bratasyuk and Shevchuk 2022), in the field of economic activity, administrative procedures can be distinguished according to their functional characteristics or goals that can be achieved by using the procedures:

- organisational (including state registration of the establishment of a business entity, state registration of changes to information about a legal entity, state registration of the transition of a business entity from a model charter to operating on the basis of its own constituent documents, state registration of the termination of a business entity as a result of its liquidation, state registration of the termination of a legal entity due to its reorganisation)
- control (for example, conducting inspections, surveys, supervision, revision, audit, of a business entity);
- regulatory (results of rule-making activities of state authorities and local self-government bodies to make sound management decisions of an individual or collective nature that regulate the activities of business entities, such as licensing or public procurement procedures).

The principles envisaged by the Law of Ukraine "On Administrative Procedure" not only reflect the best traditions of European rule-making, but also set basic standards for interaction between public authorities and business entities. However, it is particularly noteworthy that the principle of tacit consent is not properly regulated by the Law. This is the

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principle according to which a business entity acquires the right to carry out business activities without obtaining the relevant permit if it has submitted to the administrative authority the full scope of all documents required to obtain permits, but has not received such documents or a decision to refuse to issue them within the time limit established by law (THE LAW OF UKRAINE, 2022).

In particular, in accordance with the provisions of the Law of Ukraine "On the Permitting System in the Field of Economic Activity", "...the principle of tacit consent is the principle according to which a business entity acquires the right to perform certain actions in relation to economic activity or types of economic activity without obtaining a relevant permit document, provided that the business entity or its authorised person has submitted an application and documents in full in accordance with the established procedure, but within the time limit established by law, the permit document has not been (THE LAW OF UKRAINE, 2024).

The introduction of the principle of tacit consent in practice should solve a number of problems in the field of issuing permits, the main ones being: reducing the real time spent by business entities on obtaining permits; limiting the possibilities for abuse by representatives of public authorities related to the delay in the time limits for issuing pre-trial documents established by the current legislation; avoiding unjustified termination or suspension of economic activity by business entities; avoiding unjustified

After all, if a business entity fails to obtain a permit or a decision to refuse to issue such documents within the statutory period, it is entitled to carry out certain actions in the field of economic activity without obtaining such a permit within 10 business days from the expiry of the period established for issuing a permit or making a decision to refuse.

However, it should be remembered that a business entity is required to have a copy of the list of all accepted documents with the date of their acceptance and registration. In other words, a business entity acquires the right to carry out business activities without obtaining the relevant permits if the application and all necessary documents are submitted within the statutory period, but no positive or negative response is received.

Thus, the principle of tacit consent can be used if the relevant authority fails to issue or refuse to issue a permit or relevant approval within the statutory period. This allows a business entity to continue performing work or rendering services until a decision is made to fulfil its business obligations, avoiding lost profits and sanctions under a business agreement. In other words, the main legal fact that gives rise to legal relations in which a business entity may continue to operate, referring to the principle of tacit consent, is the inaction of an administrative body.

Today, in accordance with the Law "On the Permitting System in the Field of Economic Activity", a business entity may apply the principle of tacit consent if three basic conditions are met:

1) the business entity has proof that it has submitted all documents required by law to obtain a permit within the time limit established by law;

2) the deadline for consideration of the application and the documents submitted with it is 10 business days from the date of submission of the application;

3) no response from a state or local government authority or a response provided in violation of the time limits established by the applicable law (THE LAW OF UKRAINE, 2005).

We believe that the provision on the procedure for applying the principle of tacit consent should be included in the list of principles established by the Law of Ukraine "On Administrative Procedure" (Administrative Procedure Act, Columbia, 1968), taking into

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account the time limits provided by law for consideration of applications and complaints, namely 30 and 45 calendar days. However, the introduction of these amendments requires the resolution of a number of issues that arise when business entities apply the principle of tacit consent. After all, while the existence of the second and third grounds for applying the principle of tacit consent is subject to simple justification, the fact that a business entity has submitted a full package of documents to the competent authority and within the time limit established by law requires some clarification.

In particular, the Laws of Ukraine "On the Permitting System in the Field of Economic Activity" and "On Administrative Procedure" should explicitly set the timeframe for the administrative authority to return documents to a business entity on the grounds of their incompleteness and to eliminate the said deficiencies, as well as the obligation of the administrative authority to publish information on the return of documents to a business entity on its official website.

The Law of Ukraine "On Administrative Procedure" defines a mechanism for leaving an application without movement with a deadline for correcting deficiencies, which allows, in case of complete correction of deficiencies within the time limit set by the representative of the administrative body, to consider the application registered at the time of initial application (THE LAW OF UKRAINE 2022).

In other words, if the administrative authority does not conduct an appropriate analysis of the submitted documents and does not notify the business entity of the need to eliminate deficiencies in the application or submitted documents, we can assume that the business entity has submitted all the necessary documents to obtain the relevant permit, and therefore potentially has the right to apply the principle of tacit consent in the future.

The possibility for a business entity to apply the principle of tacit consent has already been the subject of numerous commercial disputes. In particular, the Supreme Court, as part of the Judicial Chamber for the Protection of Social Rights of the Administrative Court of Cassation, in case No. 826/9746/17, is considering the issue of the principle of tacit consent when obtaining permits. The Court concludes that the principle of tacit consent does not mean that the said right is absolute and can be exercised in any case where the decision of the administrative authority to grant or refuse a permit was not sent within the statutory period.

In order to avoid these procedural problems, the State Regulatory Service recommends that business entities send the application and a package of documents by registered mail with a list of attachments and acknowledgement of receipt to the administrative authority (with the date). In turn, administrative authorities are advised to take such notification into account, realising that the acquisition by a business entity of the right to carry out certain activities is a legal fact that cannot be changed or terminated due to the late submission of a decision to refuse to issue permits (Oksana Shevchuk, 2022).

In view of the above, we conclude that the principle of tacit consent cannot be positioned as an effective mechanism for protecting the rights and legitimate interests of business entities. The existence of gaps in the current legislation leads to a limitation of the practice of applying the principle, as it requires a business entity to prove the legitimacy of its position on its own.

However, it is worth noting that at this stage, when we are waiting for the Law of Ukraine "On Administrative Procedure" to enter into force, a radical rethinking of the functions of the state and the entire state mechanism is taking place. Therefore, the introduction of appropriate amendments to the Law of Ukraine "On Administrative Procedure" will facilitate the introduction of democratic mechanisms and new approaches to defining the content of the category "service state", and will have a positive impact on the

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choice of management strategy for business entities, as service legal relations, rather than command and control, should become dominant. Implementation of the service model of the state will promote transparency and accessibility of permitting, licensing, registration, and organisational administrative services for business entities.

Analysing the international experience of applying the principle of tacit consent, we note that the main regulations governing relations in the field of protection of business entities are

1) Rome Treaty (European Parliament, 1957);

2) Council Regulation (EC) No. 17/62 of 16 February 1962 (relating to the application of Articles 81 and 82 of the Treaty of Rome, 1958);

3) Council Regulation (EC) No. 4064/89 as amended by No. 1310/97 (on merger control - "The Merger Control Regulation (EEC)") (Council Regulation (EC), 1997).

The best example in the international legislative practice of regulating administrative procedures for business entities with the introduction of the principle of tacit consent is the Code of Best Practices for the Conduct of State Aid Control Procedures (Official Journal of the European Union, 2009).

According to clause 1 of the Code, it is established that in recent years the European Commission has been implementing procedures for modernising state aid to business entities in order to focus its control on measures that have a real impact on the development of competition in the internal market, as well as rationalise and simplify rules and procedures, clause 8 of the Code describes and clarifies the procedures performed by the Commission, indicating the procedure for using the principles of tacit consent.

The experience of Japan is also interesting. In particular, the Japanese antimonopoly authorities have one month to review a notification of economic concentration. After this period, if no response is received from the antimonopoly authority, the merger is deemed to be automatically cleared under the tacit consent rule, which is also applied in the US and EU.

DISCUSSION

The end of the XX - beginning of the XXI century was an era of complication of not only socio-economic, political, but also legal reality. The development of almost all states follows the path of expanding their functions, increasing the number of areas in which public administration is carried out, and enhancing the role of administrative vision. At the same time, traditional problems have been "superimposed" on new challenges and crises. All of the above necessitates a more intensive search for legal forms and organisational models for making legal, reasonable and expedient administrative decisions.

It is not surprising that recent decades in many countries have been marked by administrative reforms. The modernisation of Ukrainian administrative law is aimed at improving not only the system of internal relations, but also the interaction of public authorities with the public in various areas, including the provision of public services, the implementation of state control and supervision, ensuring the information transparency of public administration, and the introduction of new electronic technologies in the administrative process.

Improvement of the phenomenon of administrative procedures is one of the key issues in the development of modern administrative law, and its solution requires analysis of a variety of closely related issues: the principles of administrative law, forms of administrative actions, and the criteria of sufficiency and redundancy of administrative and legal regulation.

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According to the managerial approach, administrative (managerial) procedures are a statutory procedure for the consistent implementation by authorised subjects of law of coordinated actions to exercise their competence, both positive and negative (jurisdictional). A positive understanding of administrative procedure, as it is easy to understand, reduces it to an undisputed, non-jurisdictional activity of public administration.

In other words, administrative procedures are legally effective sequences of actions of subjects that cover both regulatory (positive) and protective (jurisdictional) relations; and within the framework of positive procedures, as a rule, rule-making and law enforcement, external and internal administrative procedures are distinguished.

In general, the basis of the management activities of executive authorities is administrative procedures, the types of which are shown in (Figure 4).

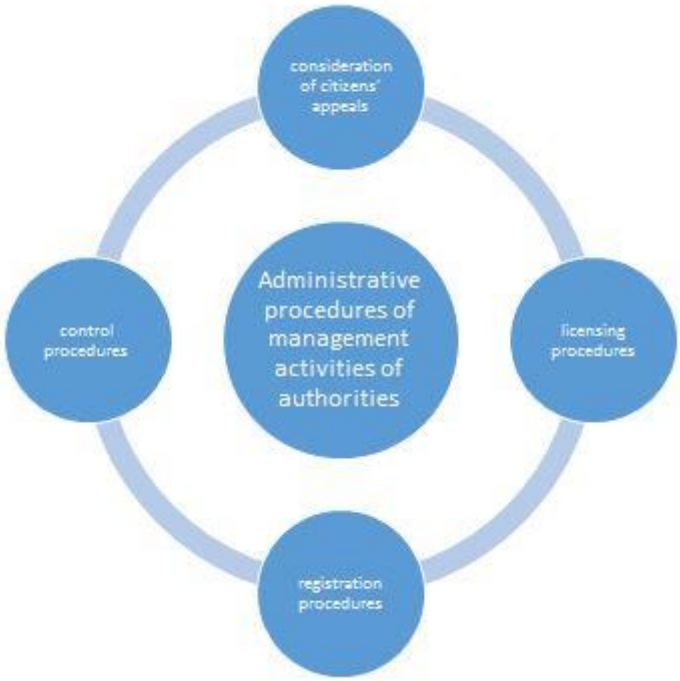

Figure 4
TYPES OF ADMINISTRATIVE PROCEDURES OF EXECUTIVE AUTHORITIES

A characteristic feature of the relationship between the parties to administrative legal relations is inequality, and therefore one of the parties - the executive authorities - is vested with decision-making powers in relation to the other party to administrative legal relations. This means that clear regulation of administrative procedures is essential.

On the one hand, administrative procedure is a guarantee of the rights and freedoms of citizens, as it enables the administration to establish its own rules for interacting with non-governmental entities. On the other hand, administrative procedures provide the authorities with a choice of forms of interaction. This choice is provided to ensure that administrative activities have flexibility and can take into account the circumstances of a particular case.

The main characteristics of intermunicipal cooperation, from the point of view of (Mentukh et al., (2023) are:

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- the presence of two or more local governments that have mutual cooperation;
- agreement on joint actions, involvement of separate resources to obtain mutual benefits that would be unattainable in the case of independent actions;

joint activities aimed at one or more sectors within the established competence of local self-government bodies;

- costs of the parties (efforts, financing), joint use of resources (personnel, land, equipment, buildings, etc.);
- benefits for the partners (provision of services inaccessible to small communities, reduction of costs in the provision of services, improvement of the quality of services, improved coordination of future development planning);
- a certain period of cooperation, which is determined by the agreement without specifying the expiration date;
- absence of permanent transfer of powers of local self-government bodies with the preservation of indirect control of local authorities over decisions and services arising from cooperation (Nataliya et al., 2023)

The development of new scientific ideas, their implementation and legislative formalisation are impossible without taking into account the experience of foreign countries, its analysis and generalisation. The law-making process of developed countries confirms the correctness of the chosen vector of development of administrative procedure legislation. Meanwhile, administrative procedures of foreign countries have some specific features.

In his work, (Ponce Sole 2005) proposes a division of administrative procedures. proposes to differentiate administrative procedures depending on their functions. These functions are called instrumental and non-instrumental (EUR-Lex, 1962). Thus, procedures that play a separate role and are directly related to the final decision in a case are non-instrumental. Administrative procedures that are functionally aimed at consideration of a specific administrative case and guarantee a fair decision by an independent official should be recognised as instrumental.

Professor of German and European Administrative Law, notes that "administrative procedures should bring order to the activities of the executive branch: the individual stages of decision-making, the role of participants in this process, the influence of different interests and the significance of the decision results should become more transparent. Procedures are, on the one hand, real processes and, on the other hand, models of order. They influence the application of substantive law by the executive branch and help ensure the legitimacy of the executive branch" (Schmidt-Aßmann, 2009).

Notes: "Administrative procedure can be understood as a sequence of acts (actions) and operations performed by an administrative body on its own initiative or at the request of an application, in order to make decisions regarding the rights, interests and obligations of the participants in the procedures or decisions in the public interest in accordance with laws and other applicable acts" (Dragos, 2016).

In other words, administrative procedures act as a "link" between various administrative and legal phenomena: public administration, administrative acts (adopted by public administration as a result of the procedure), citizens and organisations (whose legal status is changed as a result of adoption of administrative acts), serve as a means of implementing the requirements of the principles of administrative law, and facilitate the implementation of their provisions.

The search for the best option for a modern understanding of administrative procedures requires an analysis of foreign experience in legislative regulation of administrative procedures.

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The emergence and consolidation of the provisions of "administrative procedure" around the world differs, given the historical background of development. Nevertheless, most countries have chosen to systematise the rules of administrative procedure into a single legal act.

For example, the first codified legislative acts on administrative procedure were adopted in Australia (1925), Poland and Czechoslovakia (1928), and Yugoslavia (1930). In 1946, the United States adopted a law on administrative procedure, Hungary - in 1957, Spain - in 1958. After the Second World War, due to the change of power, new laws on administrative procedure were adopted in Yugoslavia (1956) and Poland (1960). In Germany (1976), Bulgaria (1979), Denmark (1985), Italy (1990), Portugal (1991), the Netherlands (1992), and Japan (1994), codified laws on administrative procedure were adopted. As for the post-Soviet countries, only Georgia (1999) and Kazakhstan (2000) have adopted codified regulations on administrative procedure" (Tymoshchuk, 2003).

The end of the twentieth and beginning of the twenty-first century in the world is characterised by the intensification of legislators' efforts to adopt specialised legal acts in the field of administrative and procedural regulation (1946 - USA, 1960 - Poland, 1967 - Norway and Slovakia, 1968 - Switzerland, 1976 - Germany, 1979 - Albania, 1985 - Denmark, 1990 - Italy, 1991 - Austria, Portugal and Canada, 1993 - Iceland and Japan, 1999 - Greece, Georgia and Slovenia, 2000 - Kazakhstan, 2001 - Latvia, Estonia, 2003 - Finland, 2004 - Armenia and the Czech Republic, 2005 - Macedonia, 2009 - Azerbaijan, 2010 - the Netherlands, 2014 - Croatia and Montenegro, 2015 - Albania, Spain, France, 2016 - Hungary, 2017 - Sweden) (Zakon, 1976), which led to the emergence and further development of administrative procedure law. (Table 1)

Here is a table of legislative acts on administrative procedure in some foreign countries.

Table 1
CURRENT ACTS ON THE ADMINISTRATIVE PROCEDURE OF CERTAIN FOREIGN COUNTRIES

Country	**Name of the regulatory act**	**Year of acceptance**	**Using the principle of 'tacit consent'**
USA	Law on Administrative Procedure	1946	+
Poland	Law on Administrative Procedure (Code of Administrative Procedures)	1960	+
Slovakia	Administrative and procedural code	1967	+
Norway	Law on Administrative Procedure	1967	+
Switzerland	Federal Law on Administrative Procedure	1968	+
Germany	Law on Administrative Procedures	1976	+
Bulgaria	Act on administrative procedure	1979	+
Denmark	Law on Public Administration	1985	+
Italy	Law on Administrative Procedure	1990	+
Austria	General Law on	1991	+

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	Administrative Procedure		
Portugal	Administrative and procedural code	1991	+
Iceland	Law on Administrative Procedures	1993	+
Greece	Code of Administrative Procedure	1999	+
Georgia	General Administrative Code of Georgia	1999	+
Finland	Law on Administrative Procedure	2003	+
Czech Republic	Law on Administrative Procedure (Code)	2004	+
Netherlands	Law on General Administrative Law	2010	+
France	Code of relations between the public and the administration	2015	+
Spain	Law "On General Administrative Procedure of State Administration"	2015	+
Hungary	Law on General Administrative Procedure (Code)	2016	+
Sweden	Law on Administrative Procedure	2017	+

For the formation of administrative procedure legislation in the world, the adoption of two regulatory legal acts was of great importance - the US Federal Administrative Procedure Act of 1946 (APA, 1946).and the German Administrative Procedure Act of 1976 (Administrative Procedure Act Verwaltungsverfahrensgesetz, 1976).

The US Administrative Procedure Act provides for procedures for: 1) rulemaking; 2) individual regulation (adjudication) - individual positive cases regarding the adoption of an individual act, as well as cases of appeal. At the same time, this legal act regulates in detail all types of activities of administrative authorities (rulemaking, executive, law enforcement, and law enforcement activities), as well as all stages of the administrative process and almost all actions of administrative-type institutions and their officials covered by the provisions and regulations of administrative procedure law.

The concept of administrative procedure in the United States covers: a) the agency's activities to formulate, amend or repeal a regulatory regulation ("rule") that are not related to the adjudication of a case (so-called "rule making"); b) administrative activities related to the adjudication of a case ("adjudication"); c) licensing activities of the agency, which is the procedure for issuing, amending or cancelling a "rule making"); b) administrative activities related to the adjudication of a case ("adjudication"); c) licensing activities of the agency, which is the procedure for issuing, extending, rejecting, cancelling, suspending, revoking, limiting, changing and modifying a licence ("licensing") (APA, 1946). At the same time, a number of agencies in the United States are empowered to develop, adopt and enforce not only individual but also regulatory acts, as well as to carry out quasi-judicial activities.

The Administrative Procedure Act thoroughly regulates all types of administrative activities: rulemaking, executive, law enforcement, and law enforcement (administrative justice). Almost all actions of administrative institutions and their officials are covered by the

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rules of administrative procedure law. All stages of the administrative process are regulated: investigation and collection of information, preparation of a draft normative or individual act, its consideration at an open meeting, decision-making, publication, and appeal to higher authorities and courts.

A conceptually important feature of the administrative process of developed countries, including the United States, is the establishment of a limited list of principles of administrative procedure of authorised bodies In particular, the basis of the US administrative procedure should be recognised as publicity and accessibility of the process to the public.

The practical implementation of this principle is carried out by means of broad informing citizens about the work of the administration, holding public meetings, promoting legal knowledge, etc. Active rulemaking in the area of establishing administrative procedures is also observed in some states (Administrative Procedure Act, Louisiana, 2003).

The German Law "On Administrative Procedure" of 25.05.1976 (Verwaltungsverfahrensgesetz), as amended (Administrative Procedure Act, 1976)., regulates the procedures for the adoption and cancellation (revocation) of administrative acts, as well as its types - general order and individual administrative act, which is why a significant part of this legal act is occupied by the rules governing the validity of an administrative act, the grounds and consequences of its invalidity. Administrative procedure is defined in this law as an external activity of public authorities aimed at checking the prerequisites, preparing and adopting an administrative act or concluding a public law contract (Administrative Procedure Act, 1976; 9. Ponce Sole 2005). This is the most general approach to the concept of administrative procedure that can be formulated based on the provisions of foreign legal doctrine.

Administrative procedure under the above law is an activity of the authorities that is external in nature and is aimed at verifying the prerequisites of a case, preparing and issuing an administrative act or concluding a public law contract.

It should be noted that the type and scope of citizens' rights to participate in administrative proceedings depends on the tasks performed by the administrative body in question, whether the required decision is a simple or multi-stage decision, and what public and private interests are affected. The administrative authority should react flexibly and choose the appropriate form of action. By not prescribing a form and requiring the administrative procedure to be simple and expedient, it is possible to ensure that citizens have easier access to the administration and that the administrative procedure is accelerated.

The Act on Administrative Procedure (Code of Administrative Procedure) in Poland (1960) regulates proceedings: 1) in public administration bodies in individual cases within the competence of these bodies, which are resolved by administrative decisions; 2) in other public bodies, as well as in other entities, if they are obliged by law or by agreement to resolve the cases referred to in paragraph 1; 3) in cases of resolving disputes on competence between local self-government units and government administration bodies and between bodies and entities referred to in paragraph 2; 4) in cases of issuing certificates (Article 1). In addition, the Law on Administrative Procedure (the Code of Administrative Procedure) regulates the proceedings in cases of complaints and proposals in state bodies, bodies of territorial self-government units, and bodies of public organisations (Article 2) (ACT of 14 June, 1960).

Active processes of developing legislation on administrative procedures are also taking place in the Baltic States and Scandinavian countries. For example, Latvia and Estonia are fully involved in the process of creating administrative and management systems that are close to European standards (Administrative Procedure Act, Estonia, 2001).

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In February 2004, the Law of Latvia "On Administrative Procedure" came into force (Administrative Procedure Law, Latvia, 2001). Prior to its adoption, there was no special procedure for consideration of administrative cases by public administration bodies in the country. To appeal against the actions of the authorities, a person could apply to a court of general jurisdiction, which considered cases in accordance with the Civil Code of Latvia.

The most important achievement of the Law was the separation of two independent judicial systems involved in administrative disputes: administrative and general. However, in addition to administrative justice, the Latvian Law on Administrative Procedure provides for: a list of pre-trial procedures; the institution of representation; accessibility and simplicity of filing an administrative complaint, etc.

The most important principle underlying the Law of the Republic of Estonia "On Administrative Procedure" is the protection of human rights, which follows from the content of the quoted articles of the Constitution of the Republic of Estonia. Thus, according to Article 1 of the Administrative Procedure Act of the Republic of Estonia, its purpose is to ensure the protection of human rights by establishing a unified administrative procedure that allows individuals to participate in it and exercise judicial control (Administrative Procedure Law, Estonia, 2001).

Also, part 1 of Article 3 of the Law of the Republic of Estonia "On Administrative Procedure" stipulates that in the administrative procedure, fundamental rights and freedoms, as well as other subjective rights of a person may be restricted only on the basis of law (Administrative Procedure Law, 2001). Thus, administrative procedural activities must comply with the law both formally and in essence, i.e. another important principle underlying the law is legality.

The 1993 Icelandic Law on Administrative Procedure is similar in content (Govt of Iceland, 1993). and the 2003 Finnish Administrative Procedure Act (Administrative Procedure Act, Finland 2003). The general characteristics of the laws are that they do not apply to judicial procedures, bankruptcy, property requisition, police and army. They set out a list of principles for administrative actions: equality; activity of the authorities during the consideration of an administrative case; speed; thoroughness of consideration; national language of production; and mutual assistance of public authorities.

Among the most important rights of persons involved in a case are the right to be heard; the right to access information; and the right to appeal decisions to higher authorities and courts.

The provisions of the laws on administrative procedures in Hungary do not apply to actions related to national defence, foreign trade, taxation (Act CL, 2016).

In turn, administrative procedures in France relate to both individual administrative acts and regulations (HAL Portal SHS, 2015).

Thus, each country has its own types of administrative procedures: for the adoption of regulations; for the adoption of individual administrative acts; for the provision of public services, etc. In some foreign countries, administrative procedures are classified by areas of administration: administrative procedures in the field of economy, enforcement proceedings, etc.

In addition, it is worth noting that the draft Model Code of Administrative Procedures of the European Union is currently being actively discussed. That is, the possibility of codifying administrative procedure legislation is being considered not only at the level of a single state, but also at the level of such a large interstate entity as the European Union.

Based on the results of public discussion of the draft Model Code of Administrative Procedure of the European Union, the European Parliament adopted the Resolution "On the

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Law on the Administrative Procedure of the European Union" (2012/2024 (INL)) of 15 January 2013 (European Parliament, 2012), де викладено рекомендації щодо розроблення закону про адміністративну процедуру The EU Model Code of Administrative Procedure is based on the EU acquis and sets out the legal framework within which administrative procedure legislation should be codified, the general principles of public administration, the requirements for making administrative decisions and their cancellation, and the general requirements for access to information on decisions.

It is worth noting that the structure of the draft EU Model Code of Administrative Procedures is built with due regard to the specifics of legal regulation of administrative procedures in different EU member states. The best examples of the structure, content of the main provisions, and enforcement practice of codified laws on administrative procedure were taken into account when working on the draft.

CONCLUSION

Based on the study, the following conclusions can be drawn.

Foreign experience shows that European countries have different approaches to determining the scope and content of legal regulation of administrative procedures. However, in all countries, administrative procedures relate to the development of decisions that affect the rights and legitimate interests of citizens.

It can also be stated that, despite the different names of administrative procedure laws of certain foreign countries, their structuring, and peculiarities in the legal regulation of certain issues, in general, they mostly reflect the basic standards of fair administrative procedure. This applies to the regulation of its principles, the rights of an individual, the duties of an administrative body, etc. The experience of Western European countries and, above all, Germany, has an obvious influence on the content of laws. This fact is also to be welcomed, since foreign legislation has already undergone a sufficient period of testing by practice and has proven its effectiveness.

We believe that it is necessary to amend the Law of Ukraine "On Administrative Procedure" to regulate the mechanism for introducing the principle of "tacit consent" into legal relations between public authorities and business entities.

The introduction of the principle of tacit consent in practice should solve a number of problems in the area of issuing permits, the main ones being

1. reduction of the real time spent by business entities on obtaining permits;

2. limiting opportunities for abuse by public authorities related to delays in issuing pre-trial documents established by the current legislation;

3. avoidance by business entities of unjustified termination or suspension of business activities, as well as unjustified financial expenses of business entities, in particular, lost profits due to the inability to start their business activities in a timely manner, or unjustified downtime due to the lack of a relevant permit.

Legislative regulation of relations between citizens and public administration entities should be clear and detailed, but at the same time easy to understand for everyone. Adoption of a single regulatory legal act on administrative procedure, which sets out the concept of an administrative body, the principles of administrative procedure, including the principles of good public administration, the procedure and timeframes for adopting administrative acts, the procedure for administrative appeal against decisions, actions and inactions of public administration entities, etc., ensures proper protection of the rights and interests of citizens.

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An analysis of the current foreign legislation on administrative procedures demonstrates the need for legislative regulation of the institution of administrative procedures. The accumulated experience allows the Ukrainian legislator to choose the existing model of regulation of administrative procedures and adapt it to the specifics of the Ukrainian legal system. Undoubtedly, further development of administrative procedures in Ukraine is possible only with due regard for the positive results of administrative reforms in foreign countries, which have created new administrative realities and opportunities for people and citizens.

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